

**NOT BY BUREAUCRACY ALONE:  
CHARITABLE CHOICE AND THE REINVENTION OF CHURCH AS STATE**

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During the last thirty to forty years, increased reliance upon nongovernmental, for-profit and nonprofit organizations for the performance of public functions has constituted a dramatic restructuring of American governance. Social policy in particular has come to be implemented through a contracting regime of unprecedented scope and pervasiveness, with state and local governments implementing many programs through purchase-of-service agreements. Federal actors recently have sought to expand this contracting regime through a variety of “charitable choice” initiatives encouraging social provision by faith-based organizations (FBOs). A January 2001 executive order established a White House Office of Faith-Based and Community Initiatives, designed to facilitate government-FBO partnerships in conjunction with new centers in the Departments of Justice, Education, Labor, Health and Human Services, and Housing and Urban Development. This executive action built upon legislation enacted since 1996, which gave FBOs funded by TANF,<sup>1</sup> Welfare-to-Work, Social Services Block Grant, and SAMHSA<sup>2</sup> substance abuse treatment, and other Federal monies explicit rights to display religious symbols and items, use religious concepts and language, and employ religious criteria in making hiring and firing decisions when operating publicly funded social programs.<sup>3</sup> New legislation aimed at increasing the scope and direction of charitable choice was introduced in the House in March 2001.<sup>4</sup>

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<sup>1</sup>Temporary Assistance for Needy Families.

<sup>2</sup>Substance Abuse and Mental Health Services Administration.

<sup>3</sup>See Section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

<sup>4</sup>The Community Solutions Act of 2001, which includes three titles, was introduced in the House on March 29 by its sponsor Representative J.C. Watts. Title I would establish new Federal charitable giving incentives. Title II, to be known as the Charitable Choice Act of 2001, would extend the provisions

Political rhetoric heralding bold new directions in Federal policy notwithstanding, social service provision by religious organizations acting as government contractors is anything but new. Survey data collected in 1965, almost four decades ago, confirmed the existence of substantial collaboration between government and sectarian organizations via purchase of service agreements. By the 1980s, if not even earlier, public funds had come to constitute large and even majority portions of the budgets of established, religiously-affiliated charitable organizations such as Catholic Charities USA (Coughlin; Netting; see also Monsma).

What *is* new since 1996 is Federal policy actively and overtly promoting faith-based organizations as implementers of social policy when large questions about legality, efficacy, accountability, and institutional capacity remain unanswered. To many, including members of faith-based organizations and communities, the core issue raised by charitable choice is that of the methods and standards that will be used to prevent violations of the church-state boundaries that long have been hallmarks of American constitutionalism. Worries abound concerning the possibility of proselytization funded by government monies; legalized discrimination against particular faiths and their respective adherents; and the consequences of blurring the social, political, and cultural lines between secular and sacred. Also at issue are the standards of accountability that may or may not apply to faith-based contractors; the capacity of FBOs to meet their contractual obligations, both programmatically and administratively; the efficacy of faith-based social service providers, especially those new to the enterprise, compared with the efficacy of other kinds of organizations; the capacity of subnational governments to treat FBOs equitably in procurement processes; and their capacity to

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of charitable choice already applicable under TANF, social services block grant, and SAMHSA to Federally funded job training, juvenile delinquency and prevention, crime prevention, domestic violence prevention and intervention, hunger relief, housing, child care development, and Older Americans Act-funded senior citizen programs. Title III would enable “working-poor” families to “save, build wealth, and enter the financial mainstream through the use of Individual Development Accounts.”

monitor their behavior as agents of the state. Still other issues have been raised that center upon the negative effects that charitable choice could have upon congregations and religious organizations, including the possible dilution of their religious character; mission displacement; the burdens of increased government regulation; a reduction in private contributions given the presence (or assumed presence) of public funding, resulting in new dependence upon government funds); and a reduction in the relatively high level of faith-related activity that currently characterizes American public life. The issue of charitable choice as a form of patronage also has emerged, with some asserting in recent months that it is less aimed at improving public policy than at ensuring partisan support for the Bush II administration among conservative Republicans. Not unrelated to this contention is the concern that charitable choice is meant as a first step toward ending national public social provision and the welfare state altogether, leaving many Americans in need and creating demands upon nongovernmental social service providers that would be impossible for them to meet.

Although all of these issues are vital ones deserving of further study,<sup>5</sup> this paper will forego extended consideration of any of them in order to address a question that so far has not been raised with respect to charitable choice: that of how it the reforms it advances reflect, or fails to reflect, the principles of the reinvention and devolution movements which have become such prominent features of contemporary American governance. In its embrace of ends-oriented governance including privatization in the form of contracting out, charitable choice has seemed to some observers to be a logical extension of the philosophy of reinvention. Charitable choice's focus upon localized, community-based solutions to social provision likewise has led some to view it as a

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<sup>5</sup>Some of these issues are already under consideration in a three-state, comparative study of charitable choice funded by a three-year grant from the Ford Foundation. The author of this paper is a member of the research team, which is centered at Indiana University-Purdue University, Indianapolis and headed by Principal Investigator Sheila Suess Kennedy of the IUPUI School for Public and Environmental Affairs.

logical extension of the so-called “devolution revolution.” While charitable choice can be seen to share some of the ideals of reinvention and devolution, careful study also reveals points upon which the philosophies are only marginally in agreement, if not seriously at odds. This lack of accord may be consequential. Reinvention has proven remarkably popular and durable despite the fundamental challenges it posed (and continues to pose) to long-standing tenets of American governance. An almost extraordinary consensus about the wisdom of devolution has also come to exist, even if agreement on devolutionary principle does not always carry over into practice. Charitable choice, by contrast, has so far been very controversial, despite a long and largely unchallenged tradition of reliance upon faith-based organizations for the provision of social services.

## **CHARITABLE CHOICE AND REINVENTING GOVERNMENT**

In a seminal article published last year, Linda deLeon and Robert Denhardt (2000) examined the implications of the reinvention movement for democratic governance. Proceeding from Dwight Waldo’s observation (1984) that administrative arrangements have important theoretical and valuational underpinnings and consequences, deLeon and Denhardt argued that the political theory implicit in reinvention is premised upon the conviction that “the public interest can be approximated through the accumulation of the narrowly defined self-interests of many individuals” (96). Three core elements of the reinvention movement support this conviction: its reliance upon the market model, its emphasis on customers rather than citizens, and its veneration of entrepreneurial management (90). Charitable choice’s consonance with each of these elements of reinvention will be considered in turn.

### **The Market Model**

Reinvention advocates argue that government should adopt business values in addition to the techniques of business administration, including trust in competition, respect for entrepreneurial behavior, and a preference for market mechanisms of social choice (deLeon and Denhardt 2000, 90). Charitable choice is indeed concerned with competition, seeking to ensure that faith-based organizations are able to compete on an equal basis with other types of bidders when social service contracting opportunities arise. A key component in President George W. Bush's plan to "rally the armies of compassion" is the identification and removal of barriers to market entry that are widely (if somewhat misguidedly) believed to have inhibited contracting by FBOs in the past (Bush 2001a). Notably, charitable choice's market model is no more a purely free one than the reinvention movement's. Despite promises of regulatory and statutory relief, charitable choice, like the reinvention movement, relies upon publicly managed competition, in which the state retains the authority and responsibility to set rules governing transactions (deLeon and Denhardt 2000, 91).

To a degree, charitable choice also joins reinvention in promoting entrepreneurial behavior, in its efforts to encourage faith-based organizations to become government contractors. It cannot be said, however, that FBOs enter the market merely out of self-interest, as participants in reinvented governing schemes are presumed to do. Though some view charitable choice as a new form of patronage or government aid to religion, arguing that it is intended primarily to allow faith-based organizations to capitalize on government funds in order to further their particular sectarian missions, FBOs are typically nonprofit rather than for-profit entities. Even the most ardent of charitable choice's critics would probably admit that their motives, at least to date, have been at least as voluntary and philanthropic as they have been self-interested. Publicly financed or not, the social programs of faith-based organizations stem from a desire to serve collective, societal purposes. Hence the long-standing reputation of FBOs such as

Catholic Charities, Lutheran Social Services, the Salvation Army, and the Jewish Welfare Federation as indispensable sources of social aid. If the rhetoric accompanying recent initiatives is any indication of charitable choice's policy purposes, then charitable choice is arguably not as concerned with fostering competition among service providers as it is with replacing governmental caregivers with faith-based and community organizations as a means of advancing the public interest.

For charitable choice to reflect the reinvention movement's preference for letting market mechanisms guide society toward the maximum achievable social good, the "unseen hand" of the market presumably would have to guide the direction of the mixed economy of welfare that includes faith-based providers. As noted above, however, the context of American governance (including reinvented governance) involves neither a purely free market nor participant motivations rooted solely in self-interest. Moreover, charitable choice entails government regulation aimed at recognizing and mobilizing benevolent, collaborative behavior on the part of organizations and individuals. It is clearly animated by a complex mix of liberal and republican principles in its effort to discourage the state from implementing social programs directly while encouraging citizens and community organizations to participate more actively in public life. In this respect, charitable choice rejects the market model's impoverished view of social service contracting as mere buying and selling (Smith and Lipsky 1993, 11), acknowledging, if sometimes only inadvertently, that "public policy is about trying to achieve something as communities" (Stone 1988, 14).

Melissa Buis's study of community-based welfare reform (2000) suggests that charitable choice is wise for rejecting the market model's limited vision of contracting. Analyzing the state of Oregon's new community-based reform strategy, which involves both faith-based and non-faith-based community organizations, Buis argues that if the contracting relationship is

only about the terms of contract obligations, then the benefits of such partnerships are minimal. [But] when resource sharing occurs in an environment of consensus building, the focus can shift from, *How much is the state buying for its dollar ... to How well is the partnership meeting the needs of recipients and What will it take to do so?* (4, emphasis in original)

### **Customer-driven Governance**

Implicit in the reinvention movement's market orientation is its vision of American citizens as consumers of public goods and services, which optimally are produced by a government centrally concerned with ensuring consumer choice, service, and satisfaction. In deLeon and Denhardt's analysis (2000, 91), this notion of consumer or customer-driven governance embodies a political viewpoint that "prefers a government that responds to the short-term self-interests of isolated individuals ... rather than one that supports the pursuit of public interests publicly defined through a deliberative process." DeLeon and Denhardt criticize this view, arguing that democratic citizens should "expect government to act in a way that not only promotes the consumption of services, but also promotes a set of principles and ideals that are inherent in the public sphere" (95).

Common to both the reinvention movement and deLeon and Denhardt's critique of it is the problematic premise that it is always obvious who "government" is. In the new world of reinvented, "proxy" government (Kettl 1988) relying upon "privatization" in the form of contracting out, however, it is often far from clear who, precisely, counts as a state actor (Gilmour and Jensen 1998; Kennedy 2000). Charitable choice compounds this difficulty by vesting the authority to provide public services not only in private hands, but in private hands that arguably are at least somewhat influenced by religious belief. While the mere presence of religious belief may not pose any greater accountability problems than, say, the profit motive (indeed, it may pose far less), much may depend

upon whether particular FBOs understand their primary mission as public social service delivery or evangelism, and/or envision the master that they serve as the government or God. As Buis has observed (2000, 4), there are often culture clashes between service providers who see their role as one of client advocacy and government actors charged with implementing policy rules and regulations. Such culture clashes often occur within funding relationships as well, since recipients of contracts typically want more money and less oversight. The addition of an overt religious dimension to nongovernmental service provision, especially in the case of faith-based organizations new to contracting, increases the potential for culture clashes to occur, and may diminish the possibility of successful government-FBO collaboration.

The reinvention movement is also based upon the problematic premise that it is obvious who the “customer” is: namely, the service recipient. As DiIulio, Garvey, and Kettl (1993, 49) have pointed out, service recipients are not the only customers in a delivery system that involves the multiple actors, entities, and policies of state and local governments, native American tribal governments, and for-profit and nonprofit organizations in addition to those at the Federal level. Viewing these partners in implementation as *intermediate* customers, DiIulio et al. argue that the U.S. government must be capable of working closely with them if Federally-financed programs are to be effective (49). Not only must the cultural boundaries discussed above be overcome, but also the intersectoral (public-private), interlevel (federal-state-local), interagency, and interprogram boundaries common to decentralized governance (60). Charitable choice is remarkably ambiguous on this front. On the one hand, the establishment of the White House Office of Faith-Based and Community Initiatives, along with satellite centers in key Federal departments, suggests that Congress and the executive are concerned with building institutional capacity for this purpose. On the other hand, though, charitable choice embodies Federal mandates that impose new procurement requirements on

subnational governments that in some cases are at odds with the provisions of state constitutions, statutes, and administrative regulations, not to mention ingrained practice. Neither bureaucratic growth nor the imposition of new Federal mandates upon state and local government comports with the theory of reinvention.

Finally, as observed by DiIulio, Garvey, and Kettl (1993, 50), Mintzberg (1996), Gilmour and Jensen (1998), and deLeon and Denhardt (2000, 95), the goals of government include more than simply responding to citizens as customers. Political, legal, and ethical accountability are arguably far more fundamental to democratic, constitutional governance than paying attention to consumerist demands. This raises the potential problem of discrimination on the basis of religion under charitable choice, both in the form of governmental bias against particular religious orientations in procurement and other processes, and discrimination by particular faith-based contractors against needy citizen-clients who do not share in their beliefs. Federal charitable choice statutes explicitly prohibit governmental discrimination against FBOs, but effective oversight is likely to prove quite difficult given the multiple players and levels of government involved, variation in the makeup of local religious communities, and the fact that procurement often is not the most transparent of public processes. Federal charitable choice statutes also try to safeguard against religious discrimination by requiring alternative, non-faith-based programs to be available if clients object to faith-based ones. Though notable with respect to its rejection of mere consumerism in favor of accountability and the protection of citizens' rights and liberties, the duplication of effort that charitable choice mandates when government-FBO social service contracts exist is by no means in line with the reinvention movement's goals of efficiency and devolution. Nor is it likely to be practicable in small municipalities or rural areas. Where the principles of both reinvention and devolution can be seen to have broad

application in implementation, charitable choice is likely to encounter serious difficulties in certain geographical areas.

### **Entrepreneurial Governance**

The third core element of the reinvention movement identified by deLeon and Denhardt (2000, 92) is its enthusiasm for entrepreneurial governance, defined as governance that uses resources wisely and creatively toward maximum productivity and effectiveness; focuses on ends or outcomes rather than means or procedures; takes a proactive stance toward problems; and features unfettered agency on the part of the individuals or organizations implementing public programs. Finding ways to reinvent government so as to facilitate entrepreneurial activity by agency actors, ultimately to change the culture of public administration, was indeed one of the main items on the reform agenda contained in the Clinton-Gore Administration's 1993 *National Performance Review*.

As noted above, charitable choice reflects reinvention's emphasis on entrepreneurial behavior in its efforts to encourage faith-based organizations to become government contractors. Charitable choice effectively urges religious groups, whether congregations or religiously affiliated nonprofit organizations, to transform themselves into local social policy entrepreneurs.<sup>6</sup> While most people would probably agree that contracting out social welfare programs to FBOs under charitable choice's terms is a creative use of public resources, opinions vary dramatically regarding the wisdom of allowing tax dollars to fund programs that may now have explicit religious dimensions. Some view this as an illicit form of patronage, asserting that since money is fungible, there is no way to keep public funds from spilling over into collection plates to subsidize religious activities including evangelism and efforts at conversion. Others argue that

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<sup>6</sup>President Bush refers to John DiIulio, chosen to head the new White House Office of Faith-Based and Community Initiatives, as "one of the most influential social entrepreneurs in America." Bush 2001b, 2.

charitable choice will waste money since in many cases government will be funding programs that faith-based organizations previously were running at their own expense. Still other critics point to the inefficiency and expense that will result from charitable choice's various mandates, especially the requirement that alternative, non-faith based social programs must be provided for clients objecting to the religious character of programs run by FBOs. There is also concern that faith-based organizations will suffer the loss of private resources once they become government contractors, causing them to become dependent upon public funds and thus more vulnerable to changes in policy and the political environment.

Advocates of charitable choice, by contrast, understand it to promote uses of public resources that are legitimate, wise, and long overdue. In their view, charitable choice will not result in constitutionally or ethically inappropriate aid to religion, both because charitable choice legislation specifically bars the use of government funds for sectarian worship, instruction or proselytization, and because it requires that alternative programs exist for clients objecting to the religious character of faith-based social provision. Charitable choice allows the government to take advantage of successful programs in the nonprofit sector, which may also be relatively inexpensive if they involve FBOs who are either unable or unwilling to demand the full costs of program operation due to the assistance of volunteer help, a lack of institutional capacity, or both.

In the last analysis, questions about public resource utilization in government-FBO partnerships may be difficult to answer. John DiIulio, the new director of the White House Office on Faith-Based and Community Initiatives, has responded to concerns about the effects of charitable choice's deployment of public funds by arguing that "four decades of government-by-proxy have led [civil servants] to develop mostly reliable procedures for segregating program accounts and enforcing compliance with

antidiscrimination policies (DiIulio 2001). Note, however, that contrary to the rules that continue to govern public social service agencies, charitable choice protects the autonomy of participating faith-based organizations by allowing them the opportunity to limit the scope of fiscal audits. This may shield them from excessive regulatory scrutiny, but makes it difficult for either government or the FBOs to assess fully their use of government funds, evaluate the efficiency and effectiveness of their programs, or gauge the impact of the receipt of public monies upon faith-based contractors. A recent review of the status of reinventing government by the General Accounting Office concluded that strengthening financial management; establishing clear, measurable goals and baselines; and developing and implementing modern performance management and human capital practices remain critical, unresolved public management problems (GAO, 2000, 19). To date, these are not concerns that are shared by charitable choice.

A certain amount of divergence also emerges when the question arises of whether charitable choice focuses on ends rather than means as reinvention does. According to President George W. Bush, charitable choice is ends-oriented: it is “not anti-government, but pro-results,” its paramount goal “compassionate results, not compassionate intentions” (2001a, 6, and foreword; see also DiIulio 2001). Bush and many other charitable choice advocates argue that these results will include not only more effective social service provision—a goal shared with reinvention—but also the transformation of lives, the revitalization of civic engagement, and an increase in much-needed social capital<sup>7</sup> (Bush 2001a). Notably, these are aims that reinvention says little if anything about.

Charitable choice couples its outcomes-based orientation with an emphasis on means that, in its specificity, is far stronger than any pro-contracting logic found in reinvention. This is most transparent in charitable choice’s promotion of faith-based

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<sup>7</sup>See Putnam 2000.

organizations as the vehicle of choice for implementing social programs. Neither the government's parallel (and significant) interest in contracting out welfare functions to large corporate entities nor the almost complete absence of empirical evidence demonstrating the superior efficacy of faith-based organizations seems to diminish Federal actors' new-found, bipartisan enthusiasm for service delivery via FBOs. In the words of President Bush, "these organizations boast uncommon successes, but they are outmanned and outflanked.... [A]ll too often, the Federal Government has ignored their efforts and even impeded them." (2001a, 2, 4). Charitable choice recognizes and attempts to tap into the religious community's known proactivity in the area of social welfare, reflecting reinvention's enthusiasm for proactive approaches to problems. The hope is that it will inspire even more grassroots activity aimed at solving societal problems. Accordingly, the Federal government is urged to "play a new role as supporter, enabler, catalyst and collaborator with faith-based and community organizations. We will build on past innovations" (Bush 2001a, 6).

Finally, regarding the resemblance between charitable choice and reinvention with respect to the latter's belief in unfettered agency, one of the most curious aspects of charitable choice is the way in which it positions faith-based social provision as the solution to bureaucratic inadequacies, as if government did not already routinely contract out for the provision of social services, with many FBOs historically serving as contractors. Charitable choice's staunchly anti-bureaucratic stance mirrors reinvention's, but unlike reinvention's, it essentially ignores the extent and pervasiveness of the contracting regime already in place in the United States. This includes overlooking the presence of large, for-profit concerns like Lockheed Martin and Maximus in the landscape of American social provision, despite the fact that they and other major corporations are very prominent players, whose motivations and approach to performance-based contracting generally are distinct from those of faith-based

organizations. This selective perception on the part of Federal actors may simply be part of a rhetorical strategy aimed at building approval for charitable choice, but it nonetheless detracts from an informed understanding of contemporary American governance on the part of citizens and public officials alike.

### **CHARITABLE CHOICE AND THE “DEVOLUTION REVOLUTION”**

The reinvention movement has both included, and been paralleled by, much talk of devolving public powers and functions from the Federal government to the states. Arguments concerning the federal balance are nothing new in U.S. politics; Americans have debated the proper division of authority between the national government and the states, and the theoretical and practical merits of nationalization versus localism, since the time of the nation’s founding. Recent calls for intergovernmental reform shifting the governmental center of gravity away Washington, however, have been remarkable both for their fervor and for the degree to which they have appeared to represent a near-uniform consensus concerning the capacity and legitimacy of subnational governance (or at least the inadequacies of national governance). Congress’s enactment of such state-regarding legislation as the Unfunded Mandates Reform Act<sup>8</sup> (UMRA) in 1995 and the Personal Responsibility and Work Opportunity Reconciliation Act<sup>9</sup> (PRWORA) in 1996 seemed finally to confirm what many observers of the American scene already suspected: a “devolution revolution” was underway (Nathan 1996).

The states undeniably have come to figure more prominently in American governance during the past decade. To characterize the direction of American public policy or intergovernmental relations as “devolutionary,” however, is simply inaccurate. Technically speaking, there can be no devolution between the U.S. government and the

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<sup>8</sup>P.L. 104-4.

<sup>9</sup>P.L. 104-193.

states, because the U.S. Constitution does not permit Congress simply to cede its authority (Kincaid 1998, 13). Formal transfers of authority between the U.S. government and the states require the explicit consent of Congress, a majority of the states' legislatures, and/or that of the people. Nor does the Constitution contemplate decentralization *per se*, because, formally, the American federal system is non-centralized.<sup>10</sup>

What is often termed “devolution” in the American federal system is actually delegation. By any measure, the delegation of congressional authority has escalated dramatically since the 1930s, but to describe the recent direction of American public policy as devolutionary is to drastically oversimplify contemporary developments. Claims of a revolution in intergovernmental relations notwithstanding, what has been occurring is far more complex than a simple unidirectional shift of authority and responsibility from the U.S. government to the states, or, for that matter, from the states to local governments. Neither decentralizing nor centralizing, the current trend instead is comprised of a series of often simultaneous thrusts in both directions, sometimes within the same piece of legislation. Nowhere can this be seen more clearly than in the terms of the welfare reform legislation of 1996. Eliminating the categorical entitlement program Aid to Families with Dependent Children (AFDC), PRWORA delegated to the states considerable new authority to design and implement their own social welfare programs under the auspices of Federal block grant funds. Yet while it gave the states new flexibility in determining who would be eligible for welfare benefits, the form of those benefits, and the structure of related work and training programs, the law also contained significant new Federal mandates, including time limits upon the receipt of

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<sup>10</sup>This is unlike the situation in Great Britain, for example, where Parliament is able unilaterally to decentralize or devolve powers to regional or local authorities that possess no sovereignty or supremacy of their own. It is also unlike the situation at the subnational level in the United States, where devolution *may* occur because local governments have no independent legal authority, but derive all of their governing authority from their respective states. See Kincaid 1998, pp. 13-15.

Federally-subsidized assistance, work requirements, morality standards, child support enforcement requirements, and charitable choice's procurement requirements and exemptions from Federal civil rights law.

In his seminal book *From New Federalism to Devolution* (1998), Timothy Conlan assays the intergovernmental reform impulses that have shaped American national politics since the first of several "new" federalisms was embraced by President Richard Nixon. Not all of these impulses resulted in actual changes, but, as Conlan notes, they reflected certain philosophical, administrative, and partisan commitments that continue to affect American governance. Each of these elements, and charitable choice's consonance or lack of consonance with them, will be considered in turn.

### **Philosophical Leanings**

As noted above, and as observed by Conlan, disagreements over intergovernmental roles have been an enduring part of American political debate since the time of the nation's founding. The philosophical roots of devolution are thus as old as the Republic itself. Their clearest exposition is found in the writings of the Antifederalists, who extolled the merits of local governance both for its own sake (they did not believe an extended republic could survive) and as a formative project that would positively shape the character of the people. The Antifederalists also made powerful arguments in favor of civic virtue, ideally based upon a devotion to one's fellow citizens "almost as automatic and powerful as the natural devotion to self-interest." Notably, they also believed in the encouragement of religious conviction as a primary support of republican government and in liberty of conscience, though these two could coexist only uneasily (Storing 1981, 20, 16-23, 64).

The presidential "new federalism" proposals of the 1970s, 1980s, and 1990s all echoed these tenets of Antifederalist thought, albeit in slightly different ways. Rejecting

what he saw as the excessively centralizing tendencies of the Great Society, President Nixon argued that the flow of power and resources from the states and communities toward Washington had to be reversed, because local government is closest and most responsive to citizens' needs. President Reagan likewise argued against centralization, which he claimed had destroyed the sense of community required to sustain local institutions. Where Nixon's stance was "anti-Federal," however, Reagan's was fundamentally anti-government. His reform proposals were aimed not only at decentralization, but moreover at a reduction of governmental activity at every level of the federal system, coupled with new reliance on private, communal action. The 1990s brought the intergovernmental reform agendas of both President Bill Clinton and House Speaker Newt Gingrich to Washington. If Clinton's was conflicted in both theory and practice, prominently featuring urges both to centralize and decentralize, Gingrich's was consistent: the welfare state was to blame for many of America's ills, including a culture of poverty and a culture of violence, and it needed to be replaced completely, from the ground up (Conlan 1998, 9-11, 14).

Although some kind of affinity between these philosophical roots of devolution and charitable choice seems intuitively obvious, the strength of that affinity only can be assessed in light of a nuanced understanding of the intergovernmental reform imperatives of the past three decades. As a president who believed in governmental action (albeit only that which he approved of), streamlined administrative processes, and, at least to some extent, welfare rights, President Nixon seems likely to have disapproved of the kind of highly localized, nongovernmental social service provision under the aegis of Federal funds that charitable choice advocates. Reagan, by contrast, was an advocate of privatization in the form of contracting out in principle and in practice. So was President Clinton, under whose signature charitable choice was first enacted, along with that of Newt Gingrich. Gingrich's goal of dismantling the welfare

state, aimed specifically at returning power beyond subnational government to the American people themselves, is more consonant with the principles motivating charitable choice than the agendas of any of these presidents. Yet charitable choice most clearly harkens back to the political philosophy of the Antifederalists, with which it shares the ideals of localism, service in the public interest, government encouragement of religion, and, in its requirement that citizens be provided with alternative, non-faith based social services, religious toleration.<sup>11</sup>

### **The Administrative Dimension**

As Conlan has explained, the devolution movement arose not just from philosophical inclinations, but also because of growing criticism about the structure and management of Federal programs as they had evolved from the 1930s and 1940s through the 1980s. The shift in the locus of policy initiation and leadership toward the Federal government that occurred during this period, coupled with a shift toward far greater state and local responsibility for policy implementation, gave rise to a plethora of complaints. Government actors, scholars, and citizens alike decried problems of governmental fragmentation; inadequate coordination; inefficiency; Federal intrusiveness, especially in the form of preemptions and mandates; intergovernmental conflict; insufficient resources; and constraints upon the abilities of state and local governments to devise and implement strategies for addressing the specific issues and problems facing their respective communities (Conlan 1998, 6-7). Hence the appeal of devolution, which in its advocacy of “sorting out” governmental functions and shifting authority back to subnational entities promises at least partial solutions to the incoherence and power struggles that have become all too common in the American federal system.

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<sup>11</sup>One must be careful in invoking this tenet of Antifederalists thought here, since during the 1770s, toleration would likely only have extended to Christian (or only Protestant) sects. Storing 1981, 22.

Charitable choice poses an intriguing contrast here, for unlike devolution, it is not centrally aimed at limiting Federal power, restoring the states' authority, or streamlining administrative operations. Instead, it encourages and even mandates the emergence of a host of new players and new programs at the Federal, state, and local level, many of them nongovernmental. As detailed above, a new Federal bureaucracy has been established (the White House Office of Faith-Based and Community Initiatives and its satellite centers), along with executive orders and other new directives. Legislation is currently pending that would extend charitable choice's reach well beyond its present limits, requiring a range of actors, organizations, and institutions at every level of government to comply with new procurement standards and new, variable standards for contractor behavior. In some instances, this would likely necessitate changes in state constitutions, statutes, and/or administrative regulations (assuming compliance on the part of state and local officials, which given the controversy over charitable choice cannot yet be taken for granted). Charitable choice may well share devolution's goal of more localized and more effective governance, but it clearly does not share its goal of greater governmental efficiency.

### **Partisan Aspects**

Charitable choice shares much with devolution when the partisan dimensions of each are considered. The critique of the Federal government's power and performance that led to calls for devolution began among Republicans; so too did the critique of the American welfare system that led to the proposal and enactment of welfare reform and charitable choice. Though many observers continue to associate both devolution and charitable choice with conservatives and/or members of the Republican party, the situation in each case is more complex and dynamic. It is probably fair to say that Republican rhetoric emphasizes devolution and the restoration of "states' rights" more

than the rhetoric of Democrats, but no one political party (or for that matter, no one individual, interest group, or institution) stands as a consistent defender of state autonomy. In theory, there is strong agreement on the wisdom of devolution, but specific issues play the dominant role in determining who advocates it in practice; neat divisions along party lines often do not develop (Posner 1998; see also Jensen 2000, 273, 281). Similarly, neither party uniformly advocates charitable choice. Many Republicans have backed it and continue to do so, but not all. As media reports have emphasized in recent months, staunch advocates of charitable choice also are found in the Democratic party, including Senator Joseph Lieberman of Connecticut, the Democrats' vice presidential candidate in the 2000 presidential election. Yet other Democrats remain unalterably opposed to charitable choice. It is interesting to note that political ideology also fails to account for attitudes toward either devolution or charitable choice; neither liberals nor conservatives uniformly support or oppose either one. Some may take comfort in the fact that Federal actors of divergent leanings are flexible with regard to devolution and charitable choice. However, *ad hoc*, vacillating decisions about the shape and direction of policy create enormous difficulties for state and local officials and public administrators at every level of government.

## **CONCLUSION**

All things considered, charitable choice does not quite comport with the reform philosophies of reinvention and devolution. Charitable choice embraces some of tenets of reinvention, but only some of them, and then not always completely. In its faith in publicly managed competition, its efforts to promote entrepreneurial behavior on the part of faith-based organizations, and its focus on ends, charitable choice is quite consonant with the reinvention movement's principles. Yet charitable choice is not the logical offspring of reinvention. In its refusal to see citizens as mere consumers or social

service contracts as mere market transactions, its reliance upon the imposition of new Federal mandates, its emphasis on community-building, its comfort with potential inefficiencies, and its focus on process in addition to outcomes, charitable choice seems aimed at constituting a very different mode of “public” administration.

Charitable choice likewise embraces some of the tenets of the devolution movement, but again, only some of them, and then not always completely. The greatest similarities between charitable choice and devolution are found within their philosophical and partisan dimensions. Charitable choice resonates with the devolutionary impulses that celebrate localism and the wisdom of community-based solutions to problems, and draws support from advocates who are as diverse in terms of ideology and party affiliation as the supporters of devolution are. Similarities end, however, when administrative concerns are considered. Unlike devolution, charitable choice is comfortable with, and indeed actively promotes, Federal mandates, bureaucratic growth, and new forms of regulation and oversight. Where devolution is concerned with the restoration of state and local government authority and capacity, charitable choice is aimed directly at bypassing state and local government in favor of private governing arrangements. Finally, where devolution is interested in efficiency gains, charitable choice deliberately mandates duplication of effort in instances where clients prefer non-faith-based forms of publicly funded social service provision. In terms of their view of administration, charitable choice and devolution could not be further apart.

It is too early to tell how far charitable choice will go in changing the landscape of American governance. It is not too early, however, to begin thinking about what its implications might be. As Paul Light observes in his recent study of governmental management reform (1997, 1), Federal actors “have had little trouble passing reform measures over the years, moving almost effortlessly from one reform philosophy to

another and back again, rarely questioning the contradictions and consequences of each separate act.” This is despite the fact that both history and social theory suggest that reformist impulses should be tempered with caution.

Advocates of charitable choice would do well to heed the advice of those who have assessed, or who are now engaged in assessing, the results of previous reforms. As DiIulio, Garvey, and Kettl argue (1993, 9), reforms work best when they grow from a strong strategy and robust intellectual support. H. George Frederickson (1999, 5) puts this another way: good politics cannot necessarily be equated with good government. Reform agendas must be evaluated not only by asking, “is this good politics?” but also, “is this good government?” and “is this good administration?” Looking at the record of previous governmental reform efforts, DiIulio et al. identify several temptations that today’s reformers must avoid (1993, 9-10). Three of these seem to apply with particular force in the case of charitable choice, both for substantive reasons and because of the remarkable fact of their authorship by the new director of the White House Office on Faith-Based and Community Initiatives.

First, DiIulio et al. caution against confusing disagreement over what government ought to do with how well it does it, for there is danger in the fact that proposals billed as administrative, managerial, or technical may disguise underlying differences of policy or competition among interests. Charitable choice advocates argue that passage of H. R. 7, the bill that would expand charitable choice, is necessary to prohibit discrimination against faith-based organizations in procurement processes, protect FBOs from being forced to secularize as a condition of doing business with government, and encourage more FBOs to become publicly funded social service providers because they are more effective than other organizations. Notably, however, none of these assertions are yet supported by credible evidence.

The second of the temptations to be avoided is not only rushing to judgment, but also rushing into action. Reformers “need to examine closely the problems they wish to solve and assess carefully the actions required to solve them” (DiIulio et al. 1993, 9). Where some kinds of reforms may be accomplished relatively quickly through executive and/or administrative action, others may require major changes in legislation. Still others, such as charitable choice, may even require constitutional changes via judicial interpretation or the amendment process. DiIulio et al. argue that “proceeding in a do-it-all-now manner, without matching the political resources required and the objectives sought, is likely to stall a reform effort” (1993, 9). Failed or partially implemented changes also may impact existing programmatic and organizational arrangements to the extent that they are disrupted. This is a critical issue in the case of charitable choice, since a vast network of faith-based organizations is already successfully implementing social service programs as government contractors, sometimes under very delicate understandings, involving complex trade-offs, that have been established between FBOs and state and local authorities.

Finally, DiIulio et al. warn that reformers should avoid the temptation to think that their plan or solution is “The Answer,” for scholars of implementation and public policy and administration have demonstrated that most successful reforms are the product of careful, continuous, incremental, evolutionary change (1993, 11; see also Light, 1997). This does not mean that there is no room for new ideas or alternative visions in government. The total lack of social scientific evidence supporting either the presumptions behind charitable choice or evaluating its implementation since 1996, however, should give advocates pause, as should the criticism that certain aspects of charitable choice are completely at odds with established tenets of American constitutional governance. As DiIulio et al. have so aptly asserted, reconstructing government requires “carefully paced modifications informed by an experimental rather

than a dogmatic or recklessly inventive spirit” (1993, 11). Those who seek to reinvent church as state would do well to attend to this dictum.

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