

# Toward a Political Theory of Philanthropy

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## Introduction

The practice of philanthropy and charity is as old as humanity. People have been giving away their money, property, and time to others for millennia.<sup>1</sup> What's novel about the contemporary practice is the availability of tax incentives to give money away. The charitable contributions deduction in the United States is less than one hundred years old, created by the U.S. Congress in 1917 shortly after the institution of a system of federal income taxation in 1913. Contemporary practice, in which philanthropy is structured by a regulatory framework of incentives, is not the norm but the historical anomaly. Previously, the state protected the liberty of people to make donations of money and property but did not provide incentives for doing so. A natural question arises: why do we have such incentives and what is their justification in a liberal democracy?

In fact, the historical practice of philanthropy is littered with instances in which the question that often presented itself to the state was how vigorously it should *constrain* the liberty of people to give money away. Public influence obtained through private wealth might be injurious to the state. In the *Discourses*, Machiavelli tells the following story about ancient Rome: “The city of Rome was afflicted by a famine; and as the public magazines were insufficient to supply the deficiency of food, a citizen named Spurius Melius, who was very rich for those times, resolved to lay in a private stock of grain and feed the people at his own expense. This liberality attracted crowds of people, and so won him the popular favor that the Senate, fearing the evil consequences that might arise from it, and for the purpose of putting an end to the evil before it should grow too great, created, expressly against Spurius, a Dictator, who had him put to death.”<sup>2</sup>

And the question about constraining the liberty of people to give money away remains with us today. We need only consider the debates about estate taxation and campaign finance to realize that the state may have good reasons – reasons founded on justice – to limit the liberty of people to give money away.

We might also point to the U.S. Constitution itself for evidence that in some specific circumstances people should not merely *not* receive a tax deduction for a charitable donation but should be entirely forbidden from making the donation. The Appropriations Clause of the Constitution – “no money shall be drawn from the Treasury, but in Consequence of Appropriations made by law”<sup>3</sup> – or the so-called Power of the Purse, can

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<sup>1</sup> To give but two examples: Paul Veyne's classic *Bread and Circuses* discusses the practice of *euergetism* – private liberality for public benefit – in ancient Rome; Maimonides codified eight different levels of charity in the 12<sup>th</sup> Century.

<sup>2</sup> Machiavelli, *Discourses* (Modern Library edition, 1950), 493.

<sup>3</sup> U.S. Constitution, Article I, § 9, Clause 7.

be construed to prohibit private donations to federal agencies. While the clause is invoked to limit what the executive branch can propose and do without Congressional authority, it also appears to limit *any* financing of federal agencies except through Congressional authorization. “As a consequence of the appropriations requirement,” Kate Stith argues, “all ‘production’ of government must be pursuant to legislative authority, even where the additional production is financed with donations and thus appears costless to the Treasury.”<sup>4</sup> To the best of my knowledge, this is indeed our current practice: if you want to make a donation to a federal agency, absent Congressional authorization to do so (as with the Smithsonian or Library of Congress), your only option is to write a check to the U.S. Treasury.

One final example. It took an early U.S. Supreme Court case to make constitutional the simple permission for private rather than public institutions to pursue eleemosynary aims without explicit state authorization. In *Dartmouth v. Webster* (1819), the Court’s ruling established that the state could not interfere with privately incorporated organizations, funded by donations or fees, whose mission was to produce goods with some public benefit.<sup>5</sup>

Even in the United States there have been, and continue to be, reasons to limit the liberty of people to give money away for charitable purposes.

As an under-theorized but I hope plausible starting point, I would suggest that the default position of the liberal state regarding charitable giving ought to be: individuals should possess the liberty to give their money or property away to whomever or whatever they please. Restrictions on that liberty stand in need of some justification; the state bears the burden of showing why such restrictions are necessary or permissible, because consistent with justice. Likewise, I suggest that incentives for people to exercise their liberty to give their money away stand in need of justification; the state bears the burden of showing why such incentives are desirable and consistent with justice.

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<sup>4</sup> Kate Stith, “Congress’ Power of the Purse”, *97 Yale Law Journal* 1343 (1988), 1357. Stith notes that Congress has passed legislation to permit some federal agencies to receive private donations, among them National Parks, the National Archive, the Library of Congress, and the Smithsonian. Despite the Congressional authorization, Stith believes private funding to be of questionable constitutionality: “Where broad executive discretion is inherent in our constitutional scheme, the most questionable form of spending authority is open-ended authority to receive and spend donations and gifts. As long as the executive agency is prepared to accept the donation, Congress loses effective control over the contours of authorized government activity. Where a donor conditions a gift broadly – for instance, for the defense of the United States – the recipient federal agency is able to direct the supplemental funds to activities that might not have garnered congressional approval. Where the donor specifically conditions the gift – for instance, for defense in the Persian Gulf – the donor may effectively specify the objects of government expenditure. In either event, where Congress cannot significantly circumscribe an agency’s purposes and powers, to allow the agency to spend all contributions would be to permit private power, subject only to executive discretion, to influence the contours of government and government policy” (1384-5).

<sup>5</sup> *Dartmouth v. Woodward*, 17 U.S. 518 (1819). [Please correct my reading of the case, if it is mistaken.] See also Mark D. McGarvie, “The *Dartmouth College* Case and the Legal Design of Civil Society,” *Charity, Philanthropy, and Civility in American History*, ed. Lawrence J. Friedman and Mark D. McGarvie (Cambridge, UK: Cambridge University Press, 2003): 91-105.

This returns us to my original question: what is the justification for the current practice in the United States of providing tax deductions for citizens to make charitable contributions. Because the tax deduction constitutes a subsidy – the loss of federal tax revenue – it is no exaggeration to say that the United States currently subsidizes the liberty of people to give money away, foregoing tax revenue for an activity that has for millennia gone unsubsidized by the state. Charitable giving in 2005 was more than \$250 billion, costing the U.S. Treasury more than \$40 billion in lost tax revenue. Why does the U.S. do this?

The remainder of this essay lays out and assesses (very briefly) three possible justifications for the existence of the charitable contributions deduction.<sup>6</sup> The first justification is that the deduction is necessary in order to account for the proper base of taxable income; the deduction, in other words, is no subsidy at all. The second justification is that the deduction efficiently stimulates the production of public goods and services that would otherwise be undersupplied by the state. The third justification links the incentive to the desirable effort to support a pluralistic civil society in a flourishing democracy. I believe that only a version of this third argument stands up to scrutiny. I will not develop the argument in any detail here, but instead lay out the general structure of the argument and show how it is consistent with, though perhaps not required by, liberal justice.

### **Tax Base Rationale**

The first justification rejects entirely the claim that the deduction is a subsidy. The deduction constitutes, instead, the fair or appropriate way to treat the donor; deductibility is *intrinsic* to the tax system. First promulgated by William Andrews, the basic argument is that deducting charitable contributions is necessary in order properly to define an individual's taxable income.<sup>7</sup> If taxable income is construed, as according to the Haig-Simons definition, as personal consumption and wealth accumulation, then charitable donations ought not be included in a person's tax base. The reason is that charity cannot be equated with personal consumption since charitable gifts redirect resources from private and preclusive consumption to public and non-preclusive consumption. Andrews concludes that "a deduction should be allowed whenever money is expended for anything other than personal consumption or accumulation."<sup>8</sup> Boris Bittker offered a similar argument, concluding that charitable donations ought not count as consumption because in making a voluntary donation the donor is made worse off (with respect to others at the

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<sup>6</sup> The taxonomy I develop here is neither original nor exhaustive. I have drawn from the literature on the charitable contributions deduction which is large, unwieldy, and unusually specialized, resting almost entirely within tax law and economics journals. What's remarkable about this literature is how little it engages with normative argumentation about justice. Most theories about the deductions, comments David Pozen in a recent article, "lack a coherent normative basis" (David Pozen, "Remapping the Charitable Deduction," 39 *Connecticut Law Review* 2 (2006), 547). Pozen claims, not implausibly, that no justification is possible for the deduction as it currently exists.

<sup>7</sup> Williams Andrews, Personal Deductions in an Ideal Income Tax, 86 *Harvard Law Review* 309 (1972).

<sup>8</sup> Andrews, 9.

same income who do not make a donation), relinquishing use of resources that could have been directed to personal benefit.<sup>9</sup>

Contrary to subsidy justifications, the tax base justification focuses on the fair treatment of the donor; it does not inquire into the goods produced with the donation or the efficiency with which these goods are produced. There are four obvious criticisms to make of the tax base rationale.

First, and at the level of common sense, if a person has legitimate ownership of resources and can rightfully decide how to dispose of those resources, then whatever a person decides to do with those resources – spend it on luxury goods or give it to charity – is by definition, tautologically, consumption. Some people have a taste for spending, others for donating.

Second, there are obvious benefits that some, perhaps many or even all, donors receive in making a charitable contribution. Economist James Andreoni has attempted to model and measure the motivation of receiving a “warm glow” or psychological benefit in behaving altruistically.<sup>10</sup> In making a charitable contribution, the donor experiences pleasure in giving and receives in return for the gift a “warm glow”, consuming the benefit of altruism. A warm glow might be non-preclusive in that purchasing joy through a charitable contribution does not diminish the ability of others to do the same. But a warm glow is undeniably private rather than public. Altruism might also be construed as a scarce resource, anyway. Other economists have demonstrated how much charitable giving, especially to elite institutions such as universities, hospitals, and cultural organizations, is motivated by status-signaling.<sup>11</sup> Here the motivation to give is not altruistic but self-interested; to maintain position or move up the social hierarchy. Regardless of motive – altruistic or self-interested – there are returns to the donor that make it impossible to describe donors as engaging in behavior that is public and non-preclusive or that necessarily makes them worse off. We need not be incorrigible cynics to believe that donors are purchasing something for themselves when they make a charitable contribution.

Third, Andrews’s theory has perverse implications about the permissible recipients of charity according to current law. If for Andrews anything which is not personal consumption or accumulation should be deductible from the donor’s tax base, then a billionaire businessman’s donation of a million dollars to Wal-Mart, a for-profit company, to encourage its efforts in union-busting, ought to be deductible. (Assume the businessman holds no stock in Wal-Mart.) Similarly, a donation to a foreign country or foreign charity where the donor has no connection and is motivated simply, say, to alleviate poverty, ought to be deductible. But U.S. tax law excludes donations of both

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<sup>9</sup> Boris Bittker, “Charitable Contributions: Tax Deductions or Matching Grants?” 28 *Tax Law Review* 37 (1972).

<sup>10</sup> Cites to Andreoni.

<sup>11</sup> Glazer & Conrad, “A Signaling Explanation for Charity,” *American Economic Review* 86 (1996), 1019-1028; Harbaugh, “Prestige Motive for Making Charitable Transfers,” *American Economic Review* 88 (1998), 277-282.

kinds. To qualify for a deduction, charitable donations must be directed to a qualifying 501(c)(3) or nonprofit organization that is registered in the United States.

Finally, and moving from theoretical conceptualization to empirical fact, even the briefest reflection on philanthropy in the real world reveals how donors quite frequently purchase with their charitable dollars rival and excludable goods for which they are among the primary consumers. Contributions to one's religious organization are an obvious example; churches provide club goods rather than public goods. Charitable gifts to arts organizations for which one receives in return premium seats, special access, private tours, and so on are another example. Charitable gifts to one's child's public school may also deliver improved educational opportunities or outcomes for one's child, not to mention boosting the value of one's house due to the fact that public school quality and real estate values are correlated.

On top of these criticisms can be added still another that is more fundamental. I refer to the argument, most recently expounded by Thomas Nagel and Liam Murphy, that the choice of a tax base cannot be assessed in the absence of the larger normative consideration of what constitutes social and economic justice.<sup>12</sup> The definition of taxable income is strictly instrumental on their view, the tax system just a mechanism for pursuing larger social aims. "Since justice in taxation is not a matter of a fair distribution of tax burdens measured against a pretax baseline, it cannot be important in itself what pretax characteristics of taxpayers determine tax shares".<sup>13</sup> As a result, there is for Nagel and Murphy no such thing as intrinsic fairness of the tax system or tax base but only taxation that is an instrument in realizing or pursuing the aims of a larger theory of social and economic justice.

Their argument is built on the claim that private property is a convention of the legal system. Property rights are not pre-institutional or pre-political but rather a consequence of a set of laws that form a part of a broader theory of justice. As a result, there is no such thing as pre-tax income that counts as a person's own money, and without the notion of a pre-tax baseline of income there can be nothing intrinsic about the selection of a fair tax base.<sup>14</sup> It is nonsense, then, to argue that charitable contributions ought to be deducted from one's taxable income because such deductions logically belong to the identification of the appropriate tax base.

I accept the Nagel and Murphy thesis but will not attempt to defend it here except to note that, whatever its merits, it locates the argument on what seems to me the appropriate intellectual terrain: argument about social and economic justice.

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<sup>12</sup> Thomas Nagel and Liam Murphy, *The Myth of Ownership: Taxes and Justice* (Oxford: Oxford University Press, 2002).

<sup>13</sup> *Ibid.*, 98.

<sup>14</sup> "Since there are no property rights independent of the tax system, taxes cannot violate those rights. There is no prima facie objection to overcome, and the tax structure, which forms part of the definition of property rights, along with laws governing contract, gift, inheritance, and so forth, must be evaluated by reference to its effectiveness in promoting legitimate societal goals, including those of distributive justice" (58-9).

## Subsidy Rationale

The more typical defense of the charitable contributions deduction – and one that does, even if sometimes only implicitly, take into account a broader theory of social and economic justice – is that the state accomplishes something of important social value by providing subsidies for people to be charitable. The state provides incentives for charity because it is believed that the incentives stimulate the production of something of greater social value than what the state could have produced on its own, had it not offered the incentives.

The subsidy therefore counts as a tax expenditure, the fiscal equivalent of a direct spending program.<sup>15</sup> When the state allows citizens to deduct their charitable contributions from their taxable income, the state foregoes tax revenue, which is to say that all taxpayers are affected.<sup>16</sup> Thus for most people, the success of the subsidy rationale depends on whether the benefits brought about by the subsidy exceed the costs of the lost tax revenue. Consistent with the Nagel and Murphy thesis, the subsidy is but a mechanism for realizing larger social aims. If these aims are realized, then the subsidy may be defensible.

The subsidy rationale has been invoked in several Supreme Court decisions, lending the rationale some additional weight. “Both tax exemptions and tax deductibility are a form of subsidy that is administered through the tax system,” noted the Court in *Regan v. Taxation with Representation*.<sup>17</sup> The deduction has, moreover, been included in the annual federal tax expenditure budget issued by the U.S. Government.

What’s obvious about the subsidy rationale is that it shifts attention from the fair treatment of the donor to the recipient of the donation and the good that is done with the gift. Even so, the particular vehicle used in the United States to provide the subsidy – a deduction from taxable income – is vulnerable to powerful criticisms that keep a focus on fair treatment of the donor. First, the deduction is available only to itemizing taxpayers, a group which constitutes roughly thirty percent of all tax returns. The other seventy percent of taxpayers, though they may make substantial charitable contributions (as an absolute sum or percentage of income), are excluded because they take the standard deduction. Thus the subsidy is capricious, for its availability depends on a characteristic, one’s status as an itemizer, that has nothing whatsoever to do with the value of giving.<sup>18</sup> Second, in a system of progressive taxation the deduction is tied by definition to marginal tax brackets. The richer you are, the less a charitable contribution actually costs you.

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<sup>15</sup> Cite to Stanley Surrey, Paul McDaniel.

<sup>16</sup> They are affected in (at least) two important ways. First, they stand to lose some portion of the benefit they receive from direct governmental expenditures. If every citizen gains some fraction of the total revenue of the federal budget, the loss of billions of dollars in tax revenue through the deduction lowers every citizen’s fractional benefit. Second, citizens lose in democratic accountability, for the foregone funds are not accountable, or even traceable, in the way that direct government expenditures are.

<sup>17</sup> *Regan v. Taxation with Representation*, 461 U.S. 540 (1983), 544.

<sup>18</sup> If the subsidy is justified because it produces some social good, then why should two donors who make identical donations to identical organizations, ostensibly producing the identical social good, be treated differently by the tax code?

Scholars have dubbed this the “upside-down effect”, the result of which is that, for charitable deductions, “the opportunity cost of virtue falls as one moves up the income scale.”<sup>19</sup>

But these concerns do not constitute criticism of the Nagel-Murphy thesis, for these are not criticisms of the subsidy rationale *per se*. They are criticisms of the mechanism currently in use to deliver the subsidy, the tax deduction. Reform of the subsidy could eliminate or mitigate the problems. The deduction could be extended to all taxpayers; the deduction could be eliminated in favor of a partial or total tax credit; and so on.<sup>20</sup>

How then might we assess the subsidy rationale as a whole? One obvious way to evaluate the subsidy rationale, rather than just the subsidy mechanism currently in use, is to look to the social good the subsidy produces and the efficiency with which it is produced.

Supposing that the goods produced by charitable recipients were of social value, we might ask, for instance, whether the subsidy is so-called “treasury efficient”. Does the subsidy shake off more in donations than it costs in federal tax revenue? If so, the subsidy is treasury efficient. Economists will then argue about the optimal rate of the subsidy, or how to stimulate the most giving for the least cost to the treasury. Empirical analyses of the tax deduction in the United States show that the deduction is indeed treasury efficient, though significantly less so than initially was thought.<sup>21</sup>

While treasury efficiency assures us that the subsidy is not a mere reward for charitable giving that would occur even in the absence of the subsidy – a loss of federal revenue to produce something that would occur anyway – its success depends very much on the initial supposition that the goods produced by charitable recipients are of broad social value.

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<sup>19</sup> Cite to Musgrave and Musgrave, 1984.

<sup>20</sup> For a recent reform proposal, see Batchelder, Goldberg, Orszag, “Efficiency and Tax Incentives: the Case for Refundable Tax Credits,” *Stanford Law Review* 2006. See also the 2005 Report of the President’s Advisory Panel on Federal Tax Reform for similar proposals.

<sup>21</sup> Newer studies that take long term effects into account generally find lower price elasticities than earlier studies, ranging from -0.47 to -1.26 rather than -1.09 to -2.54. The decision to make a charitable donation is not made solely with reference to the availability of a deduction in any given year; people are likely to look to the year ahead and behind in deciding how much to give. Because previous studies focused on short term effects of changes in tax incentives, they often exaggerated the impact of incentives. When tax benefits for charitable contributions decreased one year, short term studies would document a significant decrease in giving for that year. But these studies would miss the longer term reactions of donors, who would eventually increase their giving again once they became accustomed to the changes in tax incentives. Another development in recent studies is the use panel studies as opposed to cross-sectional or time series samples. The panel data uses information from the same group of individuals at successive points in time. See, for instance, Auten, Clotfelter, and Sieg, “Charitable Giving, Income, and Taxes: An Analysis of Panel Data,” *American Economic Review* 92 (2002), 371-82. The overall picture is that incentives are significantly less important than was initially thought. In explaining why people make charitable contributions, Evelyn Brody concludes, “Apparently tax considerations are not paramount. After all, philanthropy long preceded the enactment of the federal income tax, and no income-tax subsidy is available to the 70% of individual taxpayers who claim the standard deduction” (Brody, “Charities in Tax Reform: Threats to Subsidies Overt and Covert,” 66 *Tennessee Law Review* 687 (1999), 714.

When we inquire into the social good produced by charitable donations, rather than focusing squarely on questions of treasury efficiency, three problems present themselves.

First, the United States permits a kaleidoscopic landscape of public charities to receive charitable contributions (e.g., those registered as 501(c)(3)'s and qualifying under Section 170). Some and perhaps many of the social goods produced by charities will be of no value whatsoever to certain citizens. Because churches are eligible to give tax deductions for contributions, atheists are vicarious donors to churches through the tax subsidy. By contrast, Catholics are vicarious donors to Planned Parenthood and its support for abortion rights. The examples could continue. The basic point here is that the subsidy cannot be justified as a Pareto improvement, where some benefit and no one is made worse off.<sup>22</sup> At best, the subsidy is a Kaldor-Hicks improvement, where the gains for those who consume the particular social good produced by charity offset the losses to those with no interest in that social good.

But relying on a Kaldor-Hicks improvement as the standard for justifying the subsidy rationale raises a second set of problems. For obvious reasons, the beneficiaries of a deduction are highly skewed toward upper income earners. Wealthier individuals donate more as an absolute amount (but not as a percentage of income) and receive a larger subsidy for giving (the upside-down effect) and claim, as a result a staggeringly large share of the deduction. (Those making \$200,000 and above received 30% of all deductions for charitable contributions; those making \$75,000 and above claim >65% of all deductions.)<sup>23</sup> The result is a plutocratic bias in the subsidy, where the favored beneficiaries of the wealthy receive the lion's share of the subsidy.

The plutocratic bias is troubling, for systematic over-attention of the interests and preferences of the wealthy against the interests and preferences of the middle-class and poor seems a poor basis for social policy. But the trouble would be undercut if the product of charitable giving were pure public goods, in the economic sense, namely goods that are non-excludable and nonrivalous. If wealthy people donate to create goods that no one can be prevented from enjoying and that one person's consumption does not reduce the amount available to others, then the plutocratic bias nevertheless redounds to the advantage of everyone. But the vast majority of public charities do not produce pure public goods. Hospitals and universities, for instance, together account for more than half of the revenue of all nonprofits organizations. Both hospitals and universities can easily exclude persons who cannot pay for their services.

Leaving aside the strict conditions of pure public goods, the concern about plutocratic bias might be mitigated if the favored beneficiaries of the charitable givers, and the wealthy especially, were charities engaged in social welfare or services for the poor. At the very least, then, the effect of charitable giving would be to some degree redistributive. Unfortunately this is not the case, at least in the United States. And this

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<sup>22</sup> This is Mark Gergen's argument in "The Case for a Charitable Contributions Deduction," 74 *Virginia Law Review* 1393 (1988), 56.

<sup>23</sup> Calculations from IRS data.

is the third problem with the subsidy rationale. More than half of all individual giving in the United States goes to religion, and none of this money goes to the faith-based charities associated with religious groups. Those off-shoots of religious organizations have been counted in the relevant category of public/social benefit organizations, which receive less than 6% of all charitable giving.<sup>24</sup> If we focus squarely on the favored beneficiaries of the wealthy, we see that cultural organizations, hospitals, and universities are the usual recipients. Sometimes these gifts have redistributive benefits (e.g., scholarships for the poor); sometimes not. The best economic analysis of the redistributive nature of the charitable sector concludes, optimistically I think, that “no overarching conclusions about distributional impact can be made” and that while “in no subsector is there evidence that benefits are dramatically skewed away from the poor and toward the affluent” there is also evidence “that relatively few nonprofit institutions serve the poor as a primary clientele.”<sup>25</sup>

Now these latter two problems once again target the mechanism in the U.S. to deliver the subsidy: the tax deduction. The plutocratic bias in the subsidy and the lack of redistribution could be altered by changing both the mechanism of the subsidy (change to a capped tax credit, for instance) and limiting the kinds of organizations that are permitted to receive tax deductible donations (eliminating churches and elite cultural organizations, for instance). Whatever the remedy, the expectation would be that the subsidy must still be *efficient*. To be justified, the subsidy must cost less to the treasury than it produces in social benefits.

I shall not explore these sorts of remedies here. Instead, I want now to turn to an alternative rationale that does not displace the subsidy rationale but drops the necessity that the subsidy be an efficient use of tax dollars.

### **Pluralism Rationale**

The pluralism rationale come in many stripes and cannot be called a unified theory. The basic idea is that we should view the constitution of a diverse, decentralized, and pluralistic associational sector as a bedrock of a flourishing democracy. If nonprofit organizations are the institutional face of associational life, then stimulating charitable donations to a wide array of nonprofits might conceivably enhance civil society to the overall benefit of liberal democracy. Rather than focus on the matrix of goods produced by charitable organizations, the focus here is on the creation and sustenance of a diverse slate of organizations themselves. The public good or social benefit being produced is civil society itself, not the catalogue of public goods or benefits produced by the roster of organizations that constitute civil society.

This is still a subsidy theory, but there is no necessary demand that the subsidy be efficient. Even if there is a net loss to the treasury in the production of the goods produced by nonprofit organization – if the state could more efficiently deliver these

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<sup>24</sup> Giving USA publishes an annual databook on charitable giving, from which I have drawn these figures.

<sup>25</sup> Charles Clotfelter, ed. *Who Benefits From the Nonprofit Sector?* (Chicago: University of Chicago Press, 1992), 22.

goods itself – the pluralism rationale holds that the subsidy is nevertheless worthwhile. Of course, there is no bias against the efficient production of goods, but the pluralism rationale does not demand efficiency for the success of the argument.

In short, this is a fundamentally Tocquevillian argument. I shall assume that a vibrant and diverse civil society is indeed a condition for a flourishing democracy; this much seems incontestable. Nevertheless, the pluralism rationale for subsidizing charity immediately faces a battery of obvious criticisms.

First, vigorous safeguarding of liberty is typically thought to be the institutional guarantee for associational life. Is it really necessary to subsidize the exercise of liberty to produce a vibrant civil society? There was no tax deduction when Tocqueville toured the United States, after all.

Moreover, the defender of the pluralism rationale has to answer to the disturbing historical record about associational life over the last century. It is no exaggeration to say that the rise of nonprofit organizations in the United States and the use of the charitable contributions deduction coincides with the *decline* of civic engagement and associational life, at least if the Robert Putnam-inspired literature is to be believed. The existence of professionally run nonprofit organizations may have contributed to the calcification of civil society.<sup>26</sup>

If U.S. taxpayers have spent billions of dollars in tax expenditures to support charitable giving over the past generation, we might ask whether this has stimulated an improvement in civil society that would not have happened absent the subsidy. I do not hazard any such guess here. Perhaps the decline in civic engagement and associational life is less than it would have been in the absence of the subsidy. Whatever the actual fact, the empirical case that the subsidy has improved civil society, or lessened its decline, has to my knowledge not yet been made.

So what, then, is the case for the pluralism rationale?

[Much more to come here. I'll be discussing the virtues of decentralization, government failure, and Saul Levmore's "Taxes as Ballots".]

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<sup>26</sup> Cites to Putnam's *Bowling Alone* and Theda Skocpol on rise of bureaucratic civil society.