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The Nonprofit Quarterly

Significantly Misunderstood and Often Mishandled:
Nonprofit Conflicts of Interest

"*NPQ*'s Illustrated Nonprofit Economy, 3rd Edition" poster within!

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Welcome

Dear readers,

This edition of the *Nonprofit Quarterly* has a special focus on the negative and positive enactments of self-interest in the nonprofit sector.

We started by looking at conflicts of interest, and quickly realized that the last thing we wanted to do was to give the impression that self-interest in general in nonprofits is objectionable.

Sometimes it *is* a bad thing—as when individuals prioritize their own interest over the collective interest they are meant to serve. There has been a wave of such cases surfaced by the media recently, and what has been especially striking about these high-profile scandals is the extent to which multiple individuals were involved across board and staff leadership—speaking to a distinctly enabling culture—and the degree to which these so-called leaders expressed surprise at being called out, even for the most egregious of fiduciary violations.

But self-interest in the sector is not always inappropriate. In fact, the most grassroots elements of the sector are largely made up of groups pursuing collective self-interest. The people who make up these groups may have been marginalized politically, socially, and economically—and in such cases, that collective self-interest is a critical embodiment of liberatory activity.

Still, there are groups that pursue collective self-interest that are anything *but* marginalized, and such groups can act in ways that exclude and marginalize others.

No one ever said that these complexities—which we all face from time to time, or even constantly, in our organizations—do not require careful consideration; but despite the many nuances, we all know a conflict of interest when we see one in someone else's organization. It can be trickier to recognize such conflicts in one's own organization, and our hope is that these articles will inspire some soul searching and spark conversation.

This edition also contains two other very important pieces: an updated map of the nonprofit economy, by Jon Pratt and Kari Aanestad (this third edition shows some significant changes!), and an article, destined to become a classic, by David Renz and Fredrik Andersson, on the hidden-in-plain-sight dynamics of dominant coalitions as they exist in nonprofits. We also include a story of free-floating collaboration that kept a former mill town from sinking into decline, by Jonah Fertig-Burd; a thought-provoking article on the true meaning of tribalism, by Sarah Kastelic; and the sage advice of the inimitable Nonprofit Whisperer.

We welcome your thoughts! If you have had an experience with a conflict of interest in your organization that you would like to share, please connect with us at www.nonprofitquarterly.org.

The Nonprofit Whisperer

"Building Community Agency"

Community organizers impacted by the very issues an agency is addressing may find themselves "organized into the agency's—or what might be called the *elites'*—agenda" rather than "organized in ways that build their self-determination and community agency." In such a situation, the Nonprofit Whisperer advises organizing a group to talk to those in charge about the agency's approach to the work. If no such a dialogue is made welcome, "try to find work that is more aligned with your spirit and thinking." If you do find an opening, be patient: "Culture change takes time."

Dear Nonprofit Whisperer,

I feel like I am caught in kind of a sneaky vise. My job is to organize people impacted by economic injustice in my neighborhood, a role that feels a little complicated, since I fit in that category and live in that neighborhood. That might not be a problem, except that I am one of a very few organizers in this multiservice agency, and sometimes the conversation around the office reflects a real manipulative bent, as in, "How do we get these people to do that thing that we need for them to make a priority?" So, my job is what? To convince people that the agency's priorities should be theirs?

There is an ethical messiness to it all that is like nails on a chalkboard.

And I get insulted and rageful.

And that is not a good look, apparently, in a professional setting. It just seems to reinforce the "othering" that begins to feel like the cultural water we swim in every day. It's been put out for us, and we swim in it.

How does an individual who is already othered go about demanding that the water be changed?

Othered

[This], of course, is what community organizing should be about. It should not be about convincing people that the agency's priorities ought to be theirs, but about building individual and community agency.

Dear Othered,

Community organizing is noble and incredibly hard work. It is made harder when the organizer (individual employee) has different values, perspectives, and approaches from those of the agency's way of thinking and doing things.

The issue you are running into is incredibly common: Do folks, especially folks impacted by economic injustice, get organized into the agency's—or what might be called the "elites'"—agenda, or are they organized in ways that build their self-determination and community agency?

The latter, of course, is what community organizing should be about. It should not be about convincing people that the agency's priorities ought to be theirs, but about building individual and community agency.

The mantra of multiservice and social service agencies should be *working* *with, not doing for*. *Working with* means listening to the community residents using the services, as well as others in the community, about what they want and need for themselves, their families, and their community. It is finding out about their vision, their aspirations, and what services they really need versus those that people in power (those whose water we swim in) think are needed. It might be about a shift toward looking at cocreating opportunities with the residents and community while also maintaining the core needed services.

The hard work of leaders at any agency is aligning the community need and vision with those of the folks who actually control the agency—policy-makers and funders. Because local multiservice agencies typically have so many government contracts, they actually have little autonomy. However, what they do have is the ability to listen to people on the ground—frontline staff such as yourself and people in the community—informally, and also formally by gathering data.

Feedback and data can help the agency do several things: (1) Align existing programs as closely as possible with the actual needs of those to whom they are in service; (2) run a small pilot project to see if there are better ways to meet community needs; and (3) advocate for needed change with those who make policy and fund the myriad programs that multiservice agencies operate.

Working with means learning about the "other," and about everyone sharing perspectives on the water they swim in, to decrease otherness. It's also about cocreation of a new reservoir of "water" that will source the change that is so needed to move toward a more just and equitable society.

You ask: "How does an individual who is already othered go about demanding that the water be changed?"

Find out if you have any colleagues who share your thinking and feelings. If you do, talk to them about asking for a dialogue with those in charge about the approach to the agency's community organizing, and if it could be more community centered than agency centered. If you get a "No," try to find work that is more aligned with your spirit and thinking; if you find an opening, Trusted Space Partners is an organization that works with agencies on the specific issues you are raising.

Among other things, Trusted Space Partners is a team of community organizers and designers who support collaborative community change. They work with institutions like social and multiservice organizations to "make shifts in their operating culture and practices to build more impactful relationships with clients or participants and achieve genuine demand-driven change."[1]

If you do find a glimmer of light for pursuing community organizing collaboratively at your agency, then be patient. Culture change takes time—often three years or more—but you can be the drop in that water that starts the ripple of change on behalf of those you and your agency truly work for: the folks in the community.

Note

1. "Institutional Co-Investment," Trusted Space Partners, accessed August 27, 2019, www.trustedspacepartners.com/our-work.html.

The Nonprofit Whisperer has over thirty years of experience in the nonprofit sector, serving variously as nonprofit staff and board member, foundation staff member, and nonprofit management consultant.

Exploring the Problems and Benefits of SELF-INTEREST *in* NONPROFITS

There is nothing wrong with self-interest being a part of what motivates us in this sector; but avoiding the ethical sinkholes that nonprofits can create for themselves through conflicts of interest requires constant vigilance.

Why would *NPQ* prepare a special focus on self-interest both well and badly used in nonprofits? Because the topic of conflicts of interest has presented itself so often recently in investigations of large, well-known nonprofits, imbuing the sector with reasons for the public to be skeptical about its intentions.

Over the last few years, some high-profile stories have surfaced about conflicts of interest among board and staff leaders. In many of these stories, the defense posed in even the most egregious of cases was a kind of wide-eyed wonder at the fact that anyone would think such behavior was out of line.

And, indeed, conflicts of interest are a slippery slope—which is why at *NPQ* we have always suggested that it is just better to steer clear of them altogether.

This includes, by the way, disclosures and recusals, which are a poor proxy for actual avoidance of conflicts. Even as we go to press, the public is being treated to a bird's-eye view of the various ways in which executives and board members at the NRA have improperly profited from their leadership positions. As a result of the disclosures, the organization is losing donors, along with any credibility it still had. Add this to the millions of dollars that have gone into questionable expenses, and you have an organization in serious decline.

But these are the obvious types of conflicts; many are more subtle. And the opportunity to stray into dangerous territory in nonprofit life is omnipresent, requiring strong ethical practices and protocols to identify and avoid problematic situations. In each organization, the temptations may be slightly different; but when nonprofits fall prey to those temptations, they run risks for which, often, they can only barely imagine the consequences.

Those consequences can include reputational damages all around, and in some cases massive organizational losses and organizational and personal humiliation.

This cluster of articles includes a typological review of common nonprofit conflicts of interest by Dr. David Renz, one of the country's most renowned scholars of nonprofit governance; an astute and practical examination of why recusals and disclosures are inadequate to the problem, by the always insightful Vernetta Walker, who knows nonprofit boards like the back of her hand; a wonderfully irreverent meditation that brings together the notion of enlightened self-interest and ducks, by Rainier Valley Corps' Vu Le; and an article, by *NPQ*'s Ruth McCambridge, on the role self-interest plays in nonprofit life in—as Minnesota Council of Nonprofits' Jon Pratt calls it—"the nonprofit wing of the nonprofit sector."

Please help us to keep this conversation going. We would love to hear from you on this topic.

"RED ON YELLOW" BY PAUL PITSKER/WWW.PAULPITSKER.COM

CHARITY CONFLICTS *of* INTEREST: *A Guide*

by David O. Renz

Editors' note: *Legally, there are many types of nonprofits in the world. A large share of them are charities, but other types of nonprofits include business leagues, professional associations, cooperatives, labor organizations, and more.*[1] *The general issues regarding conflicts of interest exist for all types of nonprofits, but it is essential to recognize that the legal expectations generally are more stringent for charities than for most other types of nonprofits. This is true for charities in the United States, and for charities in the nations of the United Kingdom and throughout much of the rest of Europe. Thus, when this article discusses* charities, *it explicitly addresses nonprofits that have been recognized as such by their home nation, and the legal, ethical, and political expectations that accrue to this specific type of nonprofit organization.*

As widely used as the phrase is, *conflict of interest* may be among the least understood of all governance and leadership challenges that confront today's charitable nonprofit sector. Most charity board members and executives have a general intuition of what it means and why it may be an issue for their organization (although most appear quite reticent to actually tackle it in real life). And yet, as the old saw warns, "It isn't what you don't know that will get you—it's what you do know *that's not true!*"

David O. Renz is the Beth K. Smith/Missouri Chair in Nonprofit Leadership and the director of the Midwest Center for Nonprofit Leadership—an education, research, and outreach center of the Department of Public Affairs in the Henry W. Bloch School of Management at the University of Missouri-Kansas City.

Conflicts of interest abound in our sector, and they arise for logical and even beneficial reasons. The problem is not that they exist—it's that we tend to misunderstand and inappropriately address them. Conflicts of interest pose risk, and they need to be assessed and managed from a risk leadership perspective.[2] There are times when charities actively seek relationships that pose conflicts of interest, such as electing board members with particular political connections and associations, and that is appropriate *if* the risks being taken are managed to advance the mission and interests of the organization without violating the organization's core principles or values.

Starting with the Basics

It is important to recognize that most people have only a general sense of what constitutes a conflict of interest, and their perspectives tend

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Effective ethical governance in today's networked digital era demands that we employ the broader interest-based perspective . . . as the foundation for our organizations' policies and practices, regardless of where our operations are based.

to be incomplete and even inaccurate. So, let's start with a definition—or, to be more specific, a couple of definitions.

It is instructive to consider the differences in conflict-of-interest definitions for charities in the United States versus the United Kingdom and many other nations of Europe. In the United States, a conflict of interest typically is defined by regulatory authorities (e.g., the federal Internal Revenue Service [IRS], and many states' attorneys general) as a situation in which (per the IRS) an individual's "obligation to further the organization's charitable purposes is at odds with their own financial interests."[3] In other words, the IRS focus is largely on the private benefit of individuals and inappropriate financial gain. Most nations in the United Kingdom and the rest of Europe take a broader, interest-based perspective—one that is more complete and (I believe) useful in understanding and addressing the true character and consequences of conflicts of interest affecting today's nonprofits, because they focus on interests rather than on merely private gain or benefit.

The Charity Commission for England and Wales, for example, defines a conflict of interest as one in which the governing board member (or, as they are labeled in its system, the trustee) has a ". . . situation in which a trustee's personal interests or responsibilities they owe to another body, may, or may appear to influence the trustee's decision making."[4] The conflict, here, is with regard to the competition between putting the governed organization's interests first (as the duty of loyalty requires) versus placing some other interests first in the decision making.

These nations' laws and policies focus on the imperative of acting in the best interest of the charity, and treat the issue of inappropriate personal benefit or financial gain as just one type of conflict of interest. They also make explicit that the issue includes *appearances* of conflict of interest—which means that there is no need to debate the literal existence of a conflict before deciding whether there is cause for the organization to act.

And not incidentally, all of these U.S. and European nations' definitions of conflicts look beyond just members of governing bodies; issues of conflict of interest apply to all who have substantial authority in the organization—including, of course, top executives—and they also apply to many others (for example, see the sidebar on "disqualified persons" later in this article).

Effective ethical governance in today's networked digital era demands that we employ the broader interest-based perspective (e.g., per the Charity Commission for England and Wales) as the foundation for our organizations' policies and practices, regardless of where our operations are based. To do otherwise opens the door to a myriad of problems and complications that, irrespective of legality, have the potential to damage our organizations' performance and sustainability.

An essential distinction for charity leaders is that a conflict of interest is a *condition* or *situation*. It is not in and of itself illegal. The legal and ethical problems arise when a conflict-of-interest situation is not appropriately addressed and the result is that inappropriate decisions or actions occur. Further, conflicts of interest can also be the result of a positive action that was taken to advance the cause of the organization.

For example, charities often invite people to join their governing board because they have connections and experience that will strengthen the organization's governance. And yet, some of those connections or relationships may be with other organizations or causes whose interests are at times inconsistent with those of the inviting organization.

Charity leaders must take care to recognize when those conflicting instances exist. That said, an organization may still decide it will be beneficial overall to have a given person on its board to help advance other of its interests. In some cases, it may even be essential to effective governance (such as when a community organization places clients on the board to ensure that client interests are regularly considered by the board).

In other words, the imperative is not to eliminate a conflict by avoiding highly useful members. That may well be short-sighted. Rather, the imperative is to be prepared with a systematic policy and approach to managing the implications of—and openly addressing—such conflicts of interest, so that they do not become problematic.

This is not always simple to do. As California Association of Nonprofits CEO Jan Masaoka has observed, people (both inside and outside a nonprofit) often fall prey to either (or even both) of "two oddly opposite mistakes" when it comes to judging conflicts of interest. Too often, they (a) employ an overly narrow and legalistic definition of conflict of interest and "focus only on matters of [personal] financial gain," and/or (b) are quick to judge, label, and complain about "any kind of relationship at all" that they do not like "as a conflict of interest."[5]

This kind of fuzziness has significant implications for nonprofits and their leaders, since perceptions of conflict of interest are often the result of divergent interpretations of the situation, from both inside and outside the organization. Legitimate or not (from the perspective of the organization's leaders), these divergent and potentially conflicting interpretations have real consequences and often affect important relationships—especially with those whose support the organization seeks, such as donors, clients, funders, and even regulators. Thus, the governance system must have policies and procedures in place that demonstrate that the condition has been appropriately recognized, and managed or resolved.

Getting Clearer: How Are Conflicts of Interest a Problem?

While the question of conflict of interest inevitably has legal dimensions, it is at core an ethical issue that grows directly out of the nonprofit leader's *duty of loyalty*—the fiduciary principle that is integral to the roles of all governing board members in the United States and throughout much of the rest of the world. Duty of loyalty, of course, is one of the three primary fiduciary duties of a governing board (duty of care and duty of obedience are the other two[6]), and we often focus on this from only a legalistic perspective. This undermines a more complete and nuanced understanding of the truly important challenges and imperatives these conflict situations pose. This is understandable. For those who have only a limited level of awareness, conflict of interest in the nonprofit sector is perceived largely as a concern for compliance with the laws, policies, and regulations that are designed to control for misuse of charitable assets and inappropriate private benefit (sometimes called *private inurement*). But it is so much more significant than that.

While the question of conflict of interest inevitably has legal dimensions, it is at core an ethical issue that grows directly out of the nonprofit leader's *duty of loyalty*.

Left unaddressed (or left poorly addressed), conflict-of-interest situations (including those that involve mere perceptions of conflict) can have multiple detrimental consequences. Indeed, conflicts of interest can become a corrosive and damaging force that can do the following:

- Create or reinforce a climate of inauthenticity and mistrust that inhibits active and candid dialogue among members of a board and between board and senior executives. Over time, this will lead to a culture of disengagement and suspicion that will undermine both board and organizational performance.
- Lead to or result in decisions and actions that are not in the best interest of the organization and its constituents. At worst, these decisions or actions can expose the charity, its board, and maybe even other key officials and stakeholders to legal consequences (such as invalidating contracts or agreements, determining that an employment contract was illegitimate, and incurring financial and other penalties against the organization and/or the board).
- Risk or damage the reputation, credibility, and standing of the charity and its key officials, including members of the board and staff, regardless of whether they have acted improperly. These dynamics can result in loss of donations, volunteers, and even staff and clients.[7]

It is imperative that charities and their board and executive leaders understand the nature of the kinds of conflicts of interest they are most likely to confront and the consequences that may accrue if the person with the conflict is allowed to participate in the decision process.

Regardless of whether it is the United States or the majority of European nations, the law states that there is a larger group of people who are considered "disqualified persons" with regard to conflicting interests and private benefit.

What Is a "Disqualified Person" with Regard to Nonprofit Conflicts of Interest?

When the U.S. Internal Revenue Service considers whether or not to impose sanctions (i.e., penalties) on nonprofit leaders who have received inappropriate personal financial benefit, it considers whether the person who benefited is a *disqualified person*: someone who is highly influential in the governance or decision making of the nonprofit. It is essential to recognize that the category of disqualified person is not limited to those people in office (e.g., board members, top executives) at the time of an inappropriate transaction; it encompasses other people, too, including those who were in an influential role at any time *in the previous five years*—and their family members! (Note: Five years is what the policy refers to as the "lookback period.")

As U.S. federal policy governing the IRS asserts:

> A *disqualified person* is any person who was in a position to exercise substantial influence over the affairs of the applicable tax-exempt organization at any time during the lookback period. It is not necessary that the person actually exercise substantial influence, only that the person be in a position to do so.

Further, it states, "Family members of the disqualified person and entities controlled by the disqualified person [such as other nonprofits or businesses] are also disqualified persons. For this purpose, the term *control* is defined as owning more than 35 percent of the voting power of a corporation, more than 35 percent of the profits interest in a partnership, or more than 35 percent of the beneficial interest in a trust." (It must be noted that there are additional rules that govern the practices of grantmaking foundations that we do not discuss in this article.)

Types of Conflicts of Interest

Not all conflict-of-interest situations are the same, and nonprofit leaders and organizations need to be prepared to address issues associated with a variety of the types. Furthermore, it is essential to understand that it is more than only the governing board member or top executive who qualifies as the relevant person in these cases. Regardless of whether it is the United States or the majority of European nations, the law states that there is a larger group of people who are considered "disqualified persons" with regard to conflicting interests and private benefit, and this group includes former board members, family members, and even certain others whose interests may conflict.

There are four general categories of conflict of interest that warrant our attention:

1. *Direct financial gain or benefit to the member.* The most obvious and commonly recognized of all conflict-of-interest situations, for most people, is this type. An example is a board member whose personal company sells products or services to the nonprofit, resulting in the member receiving income from the profits. (Most people understand—but it must be overtly stated—that even when a member provides a product or service to the organization at a reduced cost, a conflict of interest still exists and must be addressed appropriately.) Of course, the egregious form of this type is when the member receives payment without having performed the appropriate service.
2. *Indirect financial gain or benefit to the member.* While also relatively obvious, this type is often less well or fully understood and appreciated. An example would be when a spouse or child in the board member's family is hired or contracted for work with or in the organization. This type of conflict emerges at the time the decision is being made. The very act of considering a member of the family for employment creates the conflict even before he or she may receive serious consideration for engagement. Another rather common example is when a family member of someone on a school board is considered for, or provided with, a scholarship.

3. *Nonfinancial gain or benefit to the member.* This type can be a little trickier to ascertain, because the benefit is indirect. An example would be when a board member or someone related to him or her receives a service from the organization at no cost when all others must pay for the service. A variation on this is when a nonprofit allows a member (or other disqualified person) to make personal use of the organization's assets (e.g., storing a car or recreational vehicle in a vacant garage the nonprofit owns) without appropriate compensation for the use of the asset.
4. *Conflict of loyalty.* This type may be the most insidious and yet increasingly common type of conflict of interest in today's nonprofit world. The most common form is what some have labeled a "duality of interest," because it explains a situation in which a board member has obligations to other people or organizations as well as to his or her "home" organization. In such a scenario, the obligation of loyalty would apply to each, but the board member's behavior could end up advantaging one over the other. An example would be when an influential person is a board member of two different charities in a related field of interest, each of which is eligible for a competitive grant from a particular funder. The member's decision to advocate on behalf of or support one or the other may make the difference in which organization receives the grant.[8]

Another form of conflict of loyalty involves intra-board coalitions or subgroups that coalesce to advance some particular vision or agenda for the organization. This becomes a conflict when members of the coalition work to advance the coalition's agenda even at the expense of overall organizational success. Sometimes such coalitions emerge among groups of people who conflict with others as they embrace the original vision or interest of the founder of the organization—even at the expense of the larger organization. In other cases, these emerge as different cliques or "camps" that develop to support competing visions for the future of the organization. Both of these can be especially debilitating if they escalate to the level of "my way or the highway" types of duels within the board.

Conflicts of loyalty have become a substantial challenge in today's highly networked digital era, and they are increasingly likely in the governance of collaboratives—especially in settings such as communities where groups of nonprofits come together as a network to address a complex critical issue. An example? A dozen nonprofits in a community come together to become a collective impact network to address a complex, "wicked" community challenge (e.g., combating the increase in childhood obesity). It is common for each organization that is a part of the network to designate one of its board members to serve on the governing body for the overall network. In such instances, every one of the members of the network governing body has a dual loyalty—to the best interests of the network and to the home nonprofit that they represent. Of course, in today's complicated world, it is quite likely that almost every nonprofit's board will have some members whose relationships cause one type of conflict of interest and others whose relationships cause one or two other types of conflicts of interest. It can get messy. Are these organizations doomed? Not necessarily. But they'd better get their act together (at the individual and network levels) to ensure that they are ready to recognize, assess, and effectively manage the conflicts before they get out of hand.

One of the shortcomings of many charities' approaches to address conflicts of interest is that they treat conflicts of all types the same way, irrespective of the nature or source of the conflict.

Effectively Addressing Conflict-of-Interest Situations

The most sophisticated of charities and governing boards take care to identify and assess the conflict situation before proceeding to address it. One of the shortcomings of many charities' approaches to address conflicts of interest is that they treat conflicts of all types the same way, irrespective of the nature or source of the conflict. The majority of charities in the United States report that they have instituted formal policies to address conflicts of interest.[9] In my experience, however, these tend to be quite generic; and, logically, most reflect the language and procedures articulated in a sample conflict-of-interest policy posted by the IRS.[10] Unfortunately, while this will address basic legal requirements, often it will be inadequate for actually helping a charity effectively understand and address a conflict situation. As noted earlier, some conflicts of interest can be perilous, but others can be worth navigating—as long as they are managed to assess and address risk while capitalizing on the benefits of the situation. Savvy governing boards and executives take a nuanced perspective that clarifies and then assesses potential conflicts of interest from a risk and reward perspective.[11]

Savvy governing boards and executives take a nuanced perspective that clarifies and then assesses potential conflicts of interest from a risk and reward perspective.

The initial stage of protection against debilitating conflicts of interest is awareness and a basic level of understanding among all board and executive leaders of the charity. This may result in the adoption or refinement of a formal policy, but formal action will have value and meaning only if the organization's leaders gain insight into the nature of conflicts of interest and what could be at stake as they address them. Thus, a proactive approach will begin with sharing the kind of information provided in this article with all who are in positions of authority, and actively discussing whether and in what ways it may be relevant to the individual organization. It makes sense to discuss the most likely types of conflicts and their implications, and then develop a tailored approach to the organization's policies and procedures that will reflect its operating conditions. The organization's leaders can then develop and adopt an informed and pragmatic policy and set of procedures to address the conflicts most likely to occur. (It must be noted that most nonprofits do not engage in such education for their members and top executives.)

Apart from variations in the definition of a conflict of interest, there is a relatively strong degree of consensus among charity conflict-of-interest policies in the United States and most European nations when it comes to content and procedures for addressing a potential conflict of interest. Essentially, all calls for procedures are very similar to the following:

1. **File an annual disclosure form**
   At some time, often at the beginning of a fiscal or calendar year, every board member will complete, sign, and submit a form that indicates what they consider to be existing and potential conflicts of interest they have for the coming year. Some organizations require top executives to file this as well. Ideally, these filings are shared with all board members so that all have an understanding of the potential conflicts their colleagues might have, but such sharing is relatively rare. Such filings are often shared only with the chair or among the chair and executive committee members; other board members are left uninformed with regard to their colleagues' potential conflicts. Theoretically, the chair will lead in monitoring and addressing conflicts as they are relevant to board business.
2. **Use the following procedures for addressing conflicts**
   - *Board determination.* Once a board is made aware of a potential conflict, it should meet as a group to review the information and evaluate whether the situation is a problem that is—or logically could be perceived to be—a conflict that will interfere with the member's effectively honoring his or her duty of loyalty to the organization. Some boards will leave this determination to an executive or other committee, but I consider it a problem if the entire board is not ultimately involved in the determination and the basis for it.
   - *Response to conflict.* If a board determines that the conflict is a problem, then the conflicted member needs to be removed from some or all activities associated with the conflict. Some policies call for the member to be excluded from all actions and decisions relevant to the conflict from the time of determination. Others call for the member to share relevant information (as would be desirable if the member has unique insight and expertise that the board would benefit from having) and then to leave the meeting(s) prior to discussion. All substantive policies call for the member to leave the meeting prior to final deliberations on the matter—and, especially, to not participate or even be in the meeting room at the time of a vote on the actual matter.

A few organizations wisely make clear an additional expectation: they explicitly require that the member with the conflict refrain from engaging in any efforts to influence their colleagues regarding the decision they are to make.

- *Documentation.* To protect itself legally and politically, the board must ensure that it has complete documentation of the process and of who was involved (board, staff, and any others) at each stage, including specific information about the votes taken, who attended the meeting, and who voted.[12]

A shortcoming of the above process is that it takes stock of potential areas of conflict of interest only at the beginning of the year. This is appropriate and useful as a means of identifying general topics and relationships wherein conflicts may exist over the year. But it is essential—and sophisticated policies will require—that in addition it be the responsibility of every participant to disclose an undeclared potential conflict situation at the time a specific matter arises. For each participant, the board's members need to assess the nature and scope of potentially conflicting interests. There are board members for whom certain categories or relationships always or persistently will present a conflict of interest. There are board members for whom there never will be conflicts of interest. For some (such as actors on overlapping or interlocking boards of different organizations), there will be episodic conflicts of interest. And for others, there may be only isolated situations that call for a determination of conflict. It is essential that a policy call for member disclosure on a situation-by-situation basis throughout the year in order to effectively address the episodic and sporadic situations—and far too many policies do not embrace this more active ongoing approach.

A useful example of such a policy is that of the U.S. nonprofit Give an Hour. Its board has adopted a "Conflict or Duality of Interest Policy" that acknowledges that its "directors, officers, and committee members have diverse professional and financial interests"; that these interests "may influence the way Members carry out their responsibilities"; and thus, "to protect the reputation and integrity of the Corporation," the policy requires that they must "disclose all relationships that may influence the way Members carry out their responsibilities."[13] The board requires that all members disclose their interests annually at the very least. Furthermore, the policy requires that disclosure must go beyond just the annual completion of a form:

> Members have a continuing obligation to disclose any potential conflict or duality of interest with respect to any transaction that affects or may affect the Corporation. In other words, notwithstanding the submission of the [attached] Disclosure Form, Members must reveal any potential conflict or duality of interest that arises after the submission of [this] form.[14]

Each disclosure "must describe the nature of the real, perceived, or potential conflict or duality of interest . . . and all facts known relating to the subject matter."[15] Following this disclosure, the governing board will review the information and make a determination about the conflict. The policy states, "The existence of a relationship as defined above does not necessarily imply ineligibility to serve, but rather that participation in some matters may be modified or avoided or, in appropriate circumstances, discontinued."[16]

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A Proactive Strategy

Throughout, this article discusses the issues and challenges associated with conflicts of interest from the perspective of an existing governance and leadership system, with the presumption that people who have conflicts already hold governing board positions or other roles of substantial authority for a nonprofit. I recognize the potential value of including such people on boards in spite of the conflicts of interest that come with their involvement. But I would be remiss if I did not at least introduce a strategic enhancement that may offer significant value.

This option involves the creation and effective use of advisory councils or advisory boards. These are entities that can have a real and

The tensions of conflicts of interest abound in our sector, and they arise for logical—and often even beneficial—reasons. The problem is not that they exist—it's that we tend to misunderstand and inappropriately address them.

substantive role in the governance process—a role that offers a way to effectively engage those whose relationships pose significant conflicts of interest, without subjecting the nonprofit to the threats that exist when people with persistent or frequent conflicts occupy governing board seats. There is no question that nonprofits must take care to involve only people whose commitment and loyalty lie with the organization, but the effective use of advisory entities enables organizations to capitalize on the best these people have to offer without falling prey to the downside of their potentially conflicting interests. For example, advisory entities can serve as a useful way to engage clients, constituents, resource providers, and other valuable stakeholders without exposing them to the fiduciary accountability of a governing board member. Advisory entities are effective when there is an authentic and substantive linkage to the governing board. (Warning: Do take care to ensure real engagement; this approach will backfire if it is—or is perceived to be—mere window dressing.)

Advisory entities have only the role(s) and authority they are assigned in the bylaws or policies approved by the governing board of the organization; and—unless the governing board has unwisely chosen to blur the boundaries of its authority and accountability by delegating formal authority to the advisory entity—neither the individuals on the advisory group nor the advisory group as a whole have the kind of fiduciary accountability required of the governing board and its members. (Note: There is no legal distinction between entities called "advisory boards" and those called "advisory councils"; advisory entities' roles are whatever the organization's governing board defines them to be.) There will still be a political dimension to creating such relationships, and this demands careful thought and planning. People named to an advisory entity carry the organization's brand, and their behavior can affect the organization's reputation. Nonetheless, creating one or more advisory entities can be a pragmatic way to control the legal risks while achieving a broader degree of inclusion and engagement in an organization's governance process.

Looking Ahead

The tensions of conflicts of interest abound in our sector, and they arise for logical—and often even beneficial—reasons. The problem is not that they exist—it's that we tend to misunderstand and inappropriately address them. Conflicts of interest pose risk, and they need to be assessed and managed from a risk leadership perspective. Even as it remains essential for nonprofits to demonstrate sensitivity to conditions that threaten their credibility and society's trust, the challenges confronting governing boards and their leaders in today's networked digital era demand that the sector employ an interest-based perspective to guide the design and practices of its governance and leadership systems.

Strong policy statements have value and meaning only when nonprofit leaders have insight into the nature of the conflicts of interest their organizations are likely to experience, and an understanding of what could be at stake. The information in this article is offered to help leaders of charitable nonprofit governing boards and others who are in positions of substantial organizational authority reflect on and discuss whether and in what ways these issues are likely to be relevant to their organizations, and encourage them to develop a thoughtful set of policies and procedures that reflect these realities and operating conditions. To ignore the issue of conflict of interest opens the door to a myriad of problems and complications that, irrespective of legality, have the potential to undermine nonprofits' effectiveness and sustainability.

The era of nonprofits functioning relatively free of conflicts of interest is over, and the time has come for their leaders to embrace a deeper and more pragmatic perspective on conflict of interest and what it means for a new generation of effective ethical governance.

This article is intended only to offer general information, and its contents and recommendations do not constitute legal advice. Boards and members with specific legal questions and concerns should consult legal counsel and the relevant regulatory authorities for definitive information and answers. An article such as this is intended *to help leaders begin to consider the issues that the conscientious board and its members will need to explore in order to perform their roles effectively. This article highlights the laws and policies of the United States and several European nations. Laws and legal expectations vary from state to state, even though a large number of states in the United States have adopted nonprofit corporation laws that are based on the same model statute. Nonprofit laws vary even more substantially from nation to nation. It makes a significant difference where the organization was formed and incorporated, and where it operates its programs and services.*

Notes

1. A complete list and explanation of the various types of nonprofits that are recognized by the U.S. Internal Revenue Service is provided on the IRS web page "Exempt Organization Types," updated July 2019, www.irs.gov/charities-non-profits/exempt-organization-types.
2. I discuss the overall topic of risk and the need to look beyond risk management to embrace risk leadership in the following article: "From Risk Management to Risk Leadership: A Governance Conversation with David O. Renz," *Nonprofit Quarterly* 24, no. 2 (Summer 2017): 14–23, nonprofitquarterly.org/from-risk-management-to-risk-leadership-a-governance-conversation-with-david-o-renz/.
3. "Form 1023: Purpose of Conflict of Interest Policy," Internal Revenue Service, updated November 27, 2018, www.irs.gov/charities-non-profits/form-1023-purpose-of-conflict-of-interest-policy.
4. ICSA "Guidance note": *Specimen conflict of interest policy, declaration form and register of interests for charity trustees* (London: ICSA: The Governance Institute, April 2014), 4.
5. Jan Masaoka, "Conflict of Interest . . . or Conflict of Loyalty?," *Blue Avocado*, December 9, 2012, blueavocado.org/board-of-directors/conflict-of-interest-or-conflict-of-loyalty/.
6. *Guidebook for Directors of Nonprofit Corporations*, 3rd ed. (Chicago: American Bar Association Press, 2012).
7. Adapted from insights shared in ICSA "Guidance note": *Specimen conflict of interest policy, declaration form and register of interests for charity trustees* (London: ICSA: The Governance Institute, July 2018).
8. Ibid.; And see Denise Copeland, "Conflicts of Interest," Northern Ireland Council for Voluntary Action (NICVA), updated March 8, 2018, www.nicva.org/resource/conflicts-interest; *Guidance and good practice for Charity Trustees*, Scottish Charity Regulator (OSCR), updated December 2017, www.oscr.org.uk/guidance-and-forms/guidance-and-good-practice-for-charity-trustees/; Hubert Picarda, "Harmonising nonprofit law in the European Union: An English perspective and digest," in *Comparative Corporate Governance of Non-Profit Organizations*, ed. Klaus J. Hopt and Thomas von Hippel (New York: Cambridge University Press, 2010), 170–96; and Evelyn Brody, "The Board of Nonprofit Organizations: Puzzling Through the Gaps Between Law and Practice," *Fordham Law Review* 76, no. 2 (November 2007): 521–66.
9. *Leading with Intent: 2017 BoardSource Index of Nonprofit Board Practices* (Washington, DC: BoardSource, 2017).
10. The sample conflict-of-interest policy is Appendix A (pages 26–27) of the IRS publication *Instructions for Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, revised December 2017, www.irs.gov/pub/irs-pdf/i1023.pdf.
11. Effective boards do not seek to avoid all risk—they assess the nature of the risk and determine whether the risk is relevant and appropriate to the situation. See Renz, "From Risk Management to Risk Leadership."
12. See Copeland, "Conflicts of Interest"; ICSA "Guidance note": *Specimen conflict of interest policy*; and "Form 1023: Purpose of Conflict of Interest Policy" (2018).
13. *Conflict or Duality of Interest Policy: For Directors, Officers, and Committee Members* (Bethesda, MD: Give an Hour, January 28, 2010), 1.
14. Ibid., 2.
15. Ibid.
16. Ibid.

CONFLICT *of* INTEREST: *Recusal Is Not Enough*

by Vernetta L. Walker

According to a recent Gallup and Wellcome Trust study, more than a third of people worldwide don't trust charities and NGOs.[1] In the United States, charities fare slightly better, with only 27 percent of respondents saying they do not trust them. For a sector that depends on and is accountable to the public, this is disturbing.

Fueling this negative perception is the steady stream of headlines about nonprofit organizations either failing to recognize conflicts of interest or making poor decisions in light of the facts and circumstances.

Just in the past few months, Baltimore's mayor Catherine Pugh resigned following a scandal that revealed she had profited in the hundreds of thousands of dollars from selling her self-published children's book to the University of Maryland Medical System, where she served as a board member;[2] the *Washington Post* exposed eighteen board members of the National Rifle Association who were paid commissions and fees ranging from thousands to over $3 million;[3] and ProPublica's searing investigation into Memorial Sloan Kettering Cancer Center revealed a nest of self-serving behavior, including top executives who received personal annual compensation in the hundreds of thousands of dollars and in one instance over a million dollars in equity stakes and stock options from the drug and healthcare companies.[4] Meanwhile, dozens of stories have appeared that raise questions in the minds of the public about pharmaceuticals' funding of patients' rights groups. These are just the tip of the iceberg of recent examples eroding the public trust.

Let's face it—conflicts of interest arise routinely in the ordinary course of doing business. Nonprofits cannot possibly avoid conflicts, but that is why it is important to have clear rules, policies, and guidelines to follow. Whether serving a small community-based nonprofit or a multibillion-dollar enterprise, boards need to recognize what is at stake: reputation, image, credibility, and the public trust. This begs the question: Is recusal enough to protect the organization?

This article examines how conflict of interest functions in the nonprofit sector, and explores crucial considerations and decision points for promoting ethical decision making.

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Effective governance requires more than compliance. To be clear, doing what the law requires is a great starting point, but ethical leadership (doing what is right under the circumstances) has to be part of the equation.

What Is Conflict of Interest?

According to the IRS, a "conflict of interest occurs where individuals' obligation to further the organization's charitable purposes is at odds with their own financial interests," and conflict-of-interest policies are "intended to establish procedures under which individuals who have a conflict of interest will be excused from voting on such matters."[5] These individuals, referred to as insiders,[6] include officers, directors, managers, key employees, and any other person in a position of authority over an organization who might stand to benefit financially—directly or indirectly—from decisions he or she could make in such capacity.[7] Frequently, cited examples of conflicts of interest include contracting with an insider; accepting gifts, gratuities, or favors from third parties that do business with the organization; gratuitous use of property of the organization; and seeking preferential treatment.[8]

Surprisingly, when the IRS revised Form 990 in 2008 and created a governance checklist (Part VI), it did not require that nonprofit organizations have a conflict-of-interest policy; rather, nonprofits simply have to report whether they have one.[9] If the policy exists, they must indicate whether officers, directors, trustees, and key employees are required to disclose interests that could give rise to conflicts, and whether the organization monitors and enforces the policy. Organizations are then directed to Schedule O to describe how compliance is monitored.

According to the IRS, the revisions were added to improve tax compliance generally, especially as it relates to preventing nonprofits from serving private interests in a manner that is inconsistent with the organization's charitable purposes.[10] More precisely, federal tax law prohibits private inurement, whether through excessive compensation or paying more than fair market value to an insider.[11] Similarly, the private benefit doctrine prohibits charitable organizations from providing benefits—financial or otherwise—to a narrowly defined group rather than the public, unless said benefit is insubstantial or incidental.[12]

In an effort to strengthen compliance, some states have mandated conflict-of-interest policies through legislation. For example, the New York Non-Profit Revitalization Act of 2013 requires that not-for-profit corporations adopt a conflict-of-interest policy that includes a definition of circumstances that constitute a conflict of interest; procedures for disclosing a conflict of interest to the audit committee or the board; a prohibition of the conflicted person from participating in, attempting to influence, or voting on the matter; and a requirement that the resolution of the conflict be documented in the minutes.[13]

But the fact is that many stop there in terms of understanding the requirements for avoiding conflicts of interest. That leaves the organization at high risk, because, additionally and ultimately, board members and officers owe a duty of loyalty to make decisions and act in the best interest of the nonprofit organization, not their own interest.[14] There is no doubt that there are instances where transactions involving an insider may actually inure to the benefit of the organization and its constituents; but these instances deserve careful scrutiny, not only for whether or not they are well-considered and undeniably good decisions but also for whether they will be perceived that way by skeptics. How the organization manages each instance of conflict of interest can mean the difference between maintaining the public trust or being embroiled in a public scandal.

Technically, It's Not Illegal…

Even with guidance from the IRS, statutes, and clearly articulated leading practices from organizations like BoardSource, BBB Wise Giving Alliance, and Independent Sector, nonprofits struggle.[15] A closer look at real-life examples reveals three separate but related issues that surface repeatedly: (1) failure to navigate the gray areas of conflicts of interest, including group dynamics within the boardroom; (2) failure to navigate the gray areas of recusal and disclosure; and (3) failure to fully appreciate unintentional reputational damage because, technically, the transaction being considered is not illegal.

Navigating Gray Areas of Conflicts of Interest

Effective governance requires more than compliance. To be clear, doing what the law requires is a great starting point, but ethical leadership (doing what is right under the circumstances) has to be part of the equation. In *Managing Conflicts of Interest*, authors Sarah Paul and Daniel Kurtz propose that we think about conflict of interest along a continuum from totally unacceptable at one end (illegal or widely regarded as unethical), to inconsequential at the other end.[16] The problem is that not avoiding conflicts at the inconsequential end can lead to a well-populated swamp of the totally unacceptable, and that is a hard place from which to recover.

CASE STUDY #1

The case of Goodwill Omaha, in Nebraska, illustrates the above point exhaustively.

That case involved, among other issues, three specific major instances of conflict of interest associated with board members.[17] The first was a contract for the architectural design of Goodwill Omaha's retail stores. The second was a contract for the construction of the stores. The third was a contract for insurance. The principal architect at the architectural firm served on the Goodwill board, as did the president of the construction company, who also had previously served as board chair—and the executive vice president of the insurance company was the current board chair.

Goodwill Omaha had a policy requiring that all board members sign a conflict-of-interest document, and they also had a process in place requiring at least three bids for certain jobs. The attorney general found that the bid process was routinely ignored: outside bids were not obtained for the contracts for design and construction of the stores. Upon further investigation, the attorney general concluded that the rates charged were fair to Goodwill Omaha but that the "fact that Goodwill Omaha's Board dispensed with the three-bid process, especially for its *most expensive transactions*, was troubling."[18] (Emphasis added.)

The report also details how Goodwill Omaha's routine business dealings with board members occurred in an environment of rubber-stamping and deference to the chief executive. There were multiple instances where the board failed to fulfill its fiduciary duties, and the report even references the social relationship between the chief executive and the board member whose company received the construction contract, stating that bids had not been solicited since 1995. Such an environment can create loyalties, impair independent judgment, and erode checks and balances.

On top of all this, relatives of board members and executives were employed at the agency, which paid extraordinarily high salaries to executives while paying less than the minimum wage to employees with disabilities. Other family members were also the recipients of no-bid contracts. In answer to a question about the hiring of close relatives of senior staff and a board member, CEO Frank McGree said that Goodwill Omaha was lucky in that it gets referrals "from friends and family that already bleed Goodwill blue."[19]

But, as was reported at the time, Goodwill was not hiding this information. In fact, it disclosed any number of business relationships on its 990 form—including with Kiewit, RDG Planning and Design, the insurance company Arthur J. Gallagher & Co., First National Bank of Omaha, and the Omaha law firm Baird Holm—and also confirmed relationships with Investors Realty, the Omaha law firm Fraser Stryker, and American National Bank. In all, seven of Goodwill's twenty-one board members were employed at one of those firms (with an eighth having just resigned). As reported by *NPQ* back in 2016, a number of experts commented on the situation in one of the many articles on the topic published by the *Omaha World-Herald*.[20]

> "My first reaction is just sadness," said Dave Renz, a nationally renowned expert on nonprofit governance. "What you are describing here is a process that seems to undermine the trust that is essential for a nonprofit's donors, its constituents, its community. It's not all that unusual. But it is unacceptable."
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> Omaha-based Angela Eikenberry, another national governance expert, says that beyond the legal requirements, "There's an ethical duty here—a duty to avoid the appearance of anything strange or anything that seems like a conflict. So, yeah, this kind of raises the eyebrows, doesn't it?"[. . .]

[N]ot avoiding conflicts at the inconsequential end can lead to a well-populated swamp of the totally unacceptable, and that is a hard place from which to recover.

So, how should nonprofits navigate the gray areas where relationships are involved, the actions are not illegal, and the organization has complied with the conflict policy?

"It's a board's job to ensure that the brand of the organization isn't sullied by the practices of that organization," said Renz. "Quite frankly, the cleanest way for an organization that's taking great care is to just not engage in these kind of relationships. [. . .] Boards (around the country) are recognizing that there needs to be more care taken . . . to keep these processes clean."[21]

Indeed, the organization saw its donors drop away precipitously, its property tax exemption come into question, and an investigation launched by the state attorney general. It required a sweep of executives and board members to even begin to right the ship.[22]

Do Recusal and Disclosure Matter?

In the case of Goodwill Omaha, disclosure was a vastly inadequate response, and reinforced the message that the organization did not recognize or care about the degree to which it had strayed from arm's-length decision making and into areas where habits of self- and mutual emolument were the standard. In such a situation—where a number of influential decision makers are benefiting financially from the organization—recusal can be a mere formality, accomplished with a wink and a nod; and 990 disclosure, at least at this point, is only useful if some enterprising reporter takes up the case, as happened with Goodwill Omaha and Sloan Kettering.

So, how should nonprofits navigate the gray areas where relationships are involved, the actions are not illegal, and the organization has complied with the conflict policy (i.e., disclosure and recusal)? Some organizations decide, as a matter of policy, never to enter into paid contractual relationships with any board member, so as to avoid speculation about abuse of position and influence for personal gain. Such organizations, of course, steer well clear of inviting vendors or potential vendors onto their boards. They also tend to be very careful about contracting with other organizations where staff members have an interest in the vendor or hire family members or personal friends, because they are consciously holding an ethical standard that argues against it.

Where using a board member as a vendor is concerned, there may be some cases in which such situations emerge and the connection is limited enough, or thought to benefit the organization enough, that it may decide to leave some room in its policy while recognizing the risks it incurs in doing so. In all such cases, the board should make comparisons of alternative options; and it should take a vote on whether the proposal is fair and reasonable and in the financial best interest of the organization, but only if no other acceptable option is available.

Questions a board should always take into account include: Is it a one-off situation or a regular occurrence? What due diligence is required to justify and document the decision to move forward? How will stakeholders, the press, or charity watchdogs view the transaction? Additionally, a written code of ethics can help codify expectations regarding delivery on the mission, standards for the organization as a whole, and guidelines to promote organizational integrity and public accountability.

There is no question that indulging in financial relationships with board members as a matter of course is negligent behavior. One need only look at the recent reports about the NRA's contracts with board members to get a sense of how financially risky it is. As with Goodwill Omaha, the NRA's stated justification was anything but reassuring. NRA spokesman Andrew Arulanandam, in defense of the practice, called the national gun rights movement "a close-knit community comprised of partners and vendors who understand the issue and are defenders of the Second Amendment [. . . .] Therefore connections between employees or board members and partners are not unusual."[23]

Reputation and Unintended Consequences

The questions in the previous section can also help assess unintended consequences in situations where the board has complied with its conflict-of-interest policy but things still smell a little fishy. The following case study, which is based on a real encounter, illustrates the reputational risks and consequences of not fully appreciating the need to be accountable to stakeholders and the public.

CASE STUDY #2

A nonprofit organization focused on improving environmental conservation through policy advocacy, research, and building coalitions engaged a consultant to conduct a governance review of its practices, policies, and operations. The timing of the review was prompted by the organization's major funder, which had expressed a desire to substantially increase its financial investment in the nonprofit based on mission alignment and its belief that the organization was well-positioned for growth, barring any red flags.

The organization produced its conflict-of-interest policy, minutes, and disclosure forms, among other organizational documents. A comprehensive document review and interviews with board members and other stakeholders revealed that the nonprofit had active contracts with several board members for research. In a meeting with the consultant, board members and staff were sincere and earnest about following their conflict-of-interest policy to the letter, but also stated that it was easier to engage board members who possessed the expertise needed to conduct research projects. They offered additional justification, stating that the contracts were not illegal and did not exceed fair market value for the services. While this was true, board members did not grasp the bigger issue at play—public perception. In fact, their failure to adequately factor in this issue was about to cost them considerably more: significant financial support to accelerate and deepen their mission impact.

One more example punctuates what should be the first consideration—maintaining the public trust. Earlier this year, the University of Maryland Medical System put its CEO on temporary leave following reports that nine of the thirty-member board of directors had substantial business deals with the system.[24] Maryland lawmakers introduced legislation to bar UMMS board members from having financial interests in contracts with the system, and the board chairman, Stephen Burch, stated, "There is nothing more important than the trust of those that depend upon the board's leadership"—adding that the board is "firmly committed to evolving our governance principles and operating with even more transparency."[25]

Analytical Framework for Ethical Leadership

> Ethics aren't simply a list of behaviors, a set of restrictions on what we can and cannot do. Ethics aren't just something we do because we know people are watching us. Ethics are a reflection of ourselves. Ethical behavior expresses who we are, what values we hold dear and what principles we will always fight for. Our ethics go straight to the heart of who we are.
>
> —Lilya Wagner, director of Philanthropic Service for Institutions at the North America Division of the Seventh-day Adventist Church

In *Ethics in Nonprofit Organizations: Theory and Practice*, author Gary Grobman writes that "board members are ethically obligated to avoid even the appearance of a conflict of interest," and asserts, "As a basic principle, it is unethical for a board member to be personally enriched financially by service on the board."[26] "In practice," he continues, "disclosing and not participating has minimal practical value."[27]

The fact that nonprofits exist for the purpose of social impact has inherent implications for governance and leadership. Maintaining a culture of integrity goes a long way in earning and being worthy of the public trust. Conflict-of-interest policies are a start, but the real work involves thoughtful deliberations and decision making. The following ethical framework, based on the work of Frederic Reamer, PhD, provides structure for ethical deliberations:[28]

1. Identify the ethical issues that are or could be controversial.
2. Identify those who will be affected by the decision. (What stakeholders are impacted by the dilemma, and how?)
3. Identify the potential courses of action and the possible benefits and risks for each.
4. Examine how proposed courses of action are or are not consistent with organizational values, personal values, and ethical principles and guidelines.
5. Consult others not directly involved with the dilemma for input and advice (attorneys, experts, colleagues, and the like).
6. Make the decision and document the decision-making process.

Maintaining a culture of integrity goes a long way in earning and being worthy of the public trust. Conflict-of-interest policies are a start, but the real work involves thoughtful deliberations and decision making.

7. Monitor and evaluate the outcome. (Are there unintended consequences or environmental shifts that require making changes?)

In using this framework, boards are forced to consider and clearly identify the ethical issues, determine who might be impacted, and gather information before making a decision. It requires practice to not react reflexively, but this is the deeper work organizations are called to do to move beyond compliance and ensure ethical leadership.

Notes

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2. Paul Schwartzman and Peter Hermann, "Baltimore Mayor Catherine Pugh resigns amid book scandal," *Washington Post*, May 2, 2019, www.washingtonpost.com/local/md-politics/baltimore-mayor-catherine-pugh-resigns-amid-book-scandal-health-problems/2019/05/02/fc91f2b0-67ad-11e9-8985-4cf30147bdca_story.

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4. Katie Thomas and Charles Ornstein, "Memorial Sloan Kettering Curbs Executives' Ties to Industry After Conflict-of-Interest Scandals," Sloan Kettering Cancer Center's Crisis, *New York Times* and ProPublica, January 11, 2019, www.propublica.org/article/memorial-sloan-kettering-curbs-executives-ties-to-industry-after-conflict-of-interest-scandals; Katie Thomas and Charles Ornstein, "Facing Crisis, Sloan Kettering Tells Exec to Hand Over Profits From Biotech," Sloan Kettering Cancer Center's Crisis, *New York Times* and ProPublica, September 29, 2018, www.propublica.org/article/facing-crisis-sloan-kettering-tells-exec-to-hand-over-profits-from-biotech; and Alia Paavola, "Memorial Sloan Kettering bars top executives from pharma boards," *Becker's Hospital Review*, January 14, 2019, www.beckershospitalreview.com/pharmacy/memorial-sloan-kettering-bars-top-executives-from-pharma-boards.html.

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6. Sarah E. Paul and Daniel L. Kurtz, *Managing Conflicts of Interest: The Board's Guide to Unbiased Decision Making*, 3rd ed. (Washington, DC: BoardSource, 2012), 95.

7. "Instructions for Form 990 Return of Organization Exempt From Income Tax, 2016," Internal Revenue Service, December 2016, 22.

8. Ibid., 23.

9. IRS Form 990, Part VI, Section B, line 12, 24.

10. "Background Paper: Forms 990, Moving from the Old to the New," Internal Revenue Service, August 19, 2008, www.irs.gov/pub/irs-tege/moving_from_old_to_new.pdf.

11. See "Overview of Inurement/Private Benefit Issues in IRC 501(c)(3)," 1990 EO CPE Text, accessed July 15, 2019, www.irs.gov/pub/irs-tege/eotopicc90.pdf.

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SELF-INTEREST *(Rightly Understood) in the Nonprofit Sector*

by Ruth McCambridge

There are any number of generalizations about the "nonprofit sector" that obscure some important purposes and parts and emphasize others. When this occurs, it can create false narratives regarding what these organizations are about and how they must function—and that obscures a larger range of available nuances about, and options for, the sector's work.

One of the most important purposes of this sector is embodied in groups that organize themselves around their own collective interests. Do conflicts of interest have to be attended to differently in these kinds of groups? On the one hand, in these groups it is expected that you bring self-interest to the table, and on the other, you still must guard against putting your interests first.

The concept of the role of self-interest in the life of nonprofits is one of those aspects that has bowed to what is essentially a colonialist mentality, in that the default image for defining the sector in broad-brush terms is that of a selfless devotion to (and benevolent control over) the interests of others. This is an image that derives from a charitable rather than a self-organizing/mutual-assistance mind-set, and these are two very different propositions—one assuming a doing *for* and the other incorporating a doing *with*.

In the first, the concept of enlightened self-interest may, in the best of cases, apply—in that we may believe that attending to the needs of others, both in terms of goods and of rights, enriches our own lives and keeps our own lives and communities safe and sustainable. But in a substantial part of this sector that is based on self-help, self-representation, and self-determination—and where the affected communities of interest are themselves in control—the work of the organization is being done in the context of other actors who have like realities. These powerful groups abound in the sector, but we don't make some of the distinctions about them that are necessary for understanding their roles in changing or maintaining/exacerbating the status quo.

A useful reframing comes from a phrase coined by Alexis de Tocqueville: "self-interest rightly understood."[1] The economist Joseph Stiglitz also referenced this notion, in a 2011 article in *Vanity Fair* on wealth inequality.[2] Stiglitz observed that Tocqueville "once described what he saw as a chief part of the peculiar genius

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"TRACE" BY PAUL PITSKER/WWW.PAULPITSKER.COM

of American society—something he called 'self-interest properly [*sic*] understood.'"[3]

> The last two words were the key. Everyone possesses self-interest in a narrow sense: I want what's good for me right now! Self-interest "properly understood" is different. It means appreciating that paying attention to everyone else's self-interest—in other words, the common welfare—is in fact a precondition for one's own ultimate well-being. Tocqueville was not suggesting that there was anything noble or idealistic about this outlook—in fact, he was suggesting the opposite. It was a mark of American pragmatism. Those canny Americans understood a basic fact: looking out for the other guy isn't just good for the soul—it's good for business.[4]

We acknowledge that some measure of self-interest in the sector is undeniable, and we need to appreciate that the handling of one's own self-interest varies depending on where one sits in social and economic pyramids.

Tocqueville was not unrealistically optimistic on this point, as he was also one of the first people to reference "individualism" as a regrettable temptation for free people in democracies to focus inward and ignore the affairs of others:

> I am trying to imagine under what novel features despotism may appear in the world. In the first place, I see an innumerable multitude of men, alike and equal, constantly circling around in pursuit of the petty and banal pleasures with which they glut their souls. Each one of them, withdrawn into himself, is almost unaware of the fate of the rest. Mankind, for him, consists in his children and his personal friends. As for the rest of his fellow citizens, they are near enough, but he does not notice them. He touches them but feels nothing. He exists in and for himself [. . . .][5]

To his credit (and warming the cockles of nonprofit hearts ever since), Tocqueville saw voluntary associations and local government as effective connecting points that could countervail the isolating aspects of individualism.

The success of these organizations regularly combines some aspects of public and private benefits. We acknowledge that some measure of self-interest in the sector is undeniable, and we need to appreciate that the handling of one's own self-interest varies depending on where one sits in social and economic pyramids. As Stiglitz noted in that same article, inequality distorts everything—including the notion of collective action for the public good. In some cases, the actual public-good element is highly questionable.

In other words, when one joins industry heads to advance the self-interests of those corporations (and your own salary prospect, to be sure), this has a very different social function than if one throws in with a group of other immigrants organizing for a higher minimum wage. There is an intrinsic moral question in groups that organize in their own self-interests—while claiming public-benefit status—when their own interests already dominate.

Nonprofit organizations are not businesses formed solely for private benefit, but the extent to which they advance a purely public interest can be seen across a continuum of public and private benefit. The U.S. tax treatment of nonprofits differentiates along this public/private continuum, giving most-favored tax status to purely charitable activities, and lesser preferences to country clubs, homeowner associations, and business leagues.

Groups made up of those who have been socially, economically, and politically marginalized have a very different set of requirements for managing self-interest than do other groups—but the same obligation not to put benefit to self above the group exists in both cases.

In these groups, the principle of managing self-interest might be stated as advocating for and seeing to one's own self-interest, but in a way that does not put it ahead of others in similar circumstances. Thus, for a Head Start parent, this might require the parent to remain self-aware of his or her ability to listen to other parents and advocate in a balanced way for the priority interests of the whole group. This is a big responsibility for an advocate who may be suffering from trauma related to the situation being addressed—but anyone who has been involved with such groups understands the strength that emerges from the disciplines of this work.

One well-known example of the exercise of such disciplines can be observed in twelve-step programs, which use sets of principles and ground rules to guide behavior. Simple rules like "no cross talk" and requirements for active service create shared platforms of understanding and energy for participants' difficult work together. But in those groups there is an explicit expectation that the interests of each participant are served by the integrity of the groups' attendance to common interests and ability to disentangle the single interest from the shared.

Thus, there is a "real politic" in self-organizing that must always be addressed through agreed-upon rule and ritual—but this real politic is the soul of democracy, which requires a balancing of self against collective interest in the best of all possible worlds. So, there is an argument to be made that these are the groups that are the civil society wing of the nonprofit sector and a good part of where we should base our future prospects.

That said, going back to our well-justified admonishments about individuals taking care not to place their own interests above those of others in a nonprofit setting, it always applies; but self-interest in self-advocacy and in self-help organizing is part of what gives such work power and focus and the democratic disciplines for which we should all strive.

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We Are All Ducks: *Othering and Enlightened Self-Interest in the Nonprofit Sector*

by Vu Le

Editors' note: *This article was first published by* Nonprofit AF, *on September 8, 2018. It has been lightly edited for republication here.*

LET'S TALK ABOUT DUCKS.

IF YOU'RE IN THE NONPROFIT SECTOR, YOU MAY BE THINKING, "DUCKS? WHAT ARE YOU TALKING about? I thought we're all unicorns." Yes, yes, we are all unicorns. We are magical unicorns who make the world better by using our horns of equity to stab injustice in the face. But we're also ducks. Just bear with me.

In the last few months, I've been thinking about a bunch of things. Mainly, "Powdered alcohol has been invented?[1] NOOOO! That was my idea two decades ago! I could have been rich by now!"

But I've also been thinking about the community-centric fundraising model, and why we each do the work we do.[2] This has been triggered in part by the increasing cultivation of individual donors I've been doing. It is humbling to sit down with donors and ask them to invest a large chunk of hard-earned money so we can do our work. Donors have been kind and gracious and generous, and my team and I are genuinely grateful for every gift.

VU LE is a writer, speaker, vegan, Pisces, and the executive director of Rainier Valley Corps, a nonprofit in Seattle that promotes social justice by developing leaders of color, strengthening organizations led by communities of color, and fostering collaboration between diverse communities. Le's passion to make the world better, combined with a low score on the Law School Admission Test, drove him into the field of nonprofit work, where he learned that we should take the work seriously, but not ourselves.

"MANDARIN DUCKS" BY NICOLA MOUNTNEY/NICOLAMOUNTNEY.COM

Othering the People We Serve

However, recently I have started noticing that many of us have unconsciously created an unhealthy dynamic between our clients and our donors and funders. Without realizing it, we often reinforce this image of donors as nice people standing at a lake throwing bread at hungry ducks in the water. "Your bread helped fifty ducks," we say. "Because of you, fifty ducks are now not going to die of starvation." During fundraising events, we may ask clients to tell compelling, sometimes harrowing stories. Video images of hungry kids may be shown to tug at our sense of pity and compassion.

This is a dynamic that's been weighing on my mind as much as the instant-whisky powder that could have made me a millionaire. How much do we as nonprofits, who stand in the middle between foundations/donors and communities, unconsciously perpetuate the notion that the people we serve are "others"?

Honestly, there's been a lot of "othering" going around in society in general. For example, there is a lot of education inequity in Seattle, with glaring gaps between schools with wealthier families and schools where most of the kids are on free or reduced-price lunch. Some schools can raise $300K in one night; others work for months to get a grand or two in a donated-books sale. One school, with 95 percent low-income kids, e-mailed an organization whose board I was on at the time, the Southeast Seattle Education Coalition—and asked for $75 to pay for food for a parents information night. They could not afford $75 to buy spaghetti. Subtle suggestions of, "Hey, parents from wealthier families, why don't you share some of your money with less-resourced schools?" have often been met with, "Sorry, we are investing in our own kids."

This is an important shift that I hope to see more of in our sector: getting people to understand that we are one community—that none of us is standing on the edge of the lake feeding ducks. *All of us are ducks sharing one lake, and our fates are tied to one another's.*

I want to tell these parents, "Hey, guess what? Your kids are going to grow up, and they're going to MARRY OTHER PEOPLE'S KIDS. So maybe you should invest in those kids as well."

This is an important shift that I hope to see more of in our sector: getting people to understand that we are one community—that none of us is standing on the edge of the lake feeding ducks. *All of us are ducks sharing one lake, and our fates are tied to one another's.* Considering the challenges we are facing as a community, it is more critical than ever that we get donors and funders to understand how the well-being of people who look completely different from them, or who are geographically far away, or who speak other languages, affects these donors' and funders' own well-being.

The Nature of Selfishness

To build strong communities, which I think is the vision that all of us in this field share, we each have to examine our own motivations for doing this work. Recently, I was talking to some colleagues in the field about why they entered the sector. "This is stressful work," said one—and I'm paraphrasing—"but I have to remember that I'm not doing this for me. We have to be selfless and think of others. This is not about me. This is about the community." Another colleague agreed.

I had to chime in and say that I don't think selfishness is all that bad. I am totally doing this work for me. I have a kid, and another one on the way. I want my kids to grow up in a safe neighborhood. I want to be able to walk down the street and see art and hear music. I want trees and pandas to exist in the world so I can visit them—trees and pandas are awesome. I want the world to be safe and diverse and vibrant, because I personally am planning to grow old in it and enjoy the hell out of it before I die in it, probably from a teleportation machine malfunction on my way to visit Mars.

In the context of our work, I think self-interest can be a force for good, and we need to remind ourselves and our donors that all of us have personal stakes in what everyone else in the world is experiencing. We all personally benefit when

"MANDARIN DUCKS" (DETAIL) BY NICOLA MOUNTNEY/NICOLAMOUNTNEY.COM other people's kids do well (because our kids marry and otherwise interact with one another); when our elders are taken care of (because we are all growing old); when our environment thrives (because we all breathe air and drink water); when people in other countries are successful (because we like to travel and eat stuff); when there are fair laws; when people have stable jobs and housing; when there is lots of art and poetry and music; et cetera. When we help people, we also each personally benefit, and this enlightened self-interest within the collective good is what will allow us to build our ideal world—not the patronizing notion of selflessness, pity for the "others," and old-school charity.

I'm a Duck, You're a Duck

I've been thinking about the dynamics between foundations and nonprofits,[3] between donors and nonprofits,[4] and between nonprofits and other nonprofits.[5] And honestly, despite the many counterexamples, sometimes it gets really discouraging just how contentious, adversarial, and generally unhealthy these relationships oftentimes are. (So discouraging, that I wish I had a cup or two of powdered rum to mix into my soy latte.)

As our challenges multiply and the illusion of resource scarcity increases its grip on our communities, I see more and more turfiness and other symptoms of a survival mindset. And we nonprofits often perpetuate this sort of mindset without realizing it. In order to survive, we divide ourselves into "us" and "them." We must examine areas where we are doing this and cut it out. And we must examine whether we see and treat our clients as "others" and whether we are inadvertently passing this mentality on to donors, volunteers, even our clients.

The success of our world depends on us all believing that we are all interconnected. And if there's one sector that can get everyone to understand and buy into the idea that our well-being is tied to one another's, it is ours. Only when we get people to realize that we are all ducks, can we all be unicorns.

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Who *Really* Governs and How: Considering the Impact of the Dominant Coalition

by Fredrik O. Andersson and David O. Renz

"The issues of politics and power in governance are important; they also provoke ambivalence," explain the authors. "Many in the nonprofit sector prefer to ignore the issues or pretend they do not exist. Nonetheless, as we suggest in this article, the power dynamics of dominant coalitions are often a significant and integral dimension of nonprofit governance, and should be given serious consideration."

So let's ask a really important—or (some might say) really dumb—question. Who governs your organization? We mean, who *truly* governs your nonprofit—not from the perspective of legal mandates and admonitions, and not from the perspective of all of the prescriptive writings that we and so many of our colleagues have produced, but from the perspective of *actually* governing. Reflecting on our real-world experiences with the couple hundred boards with which we've had the privilege of working—sometimes as consultants, sometimes as researchers, and sometimes as members—we have had to acknowledge a fundamental reality: *All too often, it is not the entire board of the nonprofit that is governing the organization!*

People with years of board experience have been whispering about this dynamic forever, and they usually chalk it up to a mix of conspiracies and human failings. Often, they refer to the "80-20 Rule" to explain it. On any board, they assert, only about 20 percent of the board (or even less) can be counted on to do the actual work; the other 80 percent are freeloaders and no-shows who may take credit after the fact but do little or nothing of the real work. There is certainly evidence to support this lament.

We have seen this dynamic happen when a small group of charismatic and/or politically connected members become frustrated with lack of action and come together to "actually get things done." Sometimes this happens when a founder calls upon a small group of her or his followers to take control (or maybe they never shared it to begin with?). We have seen the executive team (with or without a couple of key members of the board) step in to exercise control to take the organization in a new direction. For good or ill—or perhaps both—it is not all that uncommon to see the power of the full board usurped or condensed by a small group that exercises the authority of the full board without any official role or delegation. Often, in these situations, the full board is "out of the loop" until it is time to act (to "rubber stamp") a preselected course of action. But what is going on here? Where is the whole board when it comes to making decisions and monitoring performance?

True, the entire board is, in the end, legally accountable for actions taken. But, we must acknowledge, the ideal of everyone on a board playing an equally active and influential governance role is as much myth as reality. So, this raises the questions all of us in the research and consulting world (really, all of us in nonprofit leadership roles) need to ask: Who actually does the real work of governance in nonprofits, and how does real-life nonprofit governance really work? Are there certain conditions or settings where this dynamic is more likely to occur? And what are the long-term consequences of this dynamic?

These questions have drawn our attention to the long-standing but relatively ignored concept of group dynamics: the *dominant coalition*. In this article, we introduce the concept of the dominant coalition, giving some background on its roots from the literature of organizational studies; highlight why and where dominant coalitions can emerge; and discuss why we think this phenomenon is an important addition to the literature and study of nonprofit boards and governance.

Some Background

As we look more carefully at what we know from research and practice about nonprofit boards and governance, we are repeatedly reminded of the need to consider governance from multiple and broader perspectives. This starts with a reminder of an important distinction that nonprofit leaders too often overlook, even though multiple scholars have documented this point: boards and governance are related, but they are not synonymous.[1] Governance is a function, while the board is a structure. By definition, boards must engage in governance, but most boards do other work, too (such as fundraising, which is not governance). Further, boards typically are not the only actors in the organization that engage in the process of governance. As Richard Heimovics and Robert Herman have explained, executives of staffed organizations are active participants in the process of governance, too.[2] It is imperative that the nonprofit scholarly community and nonprofit practitioners and stakeholders continue to grow their capacity to examine and explain how nonprofit-organization governance is achieved.

As researchers search for deeper insights into the work of nonprofit governance, many have recently sought to develop fresh perspectives and alternative theories. We hope to contribute to the development of one such alternative by putting more emphasis on the behavioral processes and dynamics of stakeholders in and around the boardroom, with the goal of offering a pragmatic perspective that will both complement and challenge some of the prevailing perspectives vis-à-vis nonprofit boards and governance. And this is what has drawn our attention to the concept of the dominant coalition.

What Is Going On? Recognizing the Dynamic of the Dominant Coalition

As we reflected on this dynamic of partial-board engagement, we came to realize that a sociological concept introduced more than fifty years ago was at play. What we have come to see is that boards, like many other groups of people, are often run by a dominant coalition—a much smaller group of people who really "call the shots" in the name of (and sometimes even completely separately from) the governing board of the organization.

The dominant-coalition concept can be traced back to the so-called "Carnegie School," a group of prominent scholars that included Herbert Simon, James March, and Richard Cyert.[3] The Carnegie School adopted an interdisciplinary approach to depict and comprehend key processes of organizational and economic decision making. In the early 1960s, Cyert and March explained in their book *A Behavioral Theory of the Firm* that complex decisions in organizations are first and foremost the outcome of various behavioral factors, rather than a consequence of some mechanistic process for economic optimization.[4] Those in charge of making organizational decisions are frequently required to consider, and seek to accomplish, multiple and sometimes even conflicting goals simultaneously. According to Cyert and March, the more convoluted the decision to be made, the more pertinent the behavioral aspects of decision making become.

One of their key perspectives is that organizations are political coalitions in which the "composition of the firm is not given; it is negotiated. The goals of the firm are not given; they are bargained."[5] Put differently, an organization is best described as a dynamic political system consisting of multiple diverse stakeholders. Since different stakeholders may have distinct goals and preferences, negotiations and bargaining among stakeholders are common and essential practices. Moreover, because different actors inside and outside organizations may elect to pursue different goals at different times, organizations may even adopt a variety of possibly inconsistent goals.

Cyert and March focused on for-profit firms, which are ultimately guided by the goal of making a profit or exiting the market. However, there rarely is such a clear goal or performance indicator for nonprofits. As noted by Daniel Forbes, even figuring out surrogate measures for capturing nonprofit performance is tremendously difficult "because nonprofit organizations frequently have goals that are amorphous and offer services that are intangible."[6] He continues, "any discussion of effectiveness must begin with an equally problematic discussion about which—or more precisely whose—criteria of effectiveness are to be employed."[7]

The key point here is that the decision-making process in nonprofits may well be even more convoluted than in for-profit enterprises, and thus even more prone to the forces described by

Cyert and March. And in order to comprehend how strategic choices are made given the plurality of stakeholders and stakeholder interests that characterize the reality of many nonprofits today, it is useful to consider the perspective of the dominant coalition.

Why Do Dominant Coalitions Emerge?

The phrase *dominant coalition* was introduced by James Thompson, who extended Cyert and March's coalition perspective by bringing additional emphasis to the role of power and power allocation in organizations.[8] Thompson noted that while it is possible for an organization to have a single central power base, this is very seldom the case. As organizations get more complicated, the number of stakeholders expands, the sources of uncertainty increase, and the sources of contingencies and dependencies increase. Consequently, the number of power bases expands, as does the pool of stakeholders that can form coalitions. The result? In highly complex organizations, power is dispersed.

Next, Thompson asked a critical question: If an organization with a broad and dispersed power base needs to make a critical strategic decision, how can it get anything done in the face of all the coalition infighting? The answer, according to Thompson, is the emergence of an "inner circle" that will conduct business. This inner circle is most likely to emerge "informally, implicitly, tacitly"—and without this inner circle exercising leadership, the organization simply will not be able to function effectively. It will end up being "immobilized."[9]

Thus, dominant coalitions are born when power is widely distributed or diffused across many stakeholders, all seeking to get things done. Given that all of these stakeholders can have different interests and goals *for* the organization, it is likely—from the nonprofit governance perspective—that "we can also consider goals *of* the organization, or organizational goals, as the *future domains intended by those in the dominant coalition*. Almost inevitably, this includes organizational members, but it may also incorporate significant outsiders."[10] (Emphasis in the original.)

It is essential to note that the construct of the dominant coalition was introduced as a way of understanding how strategic choices were being made in organizations. It was not employed specifically to examine governance or governing boards. Nonetheless, given the above description, we strongly believe that the construct also has significant utility in helping us to understand with greater sophistication the process of nonprofit governance and those who are engaged in it. In fact, considering the uncertainties, resource dependencies, and institutional demands facing nonprofits from a wide range of stakeholders and a dynamic environment, we feel that the dominant-coalition perspective offers even more utility to the reality of nonprofits and their governance. Thus, ultimately—and in a very real sense, regardless of who is involved—if a dominant coalition exists, by definition it will be the true "home" for nonprofit governance activity.

The Dominant Coalition and Nonprofit Governance

Our discussion so far highlights a few central points of significance for nonprofit governance scholarship and practice. First, the use of the dominant coalition both reflects and reinforces the value of a power-control and political perspective when studying governance and strategic decision making in nonprofit organizations. Second, dominant coalitions are structures, and should be considered a source of significant structural variation in nonprofits. Finally, the dominant coalition helps us to examine the role and influence of hierarchical structures and vertical authority in the governance process of nonprofits.

Thus, one of the stimulating aspects of applying a dominant-coalition lens is that it makes it possible to reframe and rethink questions to help us to develop new insights into some problems that pose significant challenges for conventional board-oriented research, including power dynamics among groups inside and outside the boardroom, issues of diversity and inclusion, and options for stakeholder engagement. Furthermore, while the dominant coalition can be useful as the focus of studies of governance in individual nonprofit organizations, it can also be very helpful when attempting to understand and explain governance dynamics in complex settings such as hybrid (especially cross-sector) organizations and in settings where networks of organizations become the primary means by which services are delivered. In these settings, individual-organization board models do not explain very well the actual processes and dynamics of governance or the roles and experiences of boards, their members, and other key actors.

When we apply a dominant-coalition approach to the study of a board, one of the first questions to surface is whom to include as a member of the coalition. One must certainly give serious consideration of board members as likely members of the dominant coalition, given the way most nonprofit boards are expected to be—and are currently—involved in the governance process. However, it is vital to recognize that the question of who is part of the dominant coalition is an empirical rather than a conceptual or normative question. In other words, we need to examine the specific organization to ascertain just who is involved in a dominant coalition.

As a starting point for thinking about

what a nonprofit-based dominant coalition can look like, we offer several types that are especially likely to be found. These archetypes are based on our knowledge of nonprofit governance research, as well as our experience working with nonprofit organizations and their boards. When looking at a specific organization and coalition, we would expect to find that an archetype has unique reasons to exist—unique grounding in a particular context and set of organizational and environmental conditions. Each type would have its own strengths and create its own set of issues. Given the political nature of the dominant-coalition construct, we would also expect a fairly significant degree of difference of opinion about what might be the strengths and challenges of each type. We propose the following as eight common dominant-coalition archetypes:

1. *True Governing Board.* In what some would consider an ideal scenario, the dominant coalition and the governing board are synonymous; there is 100 percent overlap. In this case, the entire board membership constitutes the dominant coalition, meaning that other governance stakeholders, such as the executive director, are not "in the game."
2. *Strong Executive Committee.* Many boards have explicitly authorized an executive committee to act with all of the authority of the full governing board (sometimes without even any follow-up reporting or accountability to the governing board), and this committee becomes the dominant coalition because it has the power to make choices and decisions for the organization.
3. *Founder-Driven Coalition.* It is common to find that founders of nonprofit organizations seek to retain the power and influence they held from the founding of the organization, and they may exercise this authority with the support of a small cadre of their associates. This could take multiple forms, since founders may also sit on the board, or in the executive director chair, or entirely outside of any official formal role or structure.
4. *Executive-Driven Coalition.* Similar to the findings of many for-profit organizations, many nonprofits develop a situation in which an executive leadership team of the organization acts as the true governance decision maker. In such cases, the board often becomes a mere rubber stamp, and all leadership derives from the executive corps.
5. *Funder-Driven Coalition.* Many observe that "those who have the gold, rule"—and that is the essence of this dominant coalition. In some cases, this coalition may be exceptionally small (e.g., there is one dominating funder, and s/he drives all key decisions), but in others we will see a funder in the lead but working closely with some small segment of the board and/or executive director. Resources, of course, are at the core of this power relationship.
6. *Profession-Driven Coalition.* Some organizations have a strong professional component to their work (e.g., the field of medicine in hospitals), and the real power to make decisions lies (intentionally or not) with some cadre of the professionals (e.g., physicians in hospitals). In these cases, such coalition membership may be reinforced by external regulatory or accreditation conditions.
7. *Blended/Diverse Stakeholder Coalition.* There are several models of governance that rely upon the active engagement of key stakeholders in the governance decisions of the organization, and in these cases it is conceivable that a dominant coalition could emerge as a result of some set of these stakeholder representatives coming together to coalesce and exercise power.
8. *Diffuse (and Ineffective) Coalition.* Some nonprofits are not really governed by any actors with any significant power or influence. In these fragmented, shared-power settings, various constituencies come together to disrupt or blunt each other's exercise of influence, power becomes very diffused, and no one is really in charge.

The value of considering such dominant-coalition archetypes is that each has characteristics that are worth understanding for their significance in shaping and affecting the success of a nonprofit organization. It is essential to underscore a core point: *dominant coalitions may result in positive or negative consequences—and often they will leave a mixed path of results*. Each form has the potential for a unique kind of impact on the nature and form of organizational performance, responsiveness, and accountability. And each has the potential to fundamentally disrupt the formal governing authority and responsibility that officially lies with the nonprofit organization's governing board.

Where Might This Lead? Questions Moving Forward

The goal of this article is to illuminate what we believe is a different, intriguing, and potentially useful framework for deepening and advancing knowledge about nonprofit governance, how it is actually accomplished, and by whom. Studying dominant coalitions is likely to be messy work, given how they intersect with the dynamics of politics, power, and other coalitions in and around nonprofit organizations. The issues of politics and power in governance are important; they also provoke ambivalence.

Many in the nonprofit sector prefer to ignore the issues or pretend they do not exist. Nonetheless, as we suggest in this article, the power dynamics of dominant coalitions are often a significant and integral dimension of nonprofit governance, and should be given serious consideration.

At this point in time, we are only beginning to explore the nature of dominant coalitions in nonprofit organizations and networks. A myriad of questions will emerge as we take further steps to more fully understand the existence, impact, and implications of the dominant coalitions in nonprofit organizational governance. We therefore close with some of the key questions that we believe this perspective brings to the fore.

- How do various actors become members of a dominant coalition? Especially, how does this differ by organization age, mission, size, and organizational revenue model? Or does this differ according to board characteristics, such as board size, board stage of development, or whether the board is a leading versus a following board, etc.?
- In what ways might competing coalitions emerge and vie for dominance, influence, and control?
- Is the dominant coalition exemplary of, or a manifestation of, the dark side of nonprofit governance? Does a dominant coalition inherently subvert, or threaten to subvert, the legitimacy of full-board governance? Does it subvert true accountability by stealing power and influence away from the "official" board? Or is it simply the embodiment of the truth about governance in real life?
- How do successful dominant coalitions manage their boundaries and exchanges across their boundaries? How do they most effectively manage the dynamics of intra-organizational versus extra-organizational environments?
- How do dominant coalitions affect or drive definitions of organizational and board effectiveness? Or do they have any impact in this regard at all?
- When are dominant coalitions intentionally created, and by whom? When do they emerge organically? And what are likely to be germane founding conditions for each?

Have you had experience with the emergence or operation of one or more dominant coalitions in your organization? We invite readers to share their insights and thoughts about this concept and how it might be relevant to ongoing efforts to advance understanding of the complex field of nonprofit governance. We believe this to be a rich and rather unusual complementary perspective on the study of nonprofit governance, and we look forward to sharing more insights and questions in the future.

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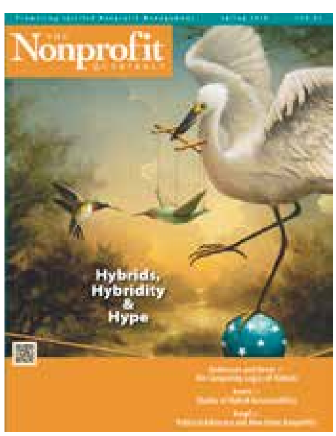
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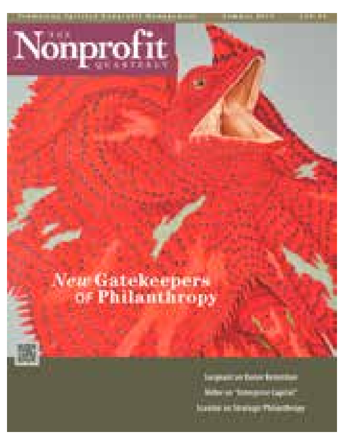
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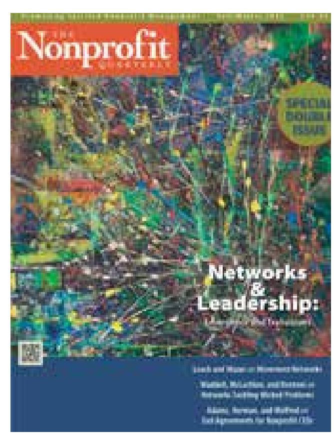
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Networks & Leadership:

Voices from the Field: Immigrants, Collaboration, and Co-ops Revive a Maine Town

by Jonah Fertig-Burd

Lewiston, Maine, a former mill town, comes back from the brink. Key elements of the turnaround include tapping into the energy of the city's growing Somali community and nuanced employment of co-op development principles.

Across the United States, hundreds of cities have struggled after industrial decline. Some have seen their downtowns gutted. A few have experienced rapid gentrification as the towns have been rediscovered by tech companies, developers, and others.

But some cities follow another, more grassroots, community-based path. Such is the case for Lewiston and Auburn, twin cities on the Androscoggin River in Maine. Here, community organizations, economic development organizations, refugees, and long-time residents have come together to develop a new vision based in collaboration and cooperation.

Lewiston–Auburn is the second-largest metropolitan area in Maine, but with a metro population of fifty-nine thousand, it's small. Lewiston—the focus here—is located (as is Auburn) in Androscoggin County, home to many farms and small businesses. In the late 1800s, textile mills were built along the Androscoggin River, and soon employed thousands of people, many of whom came to Maine from Quebec. This large Franco-American community faced intense discrimination, including by what had become a very large Ku Klux Klan chapter in Maine by the 1920s.

Over time, however, the Franco-American community became the majority in Lewiston, and French was commonly spoken on the streets of the bustling city. Lewiston thrived for decades, but textile mills, which once employed thousands of workers, started to decline in the 1950s.[1] By the end of the twentieth century, the mills were gone, downtown was largely shuttered, and the population was falling.[2]

Enter a new wave of immigrants, this time from Somalia. The first arrivals came to Lewiston in the early 2000s—some directly from refugee camps in Kenya, while others first went elsewhere, such as Atlanta or Syracuse, but moved to Lewiston after hearing that it was a small, safe city with plenty of housing.

While some local residents welcomed the newcomers, the city government did not. In 2002, Mayor Laurier T. Raymond Jr. wrote an open letter to the Somalis of Lewiston, asking them to stop other Somalis from coming.[3] Neo-Nazis from Illinois saw this as an opportunity to organize in Maine, and they planned an outreach meeting in Lewiston. But the mayor's letter and the Neo-Nazis' plans backfired, with only forty-five supporters showing up to the outreach meeting and over forty-five hundred people protesting the meeting or joining in a celebration of Lewiston's new residents.[4] During this time of division and conflict, new connections and collaborations started to grow and led to a blossoming of community-based development today.

In 2004, Lewiston proposed building a bypass through the center of the city, right through the poorest neighborhoods—an area referred to as the Tree Streets (because of the many streets named after types of trees).[5] This would have effectively displaced 850 residents from their homes. While economic growth was promised, local residents were not convinced and organized The Visible Community (TVC), a grassroots movement that included many low-income elderly, disabled, and neighborhood residents. They opposed the city's project and put forward their own vision. The result was the creation of *The People's Downtown Master Plan*, released in 2008.[6] The city's bypass plan was defeated in summer of 2005, and *The People's Downtown Master Plan* laid the seeds for projects and development over the course of the next decade.

Craig Saddlemire, then a recent graduate of Bates College, learned about community organizing from his time working with TVC and applied those skills to forming Lewiston's first housing co-op, the Faire-Op, with three other friends, in 2008. After the co-op had been in operation for five years, it became apparent that a larger, more inclusive organization was needed to help expand the opportunity of cooperative housing to other community members.

Given that the Faire-Op was founded and led by young, white college graduates, it was clear that greater representation in leadership would be necessary for the project to successfully reach the communities seeking better housing. Joined by other community leaders, they formed the Raise-Op Housing Cooperative and developed a board that reflected the diversity of the neighborhood.[7] Soon afterward, they bought a second building next to the original Faire-Op. They expanded again with a purchase of two more buildings, which brought their total to fifteen housing units and fifty residents.[8]

Today, residents and leaders of the Raise-Op include First Nations people and other long-time Mainers, as well as immigrants from Quebec, Djibouti, Congo, Angola, Somalia, Mexico, Brazil, and Europe. One of those buildings also became home to the Raise-Op's office and to the Somali Bantu Community Association (SBCA).[9] Saddlemire said, "We are creating affordable, inclusive, and democratic homes for our people. Through our organization, residents are also able to become more civically engaged, and many are leading neighborhood redevelopment projects, educating their neighbors about cooperative economics, and finding strength in collective action. We are bringing self-determination and community control back to the residents and, most importantly, treating housing as a human right to be protected, rather than a commodity to be exploited."[10]

Since moving to Lewiston, the Somali community has been steadily developing businesses, farms, and organizations that are meeting community needs. In early 2002, Fatuma Hussein worked with community elders to form a small nonprofit, United Somali Women of Maine, to increase community engagement and provide services for the growing Somali population.[11] Hussein increasingly became a spokesperson and connector for the community. This organization later became the Immigrant Resource Center as it expanded its mission and reach.[12] A few years later, members of the Somali Bantu community—from Southern Somalia, and culturally distinct from the ethnic Somalis—started their own association (the Somali Bantu Community Association [SBCA]), and a youth soccer program that later became Maine Immigrant and Refugee Services (MEIRS).[13]

SBCA began by offering cultural programs to support its community. After hearing from community members that they wanted to access farmland, SBCA started a community farming program in 2012, which now supports two farms in Lewiston and Auburn, with over one hundred farmers, and is seeking to purchase permanent farmland for its farmers.

Other Somali refugees have started farm businesses, aided by an incubator farm program called the New American Sustainable Agriculture Project (NASAP).[14] Originally a project of Coastal Enterprises, Inc. (also known as CEI)[15]—a statewide community development financial institution (CDFI)[16]—it later was adopted and operated by Portland, Maine-based Cultivating Community.[17]

Dozens of predominantly Somali farmers gained access to land, training, and markets so that they could work as farmers, as many had in Somalia. MEIRS expanded its services to support youth, juvenile justice, citizenship programs, and English classes. Lisbon Street, once the bustling main street of Lewiston, had become largely shuttered in the 1980s and '90s. Somali refugees saw opportunities in these low-rent storefronts, and soon opened halal markets, cafés, and clothing stores that met community needs and breathed new life into this neighborhood.

In 2013, the St. Mary's Nutrition Center and Bates College's Harward Center began a community food assessment, which sought to better understand food insecurity and the food economy in Lewiston.[18] The report's recommendations led to the formation of the Good Food Council of Lewiston-Auburn (GFCLA), which advanced a vision of a sustainable food system.[19] In 2016, GFCLA launched the L-A Community Food Charter—which both Lewiston and Auburn city governments, as well as 270 individuals and organizations, signed on to—to affirm their right to good food.[20]

The Cooperative Development Institute (CDI), a nonprofit that specializes in helping start new co-ops, came to Lewiston in 2015 to assist a group of Somali Bantu farmers graduating from NASAP and exploring ways to farm together on their own piece of land.[21] Subsequently, these farmers formed the first immigrant-owned co-op in Maine, New Roots Cooperative Farm (New Roots).[22]

They worked collaboratively with Maine Farmland Trust, Land for Good, and Cultivating Community to acquire a thirty-acre farm, with a lease-to-own arrangement, on the northern edge of Lewiston.[23]

At their groundbreaking celebration, in 2016, over one hundred people—including Somali immigrants, long-time Mainers, nonprofit staff and organizers, and Lewiston's then-mayor Robert E. McDonald and other elected officials—came together to celebrate this landmark achievement. CDI and Cultivating Community worked with New Roots to raise over $55,000 in grants (from private foundations and the U.S. Department of Agriculture [USDA]), donations, and crowdsourced funding, and $45,000 in Sharia-compliant financing from the Cooperative Fund of New England, another regional CDFI, Slow Money Maine, and a community member. "Our aim is not only to grow food and run a business ourselves but to help our community and teach them about how to run a business," said New Roots farmer Batula Ismail.[24]

The Healthy Neighborhoods Coalition started in 2013, as community members came together to focus on the health of the Lewiston–Auburn urban core, to strengthen relationships between mainstream organizations and immigrant groups, and to include community members and groups not usually included in planning.[25] What started as a grassroots effort has grown in the past few years, with a partnership with the City of Lewiston and significant funding from the John T. Gorman Foundation, and a $1.3 million HUD Choice Neighborhoods Planning Grant.[26]

The Healthy Neighborhoods Coalition has organized through deep community engagement, working with residents and organizations, to develop a Transformation Plan for the Tree Streets neighborhood.[27] That plan is now providing the basis for a HUD Choice Neighborhoods Implementation Grant to assist the coalition in renovating and building new affordable housing in the neighborhood (including more cooperative housing), improving conditions for neighborhood businesses, and improving existing green spaces and creating new green spaces in the neighborhood.[28]

New Roots and Raise-Op have inspired many in the Lewiston–Auburn community. Recently, CDI applied for and was awarded a Rural Community Development Grant from the USDA for $215,000 over two years, to train more nonprofit, community-based organizations in co-op development.[29]

Six different groups, including Somali-led organizations and coalition members, have participated in the training program—coordinated by CDI and the Democracy at Work Institute (DAWI), a national nonprofit[30]—where they learn how to develop co-op structures, business plans, and culture.

So far, six co-op projects have emerged. These include a temporary-labor worker co-op, two child-care co-ops, a bike-powered compost-hauling co-op, an herbal medicine co-op, and a reenvisioned food co-op and food hub.[31] In addition to the training, co-ops are connected to an ecosystem of support, including funding, financing, and additional technical assistance. CDI has also worked with Somali Bantu community members and the Sustainable Livelihoods Relief Organization[32]—a Somali-led organization—to form Isuken Co-op, a worker-owned food truck serving farm-to-table food.[33]

These projects have also reached mainstream economic groups, including the local chamber of commerce and Lewiston's Economic & Community Development Department, which have helped organize a three-part series of workshops (attended by over fifty area businesses) on exit planning—including the option of exiting through transferring ownership to worker cooperatives.[34]

These same partners came together this spring in a meeting cohosted on April 4, 2019, by the Cooperative Development Institute, the Lewiston Auburn Metropolitan Chamber of Commerce, and Kristen Cloutier, current mayor of Lewiston, to explore ways to increase collaboration. Mayor Cloutier opened by saying, "We can do more together than on our own. . . . If we want to address the growing issue of economic inequality in this country and in the great state of Maine, it is crucial that we support a democratically owned and just economy where everyone can fulfill their needs and aspirations."[35]

At the meeting, Melissa Hoover, executive director of DAWI, shared approaches used in other regions. For example, in Western North Carolina, the Carolina Textile District has taken a multistakeholder approach to revitalizing the textile industry, using co-ops as one means to secure local ownership.

Meanwhile, in Lewiston, the former mill town is on the rise. Getting there has required many partners, with collaboration grounded in strong values, participatory processes, and cooperative ownership.

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Jonah Fertig-Burd is director of Cooperative Food Systems at the Cooperative Development Institute. A cofounder of Local Sprouts Cooperative and Maine Farm and Sea Cooperative, Fertig-Burd focuses on working with immigrant and refugee co-ops in the food system, particularly in Lewiston. He is also a Local Economy Fellow of the Business Alliance for Local Living Economies (BALLE).

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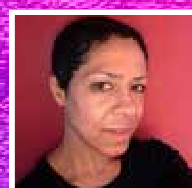

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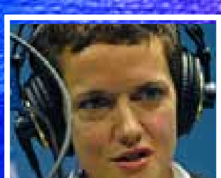

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Taking Back "Tribalism"—What We Can All Learn from Tribal Nations

by Sarah Kastelic

Sadly, the word "tribalism" has become a pejorative, suggesting narrow-mindedness. But American Indian and Alaska Native tribes are not exclusionary; rather, they foster deep values of community. "In this way," writes the author, "bound to one another and cleaving together, we create a reciprocal responsibility for the collective well-being of the human community, the human family."

Editors' note: *This article was adapted from a talk given by the author at Independent Sector's annual Upswell convening, held in Los Angeles, California, on November 16, 2018.* NPQ *published it online on July 25, 2019; it has been minimally edited for republication here.*

We live in severely polarizing times. These last several months are a painful reminder of how disconnected we have become from one another, as we retreat into our zones of safety. By "othering" those with whom we don't share identity, we spotlight difference and increase fear. In a less extreme form, this othering affects our discourse, our voting, our budget and resource allocation, our education, our housing, our justice, and so much more. At its height, this othering leads to the personal and group violence that punctuates our daily lives, that boldly declares the "other" as less than human—giving permission for the very violence that occurred. It is a vicious and rapidly accelerating cycle, one all-too-familiar to Indigenous peoples.

In today's discourse, across the political spectrum, the word "tribalism" is used to describe the othering and retreat of people to their own groups, to their camps of like-minded and similarly positioned friends and families. I believe that this is a gross misuse of the term. This phenomenon is the antithesis of what the tribal nations that make up Native America represent.

Indigenous peoples and groups from around the world may be our best instructors regarding the value brought by the group—the value of the tribe. Tribes of Indigenous peoples are about organizing, not othering. Tribal communities are a way to recognize kinship and shared responsibility, instill and preserve culture and reciprocity, and apportion and steward resources. The ties of a tribe define one's primary relationships while recognizing or even mandating a wider set of relationships.

Most Indigenous cultures are relational at their core. A more historically accurate understanding of what it means to be part of a tribe is that you are part of a community that welcomes everyone—including strangers and people different from you—with a sense of relationship. At this time of year [talk was given in mid-November], it's easy to conjure up elementary school images of the first Thanksgiving. But the idea of the tribal community runs deeper than that. It is through the tribe that you discover how you are connected to someone else, or to a group of people, and come to understand your true bond, connection, and kinship. By establishing kinship, you invoke a reciprocal responsibility for the well-being of the other. For an Alutiiq person like me, a citizen of a tribal nation—the Native Village of Ouzinkie—our community values say that we are responsible for each other and ourselves, and that we welcome everyone and favor sharing.

What this vision from Native tribal nations offers the world is a different path forward. In our tribal communities, we learn to have a recognition of relationship and a kinship responsibility to those who are different from us, which binds us together. It is the very values we learn through our tribe that invests us in our joint—and at scale, collective—well-being. There is not an option to retreat from what you are in relationship with.

Belonging is a universal human desire. It is something that we all want. As human beings, we long for connection—to be linked to our family, to the human community, to be part of something larger than ourselves, to have a shared purpose. This desire for belonging and purpose does not have to mean closing yourself off from those who are different from you—a retreat to safe sameness.

Indigenous worldviews and values offer unique understandings of purpose and belonging. In Maori culture, according to Dr. Chellie Spiller, a Maori author and trainer, "people are a reflection of each other such that in serving others, one is serving one's extended self and helping to serve a shared purpose."[1] Similarly, from the time I was small, my Alutiiq father told me that "when you need help, help others, and in that process, you will always find the help you need." This advice has always served me well. In this understanding of reciprocity, we become nourished through nourishing others.

From an Indigenous perspective, we members of the human community need each other. We are bound together; we are interdependent. No one is dispensable. We need the gifts and talents of each one in order to build and maintain the society in which we live. This value of belonging and togetherness is reinforced in our traditions of introduction, wherein we chart the relationships between things. In contrast to Western introductions (consisting of your name, what you do, and where you live), Indigenous introductions, as Dr. Spiller observes, "trace relationships through layers of connectedness, citing lineage [to people and to place], which illuminates the fullness of a person through relationships."[2] And, "This tracing of genealogies is much more nuanced and complex than a recital of family trees—it is a way of ordering the world, and connects humans to every other aspect of creation.[3] As the Lakota say, "Mitakuye Oyasin," which means "all my relations," or "we are all related."

Another aspect of this interdependence is to recognize that personal well-being is not only intimately linked to the well-being of others but also to the well-being of the environment. This kinship with creation is a way of being and relating in a web of interconnectedness.[4] It is a way of belonging, wherein humans come into being through reciprocal relationships with creation.[5]

It is through the tribe that we learn the practice of seeking relationship, crossing the divide, and active engagement in service to the collective good. It is the tribe that teaches us to reject separatism, protectivism, nationalism, and supremacy in favor of the identity, connection, togetherness, and purpose that are in the self-interest of each one of us in the human family and in all of creation. In nourishing one another, we nourish ourselves.

As Regis Pecos, a Cochiti Pueblo citizen, says, "We restore traditional values to restore attitudes and behaviors. We create new norms in contrast to the dysfunction. The new norms compound over generations."[6] In this way, bound to one another and cleaving together, we create a reciprocal responsibility for the collective well-being of the human community, the human family. There is no "them" and "us"; there is only "us."[7] This is what I was taught by my tribe, and this mindset is a resource for people from any culture who want to build community and shared well-being.

Notes

1. Chellie Spiller, Hoturoa Barclay-Kerr, and John Panoho, *Wayfinding Leadership: Groundbreaking Wisdom for Developing Leaders* (Wellington, Aotearoa [New Zealand]: Huia Publishing, 2015), 68.
2. Ibid., 73.
3. Ibid., 73–4.
4. Ibid., 73.
5. Ibid., 74.
6. Personal communication with the author, October 24, 2018.
7. Ibid., November 9, 2018.

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