# Counterpoint

## A Response to "Commercial Nonprofit Enterprises in the United States: The Phenomenon of Unfair Competition"[1] and *Unfair Competition: The Profits of Nonprofits*[2]

MARK D. HUGHES
*Fellow, Ludwig von Mises Institute, Auburn University, Maryland and Associate, The Fraser Institute, Vancouver.*

For nearly a decade, a vocal segment of America's small business community, with government support through the Small Business Administration, has accused commercially active nonprofit organizations of having an unfair competitive advantage. Two eminent free market scholars, Professor James T. Bennett, Professor of Economics at George Mason University and Professor Thomas J. DiLorenzo, Professor of Economics at the University of Tennessee—Chattanooga, are among the first economists to examine this complaint. *Unfair Competition: The Profits of Nonprofits* is the result of their efforts. The book is well written and extremely accessible to the non-economist.

According to Professors Bennett and DiLorenzo, "[w]hen two types of organizations engaged in identical commercial activities are treated differently under the law, there is unfair competition... Government has granted nonprofits special privileges that give them significant advantages in the marketplace" (p.1). Nonprofits, unlike for-profit business, enjoy tax-exempt status—referred to by the authors as a subsidy—and are free from many government regulations; thus, according to the authors, they are favoured by the government with artificially low production costs giving them an unfair competitive advantage. They suggest that government, through this "unethical" favouritism, has created an explicit anti-business policy which is driving small business out of the market and threatening free enterprise as we know it. They conclude that, "[t]he simplest solution, then, is to require nonprofits to form for-profit subsidiaries when they engage in commercial activities. This would place both types of organizations on a level playing field; fairness and equity considerations cannot be satisfied by anything less".[3]

Those with econophobia will be pleased to know that this book is decidedly nontheoretical. Close to two thirds of it is purely anecdotal:

stories which purportedly illustrate the unfair competitive advantage nonprofits have in the medical industry, the physical fitness industry, the computer software industry, and government. Perhaps this was intended to keep the interest of lay people, many of whom might be bored, if not bewildered, by econolingo. In this purpose, Bennett and DiLorenzo have succeeded.

This anecdotal approach, however, does not convince me of the *validity* of their thesis. Moreover, it keeps them from achieving their purpose: producing an "urgently needed" and "in-depth analysis" of "[t]he nature and consequences of nonprofit competition with small private firms".[4] While interesting, and often extensive, the anecdotes are not proof illustrative of a general theory of unfair competitive advantage. Indeed, an anecdote alone cannot tell us how we should interpret the described event, why it occurred, and if it will repeat itself. We need some kind of theoretical foundation to do this. Professors Bennett and DiLorenzo, however, do not give the reader an explanation of the philosophical and theoretical premises from which they work and on which they base their conclusions. Instead, we are given a number of anecdotes and are asked, at least implicitly, to trust the authors' interpretations and to accept their conclusions as correct. For each anecdote they produce as evidence, I'm sure there are 10 that could illustrate the contrary contentions.

Their reliance on anecdotes, however, is by no means the essential shortcoming of the book. The authors are guilty of far worse transgressions: they persistently blur the distinction between the State and private nonprofit organizations. Throughout the book they employ an unusually narrow definition of charitable purpose which unabashedly panders to their argument and, moreover, they wrongly and paradoxically assign culpability to exemption from taxation and other regulations, while neglecting the most obvious source of unfair competition.

**Commercial Nonprofits**

In the Bennett and DiLorenzo lexicon, the term "commercial nonprofit" has an oddly broad usage. They make no substantial distinction between private nonprofits and so-called government enterprises. For example, in the preface, after commenting that unfair competition is "endemic and expanding rapidly", they state:

> [l]ocal governments, for example, are providing large numbers of health and recreation facilities (e.g., health clubs, skating rinks, swimming pools); lending video cassettes through public libraries; and operating parking lots and garages, refuse collection, health services, and ambulance services. State

> employees build and repair roads, maintain and repair vehicles, prepare and serve food, clean buildings, and engage in a wide range of social and educational services in direct competition with private firms. The federal government operates hundreds of printing plants, maintains and repairs vehicles and ships, sells subsidized clothing and food to military personnel, and engages in myriad activities that are properly the province of the private sector.[5]

The authors are correct, these activities are indeed "properly the province of the *private* sector". Yet their book is dedicated to condemning the commercial activities of *private* nonprofit organizations (which collectively comprise what is referred to as the Third Sector). Apparently, private nonprofits are not part of the private sector. They write, "the distinction between the public and commercial nonprofit sectors of the economy becomes blurred. Referring to CNEs [Commercial Nonprofit Enterprises] as part of the 'third sector' is inaccurate" (p.66).

The authors spurn this distinction because, as they write, "there is no question that units of government have the critical structural features of all nonprofit organizations" (p.13). Namely, in nonprofit organizations, as in government, there are no direct residual claimants. Profits (or residuals) are not distributed among owners or shareholders. Because of this, the authors believe there is no "bottom line" in a nonprofit organization, the role of profit and loss calculation is missing and the incentive structure is perverted; ergo, nonprofits and government are structurally the same. But here, Bennett and DiLorenzo are incorrect. This is explained by Professor James Douglas:

> [t]he most obvious distinctive characteristic of a State service is that it can invoke the coercive powers of law... this power is most frequently used to commandeer money through compulsory taxation. Organizations in the private sector have no such power to commandeer the resources they need. They must either exchange something they own (or to which they have some form of title) for something they need or rely on tapping some vein of generosity.[6]

Obviously, there is little or no "bottom line" in state operated enterprises since they can dip into the taxpayers' purses whenever revenues run low. Private organizations, however, have no such ability. In general, nonprofits, even those engaged in commercial activities, derive the bulk of their revenue from providing a service to donors. These donors are the organization's ultimate consumers. The service they consume is not a product per se, rather, it is the opportunity to help the organization attain mutually shared goals or objectives.

Indeed, the goals of the organization must be congruent with the desires of its donors. In this way, nonprofits are subject to donors' whims every bit as much as for-profit businesses are subject to their consumers' whims. Surely there is little difference between donor sovereignty and consumer sovereignty. Unless nonprofit managers correctly calculate what their donors want, their revenue source will dry up and the organization will wither away.

Nonprofits do have a "bottom line". It is true that their "profit and loss" calculations are less exact than those of the for-profit enterprise (they are also much more complicated), nevertheless, nonprofit managers must make some sort of long-run profit/loss calculation if they wish their organizations to remain viable.

The situation is less complicated if the nonprofit's revenue is derived largely from commercial operations. Even though its profits are not distributed to a residual claimant, commercial nonprofit managers can objectively determine what goods and services their consumers prefer by creating and studying a real profit and loss statement. After all, consumers will only purchase what they want at a price they are willing to pay, even when they patronize a commercial nonprofit.

All nonprofits must cater to the preferences of their patrons. Whether it is financed by donations or through commercial activity, every nonprofit has a very real "bottom line". No nonprofit can continue to function if its costs perpetually exceed its revenue: it will face bankruptcy. Government institutions, however, never face this prospect so long as they control the taxpayers' purse strings.

State-operated institutions can, and do, compete unfairly with both for-profit and nonprofit organizations to the point of crowding them out of the market entirely. In fact, many private nonprofit welfare organizations were wiped out in precisely this manner during the Roosevelt New Deal years. This should not, however, be confused with competition between private nonprofit organizations and for-profit business.

One example the authors use to represent unfair competition by a nonprofit organization is the Smithsonian Institution in Washington, D.C. It competes unfairly with private enterprise by operating restaurants and gift shops and publishing a magazine. But the Smithsonian is hardly a private nonprofit. It is owned by the United States government and many of its branches are funded directly by appropriations from Congress. The Smithsonian is governed by a Board of Regents composed of the vice-president of the United States, the chief justice, three members of the

Senate, three members of the House of Representatives, and six citizens chosen by Congress. The Smithsonian is distinctly a government enterprise. Moreover, it has less of a "bottom line" than most government institutions because it is a "true American icon". What member of Congress desirous of re-election would risk demanding a cut in the Smithsonian budget? It is hardly a representative nonprofit organization!

**Charitable Purpose**

In *The Philanthropist* article, Professors Bennett and DiLorenzo make a comment which fairly represents their position in the book. They write:

> ... there is a bias toward nonprofit organizations in general, arising from their *pro bono publico* (for the good of the public) image. Although the halo of selfless charity surrounds nonprofit status, few private nonprofits are, in fact, "charitable" in the strict sense. Charities assist the poor, the handicapped, the unemployed, the hungry, the homeless, and the less fortunate in society, but only 10 per cent of private nonprofits do that. Many organizations with "charitable" tax status serve primarily the wealthy and middle classes, operate institutions such as Harvard University or the Music Center of Los Angeles County, or exist to promote public awareness of issues. Labour unions, industry trade associations, museums, educational and religious institutions, performing arts, alumni and professional associations, credit unions, camps, hospitals, and nursing homes ...[7]

In the book they write: "[e]ven though the rationale for nonprofit privileges may be applicable to their charitable functions, it does not follow that the same rationales be used to justify their commercial activities"(p.9). They are particularly critical of YMCAs. "Many of the nation's YMCAs," they assert, "are located in affluent neighbourhoods and serve a wealthy constituency" (p.xii). Elsewhere they charge that the YMCA "has largely abandoned its emphasis on programs for young people and concentrated instead on serving urban professionals in lavish health clubs that compete with private, profit-seeking facilities" (p.5).

Whether or not these charges are true, Professors Bennett and DiLorenzo have enlisted an arbitrarily restrictive definition of charitable purpose which panders to their argument. In their vocabulary, "charity" is synonymous with giving alms to the poor. Charity, however, means much more than this. Some common synonyms are: benevolence, good will, kindness, and liberality. In any Bible concordance charity is always first listed as love. It has been described as "that disposition of heart which inclines men to think favourably towards their fellow men, and to do good". Since

when, I wonder, has this disposition of heart been restricted by income class?

If I wish to establish a nonprofit clinic in Beverly Hills which caters primarily to the psychological and spiritual health of teenagers from the wealthy families in the area, am I any less *charitable* than the operators of Boys Town U.S.A.? Who is to decide, Professors Bennett and DiLorenzo? (But, according to the authors, whether I am charitable or not is irrelevant to the issue. My nonprofit clinic would be competing unfairly with all of the wealthy psychiatrists in southern California even if it were run by the Good Samaritan himself!)

Moreover, the common law definition of charitable purpose has never been restricted to alms giving. Historically, the common law has defined purposes to be charitable if they somehow serve the "public benefit". Professors Bennett and DiLorenzo mistake this as meaning producing or supplying "public goods". The distinction between serving the *public benefit* and producing *public goods*, however, is more than just semantic.

A so-called "pure" public good has three distinct characteristics: first, it is a good in the sense that people want to use or consume it; second, one person's consumption or use of it in no way limits or prohibits anyone else from using or consuming it; and third, the producer of the public good cannot exclude anyone from its use. An example might be the air we breathe. In reality, however, the third characteristic is a technical problem which may, with ingenuity, be solved. Once solved, the good is no longer a public good since property rights can be established and enforced.

Public-goods theorists argue that the market will undersupply public goods due to the free-rider problem (i.e., we all say to ourselves: since no one can exclude me, I will consume the good and pay nothing). Thus, some non-market mechanism is necessary to ensure sufficient production of public goods. Bennett and DiLorenzo believe that this is the just role for nonprofit organizations since "[u]nfair competition does not arise in markets for pure public goods because a commerical market for these goods and services does not exist" (p.29).

It is, however, rather difficult to imagine very many pure public goods. After all, defining and enforcing property rights, the key to exclusion, is the role of our common law judicial system. And it works; exclusion, in some form or another, is almost always possible. Thus, we seldom find nonprofits which produce these so-called public goods. And, from the Bennett and DiLorenzo thesis, if a nonprofit is not providing a public

good it must be providing a good or service which could be produced commercially and that's unfair competition.

"A strong argument," write the authors in their book, "can be made, then, that all nonprofits are potentially commercial nonprofits" (p.13). To be sure, not one nonprofit comes to mind whose activities could not conceivably be done on a commercial basis. Indeed, in the Bennett and DiLorenzo world, the Salvation Army soup kitchen competes unfairly with the skid row greasy spoon which sells broth for a nickel. The youth hostel competes unfairly with the waterfront roach hotel. The Shriners, with their bus for the handicapped, compete unfairly with Joe the taxi driver. The Canadian Centre for Philanthropy which, among other things, sells data base information on Canada's Third Sector, competes unfairly with commercial "industry monitoring" services and for-profit lobbying firms. The Fraser Institute, which publishes and sells its own books, competes unfairly with every commercial publisher of economic books, etc., etc.

Even though few, if any, nonprofits produce pure public goods, they do serve the *public benefit*. The fact that these organizations can provide many members of the public with goods and services at prices lower than the market could charge implies a benefit to a broad segment of the public. The very existence of Harvard University or the Music Center of Los Angeles County, both of which are charged by the authors with unfair competition, is a public benefit. Presumably, if the public was not benefited by their existence they would not exist as donations-funded institutions. More to the point, if members of the public at large, excluding the managers of the nonprofit itself, benefit (without solicitation) from the existence of a nonprofit, then it has served the public benefit and has met the historical test of "charitable purpose".

In Great Britain, Canada and the United States, the common law interpretation of charitable purposes is ultimately derived from an English law commonly called the *Statute of Elizabeth I*, and properly entitled "An Act to Redress Misemployment of Lands Goods and Stocks of Money heretofore given to certain Charitable Uses". In the preamble to the *Statute of Elizabeth I* are listed some 40 or more uses to which funds could be put that were considered charitable. "In its historical context," writes Neil Brooks, "it is clear that the preamble ... was not intended to be a definition of charitable uses ... the preamble was not regarded at the time as being an exhaustive listing". Moreover, the Court of Chancery determined whether a use was charitable by "asking whether it was or was not for the

public benefit that property should be devoted forever to fulfilling the purpose named".[8]

At least half of the uses listed in the Preamble to the *Statute of Elizabeth I* are clearly services which could be commercially produced. It includes, for example: the repair of bridges, ports, havens, causeways, churches, sea banks and highways; the relief, stock or maintenance of houses of correction; the maintenance of schools of learning, and free scholars in universities, and the maintenance of sick and maimed soldiers and mariners. Even today, under the precedent of common law, all of these activities serve the public benefit and are, therefore, charitable purposes. Yet, these are not unlike the activities Bennett and DiLorenzo claim are not rightly charitable, i.e., when performed by nonprofits, they are examples of unfair competition.

**The Subsidy Claim**

Repeatedly, the authors characterize the tax-exempt status of nonprofits as equivalent to a government *subsidy*. This subsidy, they claim, is ironically financed by the very tax-paying for-profit businesses over which nonprofits have an unfair competitive advantage. "For-profits," they write in their book, "have been penalized even further to the extent that they (along with taxpayers generally) have borne the cost of the subsidies in the form of higher taxes..."(p.2).

This is an odd position for two free-market economists to take. To say that everybody else's taxes must rise to compensate for the tax breaks of others implies that the total tax revenue to be collected is written in stone. In other words, the size of government is a given and cannot be shrunk. This, however, flies directly in the face of most free-market literature and scholarship which argue that the role of the state is now vastly overextended.

Moreover, the term subsidy has always referred to funds of money which are transferred to one group after being taken away from, or given away by, another. This hardly describes a tax break. "[a]n exemption from taxation or any other burden," writes Professor Murray Rothbard:

> ...is *not* equivalent to a subsidy. There is a key difference. In the latter case a man is receiving a special grant of privilege wrested from his fellowmen; in the former he is *escaping* a burden imposed on other men. Whereas the one is done at the expense of his fellowmen, the other is not. For in the former case, the grantee is participating in the acquisition of loot; in the latter, he escapes payment of tribute to the looters.[9]

In 1970, even the Supreme Court of the United States recognized this fact. In *Walz v. Tax Comm'n of New York City*[10] Justice Brennan wrote in his concurring opinion:

> [t]ax exemption and general subsidies, however, are qualitatively different... A subsidy involves the direct transfer of public monies to the subsidized enterprise and uses resources extracted from taxpayers as a whole. An exemption, on the other hand, involves no such transfer.

Moreover, Professors Bennett and DiLorenzo insist on pejoratively labelling the tax exemptions enjoyed by nonprofits as *tax loopholes*, implying that these organizations are somehow underhanded, sneaky and un-American. "There are no tax loopholes more blatant," write the authors in their book, "than the special exemptions granted CNEs (Commercial Nonprofit Enterprises), which are just another one of the 'special interests' benefitting from tax loopholes. While such loopholes comprise only one of the many legislative privileges CNEs enjoy, eliminating them would be a move in the direction of fair competition" (p.213).

This from two free-market scholars? Consider instead the words of Ludwig von Mises, perhaps the single most important free-market economist and classical liberal philosopher of the 20th century: "What is a loophole? If the law does not punish a definite action or thing, this is not a loophole. It is simply the law... The income tax exceptions in our income tax are not loopholes... Thanks to these 'loopholes' this country is still a free country."[12]

Indeed, when we speak of freedom we are referring to the absence of a state of servitude. Freedom means more than just the freedom to speak or assemble or publish, it means we are entitled to keep that which we earn or create out of our own industriousness. In other words, property rights and freedom go hand in hand. It is in this that we can find the error in categorizing a tax break, or exemption, as a subsidy. The discussion is far more than mere semantics, it is a deeply important philosophical issue.

For example, if we insist on referring to a tax exemption as a subsidy (a grant of monetary assistance), by so doing we imply that these funds, which would otherwise have been taxed away, do not rightfully belong to us. If the State, by allowing us to keep a portion of our incomes or property rather than forfeiting it in tribute, is granting us a subsidy, i.e., giving us something to which we would otherwise not be entitled, then it must be the case that the state is the rightful owner of this property to begin with. Surely the state cannot give us something to which it has no title. If it is the case that the state has title to all property or income which would

ordinarily be taxed, then the only thing delineating private ownership is the level of taxation. In essence there is no private right to property since the state owns it all and graciously may or may not allow us to keep some of it, i.e., that which it does not tax.

This, however, is in total contradiction to the institution of democracy as we know it. We have freedom precisely because the government must ask us to give it some of our wealth. Contrary to the subsidy thesis, it has no intrinsic right, or fundamental claim, to our incomes or property. The state does not pre-own what we earn or create. Indeed, given the nature of our democracy, an exemption from taxation cannot correctly be referred to as a subsidy or grant of monetary assistance. If such is not the case then we must resign ourselves to servitude![13]

**Equality vs. Equity**

Throughout the book, Professors Bennett and DiLorenzo employ an emotive technique, emphasizing the "sense of 'fairness' or 'equity' instilled in everyone at an early age"(p.1). The foundation of their argument is the Fourteenth Amendment to the Constitution of the United States which guarantees every citizen "the equal protection of the laws". This they interpret as meaning that justice is only served if all laws are applied to all people equally. They write:

> When a nonprofit organization engages in commercial activities and competes with a for-profit firm, the principle of "horizontal equity" in taxation, which requires that equals be treated equally, is violated. At issue is the basic question of fairness. (p.30)

They conclude that for justice to be served, all commercially active nonprofits must suffer the same tax laws and regulations to which for-profit business is subject. This, of course, implies that nonprofit organizations and for-profit firms are "equals". Professors Bennett and DiLorenzo, however, do not inform the reader what principle of equality they are using to determine this. We are expected to simply accept their assertion. But, aside from the complex philosophical issues, deciding who is equal to whom is almost impossible, even when strict principles are known and applied.

Moreover, as Professor Murray Rothbard pointed out 20 years ago: "the justice of equality of treatment depends first of all on the justice of the treatment itself". He further writes:

> ... equality of treatment is no canon of justice whatever. If a measure is unjust, then it is just that it have as *little* general effect as possible. Equality of *unjust*

> treatment can never be upheld as an ideal of justice. Therefore, he who maintains that a tax be imposed equally on all must first establish the justice of the tax itself... If a tax is in fact unjust, and some are exempt from it, the hue and cry should not be to extend the tax to everyone, but on the contrary to extend the exemption to everyone. The exemption itself cannot be considered unjust unless the tax or other burden is first established as *just.*[14]

Despite their charge that "fairness and equity considerations cannot be satisfied by anthing less" than equal imposition of taxation and regulation, Professors Bennett and DiLorenzo make no effort to establish the original justice of the taxes and regulations in question. On the contrary, if their past writings are any indication, it seems that both actually believe strongly that the opposite is true: that taxes and regulations of all kinds are antithetical to a just free market and should be imposed on for-profit business as little as possible.[15]

The reader is left to wonder: if taxes and regulations are bad, or unjust, for for-profit business, then why do Bennett and DiLorenzo insist that justice can only be served by foisting them equally on nonprofit organizations? Rather a startling paradox, or contradiction, for two generally lucid and rigorous free market economists. As Professor Rothbard writes: "since the very fact of taxation is an interference with the free market, it is particularly incongruous and incorrect for advocates of a free market to advocate uniformity of taxation."[16]

One contrary response to this line of reasoning is anticipated. Some will argue that it is simply utopian to think that tax exemption will ever be extended to include for-profit business, i.e., the truly just solution. To criticize the authors for proposing a "practical" solution rather than "utopia" is idle. But why, I wonder, is extending the tax system to include nonprofits the "practical" solution?

Indeed, there exists an almost identical situation in the for-profit world, where granting tax exemption and freedom from regulations to certain businesses is considered a very "practical" solution. Free Enterprise Zones are geographical areas, usually in economically depressed regions, where business and industry my be exempt from property tax, face reduced income taxes, and be free of many government regulations which affect business in other locations. Yet, businesses in these Free Entreprise Zones are never accused of unfair competition, even though, according to the Bennett and DiLorenzo thesis, they fit the definition perfectly. There are never demands on the grounds of fairness and equity, that the zone be scrapped and taxes and regulations imposed equally. On the contrary, the

surrounding businesses usually demand that the zone be expanded to include them!

If Professors Bennett and DiLorenzo are serious about their thesis, then it seems to me that consistency demands they condemn Free Enterprise Zones on the same grounds that they condemn the preferred status of commercial nonprofit enterprises. This, however, seems an unlikely prospect.

Professors Bennett and DiLorenzo contradict the very free market principles which both hold as important. The business conditions the authors claim nonprofits should not be exempt from—taxation and regulation—are those they have long argued that for-profit enterprises must be free from if they are to function properly. It may indeed be unjust that for-profit business must endure taxation and regulation but it hardly rectifies the situation to force nonprofits to endure the same "injustice". Indeed, by calling on the government to impose new costs on their rivals, small for-profit businesses are competing unfairly by harnessing the state's monopoly on legal institutionalized force to their own advantage.

The authors' arguments on behalf of small business strike me as envy-based. Free-marketers hold that taxation and regulation are antithetical to a properly functioning economy; that they are unjust since they increase the cost of production, reduce output, force prices up and decrease the general welfare. If a situation is unjust, how can justice be served by making everyone suffer under it? The argument that, in the name of fairness, commercially active nonprofits should not be exempt from taxation and regulation is tantamount to arguing that we can't free one slave since that would be unfair to the rest who were not freed. The authors' solution to this so-called unfair competition does not level the competitive playing field; it simply makes everyone play on the bumpiest part!

It is surprising to find free-market economists employing such an anti-consumer argument. That nonprofits can out-compete their for-profit rivals because their costs are lower hardly seems relevant to the fairness or unfairness of their competitive effort. Suggesting that we should not permit some commercial enterprises the freedom to avoid certain costs is an argument contrary to the consumer's interest. Lowering costs, by whatever means, and producing a lower priced product which consumers want is the mainstay of the free market system of competitive rivalry. The consumer always benefits from this.

If nonprofits enjoy any unfair competitive advantage, and in my mind many do, it is solely because they wrongly receive direct grants of money

from the state, i.e., true subsidies, subsidies which are not usually available to small business, and should not be. But here Professor Bennett and DiLorenzo dropped the ball, they failed to address this real source of unfair competition.[17] The answer to this "unfairness" is not to give government grants to for-profits business, it is to take them away from nonprofit organizations. Had this been the focus of the book we could have said "bravo!".

FOOTNOTES

1. James T. Bennett and Thomas J. DiLorenzo, "Commercial Nonprofit Enterprises in the United States: The Phenomenon of Unfair Competition", (1989), 8 *Philanthrop.*, No.3, pp. 51-57.
2. James T. Bennett and Thomas J. DiLorenzo, *Unfair Competition: The Profits of Nonprofits*, (Lanham, MD: Hamilton Press, 1989, 214 pages, U.S. $17.95).
3. *Ibid.*, p.6.
4. *Ibid.*, p.xiii.
5. *Ibid.*, pp. xi-xii.
6. James Douglas, "Political Theories of Nonprofit Organizations", in Walter W. Powell, ed., *The Non-Profit Sector: A Research Handbook.* (New Haven, CT: Yale University Press, 1987), pp.43-54.
7. *Supra*, footnote 1, p.52.
8. Neil Brooks, *Charities: The Legal Framework*, (Ottawa: Political Coordinator Directorate, Secretary of State, Government of Canada, February 1983), p.13. Professor Brooks refers to G. Spence, *The Equitable Jurisdiction of the Court of Chancery*, (Philadelphia: Tea and Blanchard, 1846), vol. 1,p.585 ff.
9. Murray N. Rothbard, *Power and Market: Government and the Economy*, (Kansas City: Sheed Andrews and McMeel, Inc., 1970), p.140.
10. 397 U.S. 664 (1970).
11. Quoted *supra*, footnote 9, at 690.
12. Ludwig von Mises, comment in Aaron Director, *Defence, Controls and Inflation*, (Chicago: University of Chicago Press, 1952). pp.115-116.
13. See also Mark D. Hughes, "Unmasking the Two-Tier Tax Credit Scheme", (1989), 8 *Philanthrop*, No.2, pp.16-31.
14. *Supra*, footnote 9, pp.139-140.
15. In the case of Professor DiLorenzo this is especially true of anti-trust regulations while Professor Bennett is especially critical of regulations and legislation granting special powers to labour unions. See Bennett and DiLorenzo, *Destroying Democracy: How Government Funds Partisan Politics*, (Washington, D.C.: Cato Institute, 1985).

    Bennett and DiLorenzo profess themselves scandalized that nonprofits are outside the jurisdiction of the United States Federal Trade Commission—an organization for which most free-market economists have little respect.

Moreover, Bennett and DiLorenzo are outraged that American nonprofits are not directly regulated regarding "unemployment insurance, minimum wages, securities regulation, bankruptcy, antitrust restrictions, and copyright and enjoy exemptions from a host of onerous state and local laws and regulations regarding franchises, inspections, bonds..."(p.10). All of these are regulations which other free-market economists believe are harmful and, as the authors themselves write, "onerous", for the market process.

16. *Supra*, footnote 9, at 140.
17. In 1986, government grants or subsidies in the United States amounted to 26.9 per cent of all Third Sector revenue. Revenue from commercial activities, i.e., dues, fees and charges, amounted to less than five per cent. In Canada government grants amounted to 21.7 per cent of all Third Sector revenue, while related business, and fees, and charges came to 4.4 per cent. Clearly, if nonprofits are competing unfairly it is not because of any cost advantage they may gain from their exemptions from taxes and regulation, since these advantages are permitting nonprofits to generate only minimal revenue compared to that received in massive direct government grants.