TRADING IN TOCQUEVILLE: PHILANTHROPY IN AN ERA OF PHILANTHROCAPITALISM, LC3s, AND SOCIAL INNOVATION BONDS

Robin Rogers

William Dennis opens “A Radical Reform for Nonprofit Tax Exemption: A Thought Experiment” with a compelling quote from Richard C. Cornuelle’s *Reclaiming the American Dream*: “Already in America, government is tightening its grip on the independent sector. It is challenging the tax-exempt status of foundations, making new efforts to ‘regulate’ almost all private groups. An independent sector regulated by its competition has, at best, an uphill fight…” (2012, 1).

Cornuelle’s concern about foundations losing tax-exempt status provides the backdrop for Dennis’ thought experiment on federal taxation and philanthropy: *What if the tax subsidy for nonprofits was eliminated?* Would this be a good thing? The answer, Dennis posits—at least in theory—is yes. But he recognizes that an abrupt end to tax advantages for the nonprofit sector might do more harm than good. Much of the infrastructure of the independent sector and the life choices of those involved with it, he notes, are dependent on the current constellation of tax incentives. Thus he offers this as a thought experiment with policy implications, but not as a policy prescription.

In 2012, substantive conversation about philanthropy, democracy, and taxation is important. There are numerous and controversial congressional proposals to alter the tax treatment of nonprofits and charitable giving. Nonetheless, there is a critical flaw in Dennis’ execution of his thought experiment: it is based on an understanding of the nonprofit sector that no longer maps to reality. Most critically, Dennis omits any mention of philanthrocapitalism, B-Corps, LC3s, Social Innovation Bonds (SIBs), and the rise of billionaire philanthropists, all of which blur the boundaries between business, government, and nonprofits.

Rogers, Robin. 2012. Trading in Tocqueville: Philanthropy in an Era of Philanthrocapitalism, LC3s, and Social Innovation Bonds. *Conversations on Philanthropy IX*: 29-35. ISSN 1552-9592 ©The Philanthropic Enterprise.

Even in a thought experiment, these developments are too profound to be set aside. Many of the new developments in philanthropy have little to do with the idea of voluntary associations on which Dennis focuses his attention. Above all, these changes invert the power relations between philanthropy and government that Cornuelle identified. Instead of relying on government grants and subcontracts, as nonprofits have commonly done since the 1960s, philanthrocapitalism is premised on large foundations, such as the Gates Foundation, setting agendas and partnering only with governments that accept their agenda and match funds or promise to do so in the future. Foundations are arguably now "subcontracting" the state.

Blurring Lines

The New Philanthropy has profound implications for civil society in the United States. Bruce Sievers, in "The Philanthropy/Civil Society Paradox," persuasively argues that civil society emerged in response to the rise of the state. He writes, "[T]his emergent civil society, with its emphasis on individual rights, rule of law, pluralism, tolerance among diverse belief systems, and a commitment to the commonweal, provided a platform for the evolution of liberal democracy. Inherent in the scheme was a delicate balance of public and private power—an eternally unresolved tension between the public and the private poles of life. Without institutions and norms of civil society, and its underlying polarity, there would be no democracy as we know it" (2012, 4).

Concern about the death of civil society spans the political spectrum. But what Sievers contributes to a discussion of philanthropy and taxes is the idea that we move among different worlds in different spheres of social life—worlds with different rules, expectations, and incentives. A recent political exchange may help to illustrate the point. Mitt Romney recently suggested that taxes are a form of charity. The Cato Institute's Michael Tanner concurred: "Taxes are a form of charity.… We tax people because there's some use, some public good, for which they're needed" (*Washington Post 2012*). Garrett Gruener, a wealthy activist for higher taxes on the rich, countered, "Democracy is not a charity. It's an enterprise of all Americans to accomplish things that we democratically decide are important" (*2012*). The debates over taxation and the nonprofit sector, therefore, are as much about the nature and independence of the different sectors as they are about efficiency and fairness.

Sievers usefully borrows the concept of "the colonization of the life-world" from the German philosopher Jürgen Habermas to make the point that the "life-world" of civil society is different from that of government or business—and always in jeopardy of being colonized by either. This is very much in line with the concern expressed by Cornuelle that the nonprofit sector was at risk of being consumed by the government sector.

The new movements in philanthropy, however, could amount to a colonization of the nonprofit sector by the market rather than by the government. Therefore, the question of taxing the nonprofit sector should not be looked at as simply affecting the efficacy of solving social problems or maintaining the autonomy of the independent sector from the government, but as a quest to reestablish the appropriate tensions and power relations between the nonprofit sector, the government sector, and the business sector in order to maintain some form of liberal democracy in a very changed world. This balance goes beyond the question of how much to tax nonprofits and expands out into the new tax structures being developed to accommodate the blurring of the line between the nonprofit and for-profit sectors.

Assumption of Goodness

Discussions of the nonprofit sector tend to assume that philanthropy is by definition good. Within some strands of philanthropy—particularly the emerging mega-donor philanthrocapitalism—there is an astonishing code of non-criticism. Michael Edwards of Demos noted its "mock civility that turns honest conversation into Jell-O" (2010, 92). William Schambra, a lonely voice of caution, observes that one of the largest and most "successful" early philanthropic initiatives was to support eugenics, a fact rarely mentioned in polite philanthropic circles (2012). If Schambra focuses on the fact that human fallibility is a factor in even philanthropic acts, Robert Atkinson, in the second lead essay of this symposium, is focused on a much more procedural aspect of what is "good," asking how we can know that our current system of giving tax preferences for charities is good just because it has been democratically decided upon. Atkinson's well-argued essay "Philanthropy and the Federal Income Tax: Should Our Republic Subsidize Tocqueville's Democracy?" touches this third rail of charity, questioning what constitutes "the good" while also posing the more academic and theoretical question of the proper role of the state in taxation and subsidies. He further questions why there is an implicit assumption that nongovernmental provision of services is better than governmental. Within that discussion, he talks about a "free-rider effect" in which people who do not give may be able to unfairly profit off of those who do. He uses the example of public schools. Even in schools that are publicly funded, parents are often asked to give—and do give—school supplies. These supplies, however, are often then used by children whose parents did not contribute; this, he argues, amounts to two taxes—one voluntary and one mandatory. Few would blame the children, or the parents who could not give for legitimate financial reasons. Nonetheless, it is true that there are always some who will not give even when they can, but will always gladly take.

As an alternative to a taxation system that favors nonprofits based on the assumption that the "good" is whatever the people say it is, either through individual philanthropy or democratic vote, Atkinson argues that we should reject a preference for philanthropy over government provision, to promote merit, and institute a preference for public (tax) funding over philanthropy, to reduce the free-rider problem.

Innovations in Philanthropy

Although it is important to think about the impact and desirability of changing preferential tax treatment for nonprofits and philanthropy, we ought to make sure that discussions reflect the independent sector as it is and not as it was or as we merely imagined it to be. There are developments occurring now in the philanthropic sector that are changing the world.

Philanthrocapitalism, as I note in "Why Philanthro-policymaking Matters," the lead essay in *Society's* 2011 symposium, The Politics of Philanthrocapitalism, is a new movement that fuses large-scale charitable giving with business practices. Its core tenets are: (1) Economic elites should assume leadership in global social change through philanthropy. (2) Philanthropic money should be used to leverage other money (primarily government) in support of its goals. (3) Market tools can be used to improve the philanthropic sector. (4) The boundaries between for-profit and nonprofit should be blurred to enable the most resources to go toward the social good.

This movement is supported by many of the most powerful people in the world. Billionaires Bill Gates, Warren Buffett, and David Rockefeller have been organizing a group of the ultra-wealthy to give away half of their money during their lifetimes in what is known as the Giving Pledge. So far, ninety-one of the wealthiest four hundred people in the United States have signed on. Others, including the Koch brothers and Walton family, are actively involved in hands-on philanthropy. Bill Clinton's Global Initiative has facilitated and stumped for many of the changes advocated by philanthrocapitalists, including greater giving by the very wealthy and new financing structures such as Social Innovation Bonds (SIB)[1]. This unprecedented private wealth is being used for public policy purposes largely without accountability to voters or taxpayers even in cases, such as the following, where philanthropic donations are matched with taxpayer dollars to fund philanthropists' policy agenda.

Philanthropy has long exerted an influence on public policy, but today it is transpiring in many new ways. In 2011, George Soros partnered with Michael Bloomberg to give a combined $60 million (matched by city tax dollars) to start a comprehensive program to change government policies in eighteen agencies in New York City, called the Young Men's Initiative. Goldman Sachs then put in a $10 million investment-loan in an anti-recidivism portion of the program. This form of investment/loan is known as a Social Innovation Bond (SIB), and this was the first ever granted in the United States. Pierre Omidyar has pioneered new for-profit philanthropies. Eli Broad has famously and controversially set about changing American public education. Jeffery Skoll has been active not only in philanthropy but also in building an intellectual network to support the work of new philanthropists across the nonprofit, business and government sectors.

There are also new legal frameworks that bridge the nonprofit and for-profit sectors. LC3s are perhaps the most innovative. They permit socially oriented for-profit companies to have some of the legal and tax flexibility of an LLC but also to attract investments from foundations and private investors. Similarly, the B-Corps provide a framework that permits a for-profit company—start-ups primarily have utilized this—to put its social mission at the core of its business. B-corps seem to be focused more on building workable industry standards and practices for socially oriented businesses than LC3s.

Tax policy creates and changes institutions. Will the existence of LC3s change the relationship between for-profit organizations and foundations? Will B-corps and Social Innovation Bonds prove a double win by providing capital for social "good" and returns for investors, or will they permit for-profit investors to skim money from social programs that can be run cheaply, though not necessarily more effectively, while leaving financially burdensome programs and knotty social problems at the feet of taxpayers and depleted governments?

These changes in philanthropy correspond with the development of a global economy in which wealth is becoming concentrated among a small group of well-networked businessmen (and they are nearly all men). These men changed the nature of business and markets over the last twenty years by expanding technology's capacity and reach and creating what Thomas Friedman has called "the flat world" of international competition and cheap goods (2005). In part because of these changes, governments have become less powerful, allowing the market to begin to "colonize" the nonprofit sector as the leaders of the sector are increasingly men like Bill Gates rather than foundation professionals or the wives of wealthy men dedicated to tending to the female sphere of domestic problems with the money earned in the male sphere of commerce.

I'd like to see the conversation on nonprofits, philanthropy, civil society, and taxation initiated in the essays by Dennis and Atkinson continue. I propose, however, that we put Tocqueville, brilliant as he was, in the background and bring forward the issues of civil society raised by Sievers and Edwards. Let's take a page from Atkinson and Schambra and question the idea that everything done in the name of philanthropy is good by definition. Finally, I want to invite challenges to my assertion that the power relationship between nonprofits and government is reversing, with some nonprofits setting the agenda, in some cases even policy, for governments. Let's look at the complexity of philanthrocapitalism and what it means for civil society. Are the new mega donors, such as Gates and Buffett really doing anything different from the old corporate liberalism and philanthropy? I argue yes. LC3s, Social Innovation Bonds and other philanthrocapitalist innovations and ideas are significantly different from older forms of philanthropy. The world in which they operate is different too; its highest economic strata are more tightly networked and separated from local communities than they have ever been before. They are able to fund global change with a speed and breadth that their predecessors could not have done. Perhaps it is time to focus less on a Tocquevillean framework derived from a bygone social order and more on constructing new models that reflect the realities of the 21st century but also retain the values of liberty and democracy.

NOTES

[1] The first Social Innovation Bonds (sometimes called Social Impact Bonds) were granted in the UK in 2010 for a pilot program to reduce recidivism. The goal of the SIB is to provide private funding for new public programs and then generate a profit for the investors if the programs are successful.

REFERENCES

Atkinson, Jr., Robert E. 2012. "Philanthropy and the Federal Income Tax: Should our Republic Subsidize Tocqueville's Democracy?" *Conversations on Philanthropy* (The Philanthropic Enterprise) IX: 9-21.

Dennis, William C. 2012. "A Radical Reform for Nonprofit Tax Exemption: A Thought Experiment." *Conversations on Philanthropy* (The Philanthropic Enterprise) IX: 1-8.

Edwards, Michael. 2010. *Small Change: Why Business Won't Save the World.* San Francisco, CA: Berrett-Koehler Publishers.

Friedman, Thomas L. 2005. *The World is Flat.* New York, NJ: Farrar, Straus and Giroux.

Roger, Robin. "Why Philanthro-policymaking Matters." *Society* 48, no. 5 (Sept., 2011): 376-381.

Schambra, William. 2012. "Philanthropy's War on Community." *Nonprofit Quarterly* (March 12). http://www.nonprofitquarterly.org/philanthropy/21012-philanthropys-war-on-community.html

Sievers, Bruce. 2012. "The Philanthropy/Civil Society Paradox." http://www.hudson.org/files/publications/civilSocietyParadox.pdf

Washington Post. 2012. http://www.washingtonpost.com/politics/romneys-equating-of-taxes-and-charitable-giving-sparks-debate/2012/08/18/63bea3e6-e891-11e1-936a-b801f1abab19_story.html