DEFINING THE NONPROFIT SECTOR:

ITALY

Gian Paolo Barbetta

Università Cattolica del Sacro Cuore
and
Istituto per la Ricerca Sociale

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Introduction

The Italian nonprofit sector is a vast and vague universe that falls in the blurred or shaded area created by the overlapping of the nominally separate realms of private and public institutions. This gray area is the legal result of two parallel conflicts that took place in the second half of 19th century, when the process of unification of the country came to an end. On one hand, the new Italian political elite tried to limit the power and the influence of the Catholic Church, while on the other, it struggled to integrate the growing socialist movement into the political structure of a capitalist economy.

As a result of the first struggle, many Church-affiliated organizations that historically met the bulk of the nation's collective needs in health, education, and social welfare became part of the public welfare system and enjoyed a peculiar legal position. Today, their status can best be described as private/public, or as secular/religious. Examples include Istituzioni pubbliche di assistenza e beneficenza (IPAB or public charity and assistance institutions) and hospitals managed by the enti ecclesiastici civilmente riconosciuti (ecclesiastic bodies recognized by civil law). Under the 1968 hospital reform law, some religious hospitals were required to serve the entire public without discrimination based on religious belief, and at fees regulated by the government. In fact, they became part of what later emerged as the National Health System. As members of a public administration, they receive funds from the central and/or local governments, and are perceived by the general population as public service providers. However, as private, religiously affiliated organizations, they continue to appoint their own administrators.

As a result of the second conflict, the Italian state took responsibility to attend to the "collective needs" of the people, advancing their well-being or general welfare. Today, public responsibility does not necessarily imply public administration. Often, private organizations that first addressed some collective needs are granted partial de jure public status. Such groups range from the Red Cross to the Touring Club of Italy, organizations which the United States or Great Britain might typically classify as nonprofit. While legally viewed as private, they exert governmental authority in specific fields. Their boards are sometimes appointed by the government, and they often retain fiscal and labor-related privileges not allowed other organizations.

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1 Paolo Barbetta is a Researcher in Economics at the Università Cattolica del Sacro Cuore in Milan and a Senior Research Assistant at the Istituto per la Ricerca Sociale. The author would like to express his thanks to Pippo Ranci for his direction, assistance and general help in assembling and writing this chapter.
Historical Note

Crucial events in the evolution of the Italian nonprofit sector took place in the second half of the 19th century with the establishment of Italy as a nation-state (the Risorgimento), the onset of the industrial revolution, and the struggle for power among the new state, the old Church, and a growing socialist movement. As the century drew to a close, social, welfare, and health services were provided largely by religious institutions founded during the medieval era. At the same time, a rising socialist workers' movement began to establish its own mutual care organizations.

Catholic welfare was mainly administered by the Opere Pie, consisting of some 18,000 institutions endowed with donations and bequests, which met most of the social and health needs of the very poor. Almost all Opere Pie were under the direct control of religious congregations. Their services far surpassed those provided by public institutions: according to one study, the government spent only 60% of the money spent by the Opere Pie on similar services (Ranci, 1990).

In terms of the workers movement, the "development of Società operaie di mutuo soccorso (Workers Mutual Aid Societies) from the remaining traces of corporazioni di mestiere (professional guilds) was also extremely promising" (Paci, 1989).

Legal attacks against the Catholic organizations were initiated by the state in its quest for authority which began in 1866 (described more below). Efforts to incorporate the autonomous workers' mutual benefit societies under the state were enacted towards the end of the 19th century and into the 20th. Indeed, it can be said that the Italian welfare system derived from an attempt by the state to drive private nonprofit initiatives, of both Catholic and socialist origin, into public channels, with the consequent increase in state political control.

Reducing Catholic Influence

In 1860, numerous regions of what is now central and southern Italy, formerly belonging to the Papal State and to the Kingdom of the Two Sicilies, were militarily annexed to form a new Italian state. Ten years later, the new Kingdom of Italy conquered the remaining Papal areas, including Rome, which was established as its capital. The cessation of war did not end the hostility between the new state and the Catholic hierarchy; instead the battle moved to the political and legislative arenas.

The establishment of the State generated a new political elite, which saw as its first major challenge the need to reduce the strength and influence of the Catholic Church and its institutions. Between 1866 and 1890, the State enacted laws confiscating the assets of various Catholic orders and congregations, forcing organizations like the Opere Pie to adhere to state jurisdiction.
In 1866, as a first attempt to diminish the influence of the Pope, the state passed a law suppressing some 1,800 religious orders and congregations, and confiscating their belongings. Expropriated buildings were given to local government authorities to host schools, hospitals and social institutions. Books and works of art were assigned to public libraries and museums.

At the time, religious ministers were mostly supported by the income given by their benefici (endowments in land and buildings erected into the legal form of a foundation); different ministers had different standards of living according to the income given by the endowments to which they were entitled. Presumably in an effort to ease the harshness of the expropriation of these endowments, the law passed in 1866 created the fondo per il culto (worship fund), the goal of which was to provide support to the members of the suppressed orders whose assets had been confiscated. Subsidies from the fund, called supplemento di congrua, were made possible through a government endowment consisting of 5% in treasury bonds as well as a portion of the previously confiscated land and buildings.

An additional 25,000 religiously-affiliated institutions had their assets confiscated and auctioned off under a second law passed in 1867. These were not parishes and local churches, which the law left untouched, but were organizations that offered no direct sacramental service ("cure of souls"), i.e., largely charitable institutions.

To compensate the members of these groups, the government endowed in perpetuity the fondo per il culto. The law also mandated a minimal level of income for the priests. Therefore, priests whose benefici (assets) had not been confiscated, but whose income was below the mandatory minimal level, were entitled to get public subsidies from the fondo per il culto. However, the government then established an una tantum tax on ecclesiastic wealth, effectively reducing the amount of irredeemable bonds given to the fund by 30 percent.

A third and final law was passed in 1890 aimed at decreasing Catholic influence on Italian society and at creating a state controlled social services system. It was known as the legge Crispi, after the ruling Prime Minister. Under the law, Opere Pie offering health, education, and job training were defined as Istituzioni Pubbliche di Assistenza e Beneficenza (public charity and assistance institutions) and became part of the public sector.

Under the Crispi law, additional organizations offering social services which were willing to be incorporated (to receive personalità giuridica, or juridical standing) were required to obtain a public IPAB charter, which placed them within the public sector. Ultimately, the law required any institution offering public assistance and having some "economic relevance" to submit to public control.

This effort at secularizing Italian society, however, was far from total. Over the decades, social service organizations and the religious elite managing them retained considerable autonomy. This autonomy increased during the fascist era (1922-1943) when the hostile relationship between
the state and the Church ceased with the signing of the *Concordato* (general agreement) in 1929. The *Concordato* not only granted a great deal of freedom of action to the Church, it declared Catholicism the official state religion, completely disavowing the liberal principle of church-state separation. As a result of this complex historical evolution, it could be said that the Catholic Church has been considered as part of the state, and Catholic institutions as public ones.

### Integrating the Working Class

The political integration of the working class was viewed as the second challenge of the new state-based political elite. The aim was to reduce the level of social discontent, paving the way for widespread industrialization (Ascoli, 1984). Toward this end, the state passed sweeping social legislation as the old century gave way to the new. Under the Giolitti administration, the legislature established a system, organized and regulated by the state, of voluntary, worker-contributed insurance through mutual funds. Providing illness and retirement insurance, the mutual funds

"...behind the pro forma appearance of autonomous control, allowed for substantial control on the part of the central authorities. State control resided not in the administration of the funds, but in the political appointments of the directors — in effect, the state's `clients.' The *Cassa Nazionale di Previdenza* for aged and disabled workers, approved in 1898, was characterized by its status as a state institution of popular insurance and by a formally autonomous board whose members, however, were (as it was then said) morally dependent upon the state government" (Paci, 1989).

This approach was preferred to compulsory insurance programs adopted increasingly by other European countries. The Italian state did, however, enact in 1898 compulsory insurance for industrial accidents. Compulsory insurance for retirement (pensions) and unemployment was instituted in 1919 and during the ensuing fascist era (1922-43). In this last period, the state suppressed workers' mutual societies (along with all political parties and freedoms), substituting mandatory public health and pension insurance, and government administered services.

### The Post War Era to the Present

The 1948 Constitution left the Crispi law unchanged, notwithstanding a provision — Article 38 — which allowed for private social assistance. Some scholars such as Cavalari (1988) have argued that the discrepancy was tolerated because the 1890 law generated many advantages to newly created IPABs. These included public funding for capital items such as building renovation and medical instruments; and the availability of contracts from the National Health System. Further, the public status of the IPABs did not prevent them from being administered in accordance with the will of their founders, especially the Catholic Church.
In 1977, as part of an attempt by the government to decentralize health and social services, the state enacted a law to subject IPABs to local authorities. This greatly constrained the organizations' freedom of action, and led to a legal challenge to the constitutionality of the Crispi law. By 1988, the Constitutional Court declared unconstitutional the legge Crispi's Article 1, which prohibited the existence of IPABs as private entities. Consequently, new organizations can now be incorporated under a different law, and existing IPABs may apply for a private charter. The situation today remains in flux, however, because few IPABs have applied for privatization (50 out of 800 in Lombardy, for example).

An agreement signed by the Holy See and the State in 1984-85 allows entities of the Catholic Church having religious purposes to apply for a "legal personality," thereby becoming enti ecclesiastici civilmente riconosciuti (ecclesiastic bodies recognized by civil law). While these organizations must pursue religious aims, nothing in the law prevents them from undertaking other activities, including health services, education, arts and culture, or even commerce. Thus, in addition to the types of organizations described in the next section, some of the enti ecclesiastici civilmente riconosciuti may operate within the nonprofit sector.

The Italian welfare system came to develop the following characteristics:

- A high degree of state intervention, and a limited role for private organizations, except those religiously-affiliated; and

- A "corporative-guarantistic" and "clientelistic-assistential" nature. "The former expressed itself in the primacy of professional solidarities based on private insurance, which, once inserted into the public code . . . assumed guarantistical institutional characteristics. The latter manifested itself primarily in assistential programs left to the political and administrative discretion of the public authorities, thus leading to the clientelistic dependence of the beneficiaries" (Paci, 1989).

The Italian welfare system expanded greatly after World War II. The role of nonprofit organizations decreased, while that of the state increased largely through public provision of health and education services. As it expanded, the system developed a kind of service separation. Social security, health and education tended to be provided largely by the government, a consequence of state incorporation of the socialistic mutual benefit societies and related worker self-help groups. This remains the case today. By contrast, most other social services, although funded by public authorities, are administered primarily by Catholic organizations (albeit under government charter) which historically have devoted their efforts to relieving the conditions of the poor, regardless of working status.

In addition, the welfare system's expansion proceeded incrementally, meeting the needs of specific groups of people, rather than through any overall effort to create a general welfare system available to all citizens. This piecemeal approach lasted until 1978, when a general health reform...
act guaranteed equality to all citizens in terms of access to health care. But even this reform reinforced the trend towards a limited role for nonprofits, and the inclusion of private institutions into the public National Health System.

Recent years have seen a reversal of this trend. The fiscal crisis of the welfare system has motivated the state to contract services to private nonprofit organizations, primarily in the field of social welfare, but also, to a limited extent, in health. Many of these contractors derive from a Catholic tradition. Others, however, are of recent vintage and reflect a new secular social awareness of altruism, the importance of caring for other people.

**Major Types of Organizations**

An accepted definition of nonprofit organizations does not exist as such in the Italian legal system. Little by way of explanation can be found in general legislation (the codes), which means that any usable definition must be inferred from the abundant special legislation, such as the national law establishing incentives for private organizations operating in the Third World, or various regional laws governing health and welfare.

The most common popular terms used to refer to components or subsectors of the nonprofit sector include:

- *Terzo settore*: third sector, or *terzo sistema*: third system;
- *Associazionismo*: the world of private associations, including foundatio
- *Volontariato*: the world of voluntarism.

The American term "nonprofit" is also gaining wider acceptance.

**Terzo settore**

The term that most closely resembles the American idiom is *terzo settore* (third sector) or *terzo sistema* (third system). However, while this generic expression serves to distinguish Italian nonprofit organizations from those in the market and government sectors, it often includes organizations omitted from the nonprofit sectors of other countries, such as trade unions and cooperatives. It is the term used by the *Istituto per la Ricerca Sociale* (Ranci and Bassanini, 1990).

**Associazionismo**

*Associazionismo* refers to the widespread world of associations regulated by the Civil Code. Associations are in the areas of sports, culture, religion, social care, and virtually every other field. The term applies to any group of people who organize to engage in any activity other than business. Therefore it does not necessarily suggest "social concern," a concept applicable to the *volontariato*
(see below). Associations, in fact, can simply pursue the well being or aims of its own members, as in leisure and sports associations.

**Civil Code Regulation.** The Italian Civil Code regulates the basic legal aspects of both business corporations and associations. The Code's fifth book applies to business corporations, or società, which undertake economic activities and distribute profits to the owners. The Code's first book applies to associations, foundations and committees.

As happens in most civil law countries, the distinction between the two types of organizations is not based on whether profits or assets are distributed, a constraint never actually imposed by law in Italy. Rather, the difference pertains either to the objectives or to the nature of activities performed by the organization. Thus, a self-interested or business aim is typical of a corporation; an altruistic aim would depict associations and foundations.

Legal scholars have explored the distinction at length, but wide areas of disagreement remain (Ponzanelli, 1985). Some scholars focus on organizational objectives. They argue that the aim of a business corporation is economic, while that of an association is "idealistic," pertaining to the sphere of ideals. Yet this distinction is only partially satisfactory, insofar as economic activity may be needed to obtain "ideal" goals. Other scholars define the distinction between corporations and other organizations in terms of their respective activities. Business corporations, they argue, produce goods and services, while other organizations satisfy needs, such as the need to gather and discuss political issues, or listen to music, or help neighbors.

**Forming an Association.** While foundations must be incorporated to acquire legal or juridical standing (personalità giuridica), associations can apply for a decree of incorporation and become associazione legalmente riconosciute (incorporated associations), or they may simply remain as associazione non riconosciute (unincorporated associations).

The formation of an unincorporated association is a simple matter. It is a "private act" which requires writing a charter and registering with a notary. The entity receives no public recognition, and is exempt from registering with a public agency. Because of this easy and inexpensive procedure, associations have mushroomed in the last forty years.

By contrast, a complex and time-consuming procedure is entailed in an association's incorporation. Its charter must be legally recognized with a public deed, inquiries must be made to ensure that the association's wealth is appropriate to the achievement of its goals, and juridical standing must be conferred by Presidential decree -- a concession of the state, not a right of the organization. The incorporation process takes several years and any modification of the association's charter must be approved by governmental authority.

Why, then, would an association go through the process to acquire the status of associazione legalmente riconosciuta? An association would want to become incorporated primarily to guard its
members against liability for losses or damages. An association with this status is solely liable; its members' wealth cannot be touched. Secondly, an association would seek incorporation because unincorporated associations cannot own real estate, nor receive donations or bequests. Buying and selling real estate or accepting donations and bequests, however, is not much easier for incorporated associations. Those actions, in fact, require specific governmental authorizations.

**Fiscal and Tax Regulations.** Fiscal regulations provided by the Testo Unico sulle Imposte Dirette introduce a taxonomy different from the Civil Code. The regulations treat enti commerciali (commercial bodies or entities) separately from enti non commerciali (non-commercial entities). The former include societies specified in the Italian Code's fifth book, such as joint stock companies, cooperatives, other private organizations whose main aim is a commercial activity, and associations operating some type of commercial enterprise. Non-commercial entities include both public organizations and private non-business societies whose main aim is other than commercial.

Commercial bodies pay income taxes according to their total annual income, currently at a 46% rate. Non-commercial bodies enjoy income tax-exemption for all activities, regardless of whether they are intended to generate profits, with the exception of those specified under Article 2195 of the Civil Code. The Code lists the following non-exempt activities:

- industrial operations involved in the production of goods and services;
- commercial operations involved in distribution;
- transportation of goods and people;
- banking and insurance; and
- activities that supplement the above.

Any income derived from these specified activities is subject to taxation.

Any other activity, including one which generates a profit, is exempt from taxes so long as it meets two criteria: it must be strictly connected to the main goal of the organization; and it must provide services "at cost" and without "specific organization." Non-commercial entities are also exempt from value added tax for selected operations. It bears repeating that tax exemption does not apply to the absence of a profit aim; it applies only to income generated by activities that are legally defined as "non-commercial."

**Tax Deductibility of Donations.** Tax deductibility is allowed mainly for donations made to associations and foundations. By Presidential Decree (917/1986, Articles 10 and 65), individual and business donations may be deducted from income tax:

- Without limit for gifts to incorporated foundations and associations dealing with the study, exhibition, preservation, maintenance and restoration of prominent art works (Law
Research and exhibitions, however, must be approved by the Ministry of Cultural Heritage.

- Up to 2% of total income for gifts to qualified organizations operating relief and development projects in developing countries (Law 49/1987).

- Up to 2% of total income for gifts to incorporated foundations and associations active in performing arts (Law 163/1985).

- Up to 2 million lire (about $1700 at the 1990 rate of exchange) for donations to organizzazioni di volontariato (voluntary organizations) regulated by the Law 266 of 1991 (see below).

Businesses, in addition, may deduct up to 2% of income for gifts to incorporated organizations (not limited to foundations or associations) active in scientific research, education, instruction, recreation, and social and health insurance (Law 512/1982), and for donations to universities. Moreover, they can deduct 50% of their donations, or up to 100 million lire (about $83,000), to organizzazioni di volontariato regulated by Law 266 of 1991 (see below).

**Increasing Donor Choice.** Italian donors may choose not only where to donate their own money, but also where certain government funds may be allocated. This tendency toward donor choice was begun by a 1985 agreement between the State and the Holy See (Law 222). According to the law, the government dispenses 0.8% of its annual tax revenues (roughly 800 billion lire in 1989, or almost $583 million at that year's exchange rate) to public organizations with social or humanitarian goals, and to private "religious, educational or charitable programs under direct control of the Catholic Church or of any other Church that has signed an agreement with the State." When filing annual tax returns, each individual may recommend how these revenues shall be allocated. The amounts eventually distributed to various recipients reflect the proportion of taxpayer choices (not the share of taxes paid by each individual).

It has been estimated that about three quarters of the 0.8% of government revenues for charitable purposes goes to the Catholic Church -- an amount equal to more than 600 billion lire (almost $501 million). Part of it supports charitable purposes both in Italy and abroad. The remainder, perhaps 350 billion lire in 1990 ($292 million), is allocated to support clergy and other church personnel. Moreover, 10 billion lire ($8.3 million) in clergy support is generated through individual donations. The agreement, in fact, allows individuals to make tax-deductible donations to the clergy. As previously noted, the government had provided a congrua (subsidy) to some 29,000 Catholic priests to supplement the income they received from ill-paying benefici (endowments), and to compensate the Church for properties confiscated during the second half of the 19th century.

Under the law, this public support system changed effectively in 1990, when the Church established local, legally recognized istituti per il sostentamento del clero (institutes for support of
The clergy), as well as a central institute. Individuals may deduct up to two million lire (around $1,700) each for donations to the central institute.

**Volontariato**

The term *organizzazioni di volontariato* (voluntary organizations), or simply *volontariato*, refers to a vast array of private organizations addressing problems primarily in health and social services (Ascoli, 1985; Prina, 1983). The term applies both to philanthropic organizations which assist the general public, and to mutual or self-help groups tending to the problems of their own members. The groups may choose which legal status to secure, or they may remain without legal recognition.

Workers may be either voluntary or salaried. While the roles of each are the subject of much debate, the recent trend is toward a significant percentage of paid staff members.

**New Legal Trends**

Since 1990, important legislation dealing with voluntary and nonprofit organizations have been passed by the Italian Parliament. The new laws regulating voluntary organizations and *cooperative sociali* (social cooperatives) represent a major change to the piecemeal approach that characterized Italian legislation in this area in the past.

**Regulating Volontariato**

Law 266, enacted in 1991, defines *organizzazioni di volontariato* (voluntary organizations) as those that pursue participation and "solidarity" purposes -- what in other countries might be called charitable aims. Although the law doesn't mandate any legal form to these voluntary organizations, it aims primarily at regulating the vast array of unincorporated associations acting in the health and social fields that rely heavily on volunteers. The law notes that such groups should not seek profits, and that volunteers should play a "prominent and conclusive" role in management and service provision.

Sources of income may include government grants and contributions and bequests from both members and nonmembers, while revenues from commercial and productive (industrial) activities must play a minor role. Unlike regular unincorporated associations, unincorporated *organizzazioni di volontariato* may purchase real estate and accept donations and bequests. Donations made to *organizzazioni di volontariato* are also tax deductible.

*Organizzazioni di volontariato*, when not established as *società* (business corporations) regulated by the fifth book of the Civil Code, or as *cooperative* (cooperatives), are exempt from
value added taxes on their "solidarity" services, and from income taxes on their marginal commercial activities.

**Cooperative Sociali**

The law regulating voluntary organizations deals mainly with bodies that generally do not run large operations. This differs from the law regulating *cooperative sociali* (social cooperatives) (Law 381/1991), a relatively new type of nonprofit organization previously known as *cooperative di solidarietà sociale* (social solidarity cooperatives). Essentially social cooperatives are:

- organizations providing social services to people in need;
- organizations in which social workers and their clients work jointly to produce goods and services.

Typical activities of social solidarity cooperatives include job training for specific clientele such as the physically or emotionally disabled, drug addicts, former prisoners, etc., in community and personal social services, education, and so forth. Some of these activities are conducted through artisan workshops, agricultural enterprises or commercial businesses. Often, solidarity cooperatives sell their products and services on the open market; however, they tend to operate at a deficit, most likely because of the difficult nature of their labor force.

Prior to recent legislation (Law 381/1991), these organizations had the legal status of cooperatives, but by charter they were not allowed to distribute income earned in excess of expenses (that is, they were subject to a "non-distributive constraint"). The new law no longer requires the "non-distribution constraint" in the cooperative's charter, but relies on the classical definition of "mutual societies" instead:

- members may not obtain dividends higher than the legal interest (10% at present) on the amount of money given to the cooperative;
- financial reserves cannot be distributed to members; and
- in the event of dissolution, remaining assets or wealth must be disbursed for a public purpose.

Social cooperatives enjoy some fiscal advantages:

- donations and bequests are tax-exempt;
- registration fees are greatly reduced;
sales of services in the social, educational and health fields are subject to reduced VAT rates; and,

- disadvantaged people employed by the cooperatives are exempt from social security payments -- roughly 65% of gross income for average workers (International Labor Office, 1991).

Usually, owing to their profit-making activities, cooperatives as a rule are not considered part of the nonprofit sector. Social cooperatives, however, are part of the Italian nonprofit sector. First, their business activities are in pursuit of a social goal, and not primarily for profit. Second, it is inappropriate for the cooperatives to accept the legal status either of "unrecognized association" -- which means they have no legal standing -- or of "recognized association," given the difficulty of obtaining that status. Other aspects of the law enforce the nonprofit status on social cooperatives, too. For example, organizations must include volunteers as well as paid staff, and disadvantaged people must comprise at least 30% of the total labor force of programs aimed at job training.

Transformation of Public Banks

At present, most public banks in Italy (about 100 savings banks and other large banks representing about 40% of total bank deposits) are established under the legal status of incorporated foundations or associations. Most charters stress the "social concern" and the philanthropic attitude of the banks and their boards. This philanthropic attitude induces most public banks to donate quite a large share of their profits to nonprofit organizations (generally stated by the charters themselves), especially those acting in the areas where the banks run their business. Therefore, public banks are a hybrid of forprofit and nonprofit activities.

Law 280, passed in 1990, allows the banks to change their legal status. Foundations (and associations) are allowed to create joint stock companies for the actual bank operations, whereas the foundations will keep control of the majority of the new bank shares. Dividends paid by the bank therefore represent the income of the philanthropic foundation. The foundations may be active in scientific research, education, preservation of cultural heritage, or health. As a direct result of this law, the foundation subsector of Italy's nonprofit sector has greatly increased (Barbetta, 1992).

Defining the Italian Nonprofit Sector

The structural/operational definition (Salamon and Anheier, 1992) gives the best available description of the Italian nonprofit sector. Nevertheless, the application of the core definition, which stipulates that nonprofit organizations be formal, private, non-profit-distributing, voluntary and self-governing, creates a few problems in the Italian context.
**Formal.** An organization must be formally constituted, as evidenced either by a legal charter or other form of institutional reality. Italian nonprofits meet this criteria, both through their own charters and the legal recognition granted them.

**Private.** An organization cannot be institutionally affiliated with the government. As previously stated, it is often difficult, if not impossible, to ascertain the public or private nature of many organizations in Italy. Legal criteria are of little utility here, insofar as the law confers some public authority to otherwise private organizations. One example is IPABs (public charities): the word "public" can be misleading as some IPABs are legally defined as private institutions with private charters. Moreover, while IPABs are legally viewed as public entities, they are privately governed insofar as their administrators are appointed by the Church or some other nongovernmental body.

Furthermore, organizations such as the *Club Alpino Italiano* (Italian Alpine Club), the Automobile Club of Italy, the Italian Touring Club, and the *Aeroclub d'Italia* are privately constituted and governed, yet exert public powers such as issuing licenses, acting as legal monopolists in some fields, and enjoying various fiscal privileges.

At best, private incorporation will have to suffice as a measure of being privately owned in some cases. In other cases, the measure will pertain to the makeup of the governing board; and others yet must be analyzed on their own merits.

**Self-governing.** Internal decision-making should be uncontrolled by government or business. This criterion is problematic for two types of Italian nonprofits: Catholic hospitals, and foundations that have been generated from the transformation of certain public banks.

Hospitals owned by ecclesiastic entities recognized under civil law are legally public health organizations, subject to various controls by the Health Ministry (fees, facilities expansion or construction, new services, etc.). Nevertheless, these hospitals should be considered part of the nonprofit sector.

It may be too early to say whether the banks should or should not be considered part of the nonprofit sector. At present both the banks and their newly created foundations are administered by officials appointed by the Minister of the Treasury. Eventual inclusion of foundations will depend on what modifications, if any, are implemented to procedures used to appoint the governing board.

**Non-profit-distributing.** An organization should not distribute income in excess of expenses to its owners or members, but must instead use excess revenues for organizational purposes. With one curious exception, Italian law does not impose this constraint. Therefore, Italian nonprofits (such as incorporated or unincorporated associations, social cooperatives and, to a certain extent, *organizzazioni di volontariato* -- those engaged in activities addressing social "ideals" rather than profit for its own sake) may, from a legal point of view, distribute profits.
According to some scholars (Preite, 1990), these nonprofits, and especially associations, may:

- Engage in entrepreneurial activities, not only to pursue their main goals, but to provide services to their members. Business, in fact, can become an association's major activity (with the exception of organizzazioni di volontariato).

- Engage in non-equal treatment of members and outsiders. For example, de facto profits (earnings above expenses) may be distributed to members alone.

- Distribute assets to members in the event of dissolution (with the exception of social cooperatives and organizzazioni di volontariato).

The only Italian organizations required to abstain from profit distribution are those in the soccer business. Ironically, these groups are actually incorporated as joint stock companies (Law 91/1981) and they generally belong to large corporations or wealthy individuals. All profits must be allocated to the broad aims of the organizations -- usually soccer practice -- as decreed by their charters. Notwithstanding this constraint (probably enacted in response to bankruptcies in the 1970s), soccer companies should not be part of the nonprofit sector. They changed to entrepreneurial organization, primarily organized to promote the interests of their owners.

**Conclusion**

In spite of a legal system that has tended to blur the distinction between the public and private sectors in Italy, both the legislature and the general population appear to be increasingly aware of a nonprofit sector. New laws, for example, provide opportunities and fiscal advantages to voluntary organizations and social cooperatives, thereby acknowledging their social value and the role they play in the Italian welfare system. Hopefully, these and similar laws will reduce the present confusion between the public and private sectors, as they demonstrate that the satisfaction of collective needs can be accomplished by private or nonprofit organizations as well as by the state.
References


