

PHILANTHROPY AND THE FEDERAL INCOME TAX: SHOULD OUR REPUBLIC SUBSIDIZE TOCQUEVILLE'S DEMOCRACY?

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The U.S. Internal Revenue Code's charitable exemption and deduction clearly treat philanthropy favorably; the question for tax theory has always been why, and how well. The traditional subsidy theory has offered no means of comparing the relative goodness of one philanthropic purpose with another, or of comparing philanthropic providers of a good or service with alternative suppliers in the for-profit or governmental sectors. It simply has accepted that all philanthropy, whatever that is, is good, and deserving of favorable tax treatment.

This seems, on its face, to be a serious deficiency, if not an outright vice. On closer inspection, however, we can see it to be an odd virtue born of the need to fit our understanding of charity to our capitalist market economy on the one hand and our liberal democratic polity on the other. If our philanthropy is to be both consumerist and populist, it must be agnostic about both human need and human excellence; it must leave the specification of philanthropy's dual traditional aims to the market and the electorate. That is the implicit genius of the traditional subsidy theory: it does not fail to specify the goodness of particular philanthropic purposes; it simply leaves that decision to the philanthropic participants themselves, bowing deeply to Tocquevillean democracy.

But we also need to see that that obeisance is a choice our republic need not make—indeed, should not make, if it is to honor both philanthropy's better traditions and its own. We need not conform our philanthropy to the two-sided mold of our current economics and politics if we prefer other politics and other

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economics. Borrowing from deep traditions in our philanthropic sector, we can, instead, see this mold as an iron maiden, profoundly damaging to what we believe best in both our society and ourselves. The function of philanthropy, from this neo-classically republican perspective, is not to conform to this world but to transform this world into its own image. At the very least, that would give both market capitalism and liberal democracy a human face and a humane spirit; at the very best it would move our whole society past self-congratulating self-aggrandizement toward the public virtues of the American founders and the classical philosophers. Toward that goal, removing the federal tax code's underwriting of Tocquevillean democracy would not be the worst place to start (nor, alas, the easiest).

The Function of Tax Exemption

From a functional perspective, tax exemption subsidizes individuals' ideas about the public good. This new perspective on the traditional subsidy theory looks neither at the products charities provide nor at anything special about the way they provide them, beyond the fact that they are provided by philanthropic-sector organizations that are, by definition, forbidden to distribute net profits to any owning or controlling group. Instead, this perspective focuses on the way those goods and services are chosen by those who support their provision; that way of choosing is, in a word, individualistic. Citizens decide for themselves what charities to give to and, more basically, what charities to found. This very individualism is the focus of Alexis de Tocqueville's oft-quoted observations about Americans' inclination to form associations for what they take to be publicly beneficial functions:

In no country in the world has the principle of association been more successfully used or applied to a greater multitude of objects than in America. Besides the permanent associations which are established by law under the names of townships, cities, and counties, a vast number of others are formed and maintained by the agency of private individuals.

... If a stoppage occurs in a thoroughfare and the circulation of vehicles is hindered, the neighbors immediately form themselves into a deliberative body; and this extemporaneous assembly gives rise to an executive power which remedies the inconvenience before anybody has thought of recurring to a pre-existing authority superior

to that of the persons immediately concerned. If some public pleasure is concerned, an association is formed to give more splendor and regularity to the entertainment. Societies are formed to resist evils that are exclusively of a moral nature, as to diminish the vice of intemperance. In the United States associations are established to promote the public safety, commerce, industry, morality, and religion. There is no end which the human will despairs of attaining through the combined power of individuals united into a society (1972, 1:191-192).

On this view, individual Americans, acting in voluntary collaboration, both define social problems and offer solutions to those problems. Americans define the good, that is, not by a nationally shared sense of “goodness” nor by the national recognition of social need, but rather by their joint action in voluntary associations. From this observation we can derive a Tocquevillean definition of charity: whatever nonprofit activity citizens say is in the public interest and put their time, money, or other resources into. As a matter of both liberal principle and constitutional law, the state cannot discourage this kind of associational activity unless the ends themselves can be made illegal.

But to say that the state cannot ban such associational activity is not to say that it should encourage it; to define Tocquevillean charity is not to prove that it is good. And so, too, the question of whether to relieve such public-spirited private initiatives from the burden of taxation, and further to relieve their donors to the extent of their donations is, necessarily, a normative question. Another critical feature of the Tocquevillean understanding of charity is this: the majority’s decision on that normative question is conclusive. Thus the functional definition of Tocquevillean charity—whatever nonprofit project anyone wants to undertake in what they take to be the public interest—is matched with its normative justification: a majority of citizens believe that this kind of social action, even by political minorities, is good in general, and also worthy of particular favor in the tax system. In a democracy, as democracy, there is no other measure of the good. A majority can decide to grant this favor, or not; ours has granted it, and therefore it is good. The people in a democracy are, in principle, like God in a theocracy: their will is the law, and their law is right and good.

Subject to constitutional constraints (which are themselves subject to democratic revision), a majority of citizens can choose to support not only particular goods or services they themselves favor, but also those that their neighbors, even their neighbors in a minority, favor. This is, in effect, what it

means, in the context of the special tax treatment of charity, to say that it promotes the values, or meta-benefits, of “pluralism” and “diversity.” The traditional subsidy theory’s odd inability to provide a substantive definition of the public benefit that it holds to be the basis of the exemption and deduction can thus be seen not as a failure but as a virtue, a bow toward Tocquevillean philanthropy.

A Critique of Tocquevillean Democratic Philanthropy

The people’s will in a democracy, we have conceded, is like God’s will in a theocracy: whatever it is, is right; whatever it seeks, is good. In classical normative philosophy, however, another question can always be put, to both the people and the deity: Is it good because they favor it, or do they favor it because it is good (Plato 1956)? A majority of Americans, at some level, must favor our Tocquevillean system of charitable tax exemption and deduction; they are entirely entitled to change it whenever they like, and presumably, if they disliked it enough, they would.

But that still leaves open this question: Is our system of exemption and deduction *really* good, or good for any reason other than its having been democratically chosen? Unless one is a radically reductionist kind of democrat, one can question its merits, in whole or in part. One’s meat is, proverbially, another’s poison. So, in classical political theory, one system’s virtues are another’s vices (Plato 1968; Aristotle 1943; see also Montesquieu 1977). And so it is, this section will show, with Tocquevillean philanthropy. We begin by identifying the kind of state that Tocquevillean philanthropy implies as its ideal complement, the minimalist state of libertarianism. We then note two critical biases that this libertarian leaning implies for philanthropy and its tax treatment. The first is a bias toward philanthropic as opposed to government providers; the second is a bias toward private contributions as opposed to public finance. But this relationship between Tocquevillean philanthropy poses a puzzle: Wouldn’t a consistently libertarian position favor abolition of all tax subsidies to philanthropy?

This question, in turn, brings us to two fundamental points about the much-vaunted value that Tocqueville placed on philanthropy in America: he saw it not as the ideal but as a distinctly second-best arrangement. And he saw it not as a means of advancing the people’s will, whatever that might be, but as the only means available to move the America of his day toward what he implicitly took to be the proper end of all societies, what he called “civilization.” As we shall see, his desired civilization was distinctly neoclassical and republican.

As noted earlier, the current system offers no guidance to individual donors or voters regarding comparisons among charities or between charity provision and other provision. From a liberal democratic perspective, that silence may be golden. The point to note is simply that it leaves a normative gap here, as is the tendency of liberal democracy in general, under the liberal principle of neutrality toward life-plans. And here that silence is nearly total, which puts the liberalism reflected in our tax treatment of charity near the libertarian, minimal-state pole of the spectrum of liberal theory. Libertarians prefer the state to be silent on the relative merits of citizens' individual ethical systems.

This libertarian tendency of Tocquevillean charity is at least as evident in two other respects, by embodying unmistakable preferences on two very important issues. The for-profit, the governmental, and the cultural sectors are, to a very large extent, capable of producing the same goods and services. Thus, for example, organizations in each sector can and do operate elementary schools. So, more generally, funding for subsidized goods and services can come from voluntary contributions or coerced transfers, primarily taxes. Schools for those who cannot afford tuition can thus be funded by taxes or by gifts (or cross-subsidies). Tocquevillean philanthropy embodies a strong preference for both nongovernmental provision and donative financing. We need look at each bias, then at their interaction.

A charity need neither prove its superior efficiency in advance nor demonstrate it in operation in order to qualify for the exemption of its income; a charity is in effect simply presumed to be more efficient, economically or productively, than government provision. This implicit preference for charity over the state, in turn, shapes our culture; if we get what we cannot find or afford in the market from charity rather than the state, we come to expect it from charity rather than from the state. Thus the charitable sector grows, qualitatively and quantitatively, at the expense of the state. Predictions of the superiority of charity—its greater efficiency, its higher quality—become self-fulfilling prophecies. The tax system's preference for philanthropic provision, then, reflects demonstrably anti-statist, even libertarian, tendencies, tendencies not wholly apparent on its face but profoundly important in their cultural implications.

The tax system's preference for voluntary financing is, if anything, even more troubling. Tocquevillean philanthropy is biased against not only state provision of goods and services through its own agency, but also public financing of goods and services without regard to the provider. The basic problem with financing through

voluntary contributions is this: that system taxes civic virtue and, conversely, subsidizes social shirking. Consider, again, the case of public elementary schools. Every fall, in schools across the land, the call goes out from individual teachers and from central administrations for basic school supplies or the money with which to buy them. Presumably, those who respond to the call are those who can afford to; so far, so good. Let's focus, instead, on those who do not respond. Some, of course, are simply too poor; others are quite able to respond but not especially forthcoming. They are, in effect, free-riding on the parents who do pay. Those paying parents are, then, paying twice: not just their "share" but also the share of parents who are able but not willing to pay (or thrice, if we count the share of those parents who cannot afford to pay). If, by contrast, the schools' necessary supplies were paid for with tax revenues, the poor could be exempted and the burden placed on all parents who are able, whether or not they are willing. Voluntary financing shifts the burden to parents both willing and able; it is thus a peculiar, if not perverse, surtax on their civic virtue.

Such examples could, of course, be multiplied almost at will; it does not strain credulity too much to imagine that the same parents who supplied chalk and construction paper yesterday are the ones shipping body armor today to their sons and daughters in Iraq. These are not, however, worst-case scenarios; both these cases involve at least some measure of public provision. Few openly doubt we should have a public army; only a vocal minority questions whether we should have public schools. As this last example suggests, opposition to public financing of goods and services may well coincide with opposition to public provision of those services. Behind proponents of vouchers for privately operated schools, at least some suspect opposition to public financing of education as well.

This last critique is the most significant. Here we need to see that Tocqueville's own praise of American philanthropy was profoundly qualified. It was, he quite clearly believed, the best we Americans could do; it is not at all clear that he believed it best by any other standard. Tocqueville wrote *Democracy in America* in the 1830s, nearly a century before the New Deal, not to mention the GI Bill and the *Brown* decision; he cannot fairly be faulted for failing to foresee these later developments. By his lights, America was, in its very essence, a democracy, free from the mixed blessings of England's hereditary nobility or France's always powerful, sometimes terrible, state apparatus. And ours, of course, was not a very liberal democracy at that: women were disenfranchised, African Americans were enslaved, and states had established religions. Tocqueville's

praise of the central role of voluntary associations in American culture was grounded, we need to note, on the premise that Americans could get the goods and services they provided no other way. He saw America's dependence upon private associations not as the best imaginable social order but only the best that America could possibly achieve.

Behind what he remarked to be Americans' astonishing inclination to form associations as the response to the full range of perceived social problems, Tocqueville noted a distinctive element of the American national character:

The citizen of the United States is taught from infancy to rely upon his own exertions in order to resist the evils and the difficulties of life; he looks upon the social authority with an eye of mistrust and anxiety, and he claims its assistance only when he is unable to do without it. This habit may be traced even in the schools, where the children in their games are wont to submit to rules which they have themselves established, and to punish misdemeanors which they have themselves defined. The same spirit pervades every act of social life (1972, 1:191).

It was this engrained sense of self-reliance and distrust of government that made the promotion of private associations, in Tocqueville's view, critical to American democracy:

Nothing, in my opinion, is more deserving of our attention than the intellectual and moral associations of America. The political and industrial associations of that country strike us forcibly; but the others elude our observation, or if we discover them, we understand them imperfectly because we have hardly ever seen anything of the kind. It must be acknowledged, however, that they are as necessary to the American people as the former, and perhaps more so. In democratic countries the science of association is the mother of science; the progress of all the rest depends upon the progress it has made.

Among the laws that rule human societies there is one which seems to be more precise and clear than all others. If men are to remain civilized or to become so, the art of associating together must grow and improve in the same ratio in which the equality of conditions is increased (2:110).

Given American culture's entrenched dislike of government and American law's Constitutional rejection of a hereditary aristocracy, promoting private associations was, in his view, America's only way out of a kind of Cyclopean semi-

barbarism. Reliance on private associations, then, was not just America's best way to become, or remain, civilized; it was our only way, a Hobson's choice, not a utopian alternative. In that, Tocqueville's thinking was implicitly Aristotelian; his virtues were functions of the institutional arrangements he thought we Americans could not transcend (Aristotle 1943; see also Plato 1968). He knew that the "ought" implies the "can"; surely he also knew that *le mieux est l'ennemi du bon*.

Democracy and Meritocracy

We now need to see another, much more significant, sense in which Tocqueville's vision of both American democracy and its philanthropy is, at bottom, Aristotelian. The phrase "to remain civilized or to become so" necessarily implies that Tocqueville has an end in view, a goal for all societies, including our democratic society, which is not to be reduced, even in our democracy, to what the people, or the majority of the people, want. For Tocqueville, child of the Enlightenment and the classics that he was, that end is civilization, "to be or become civilized." In giving content to that end, he most assuredly looked beyond America's Jacksonian democracy, back to Europe and back to Europe's past, particularly to its classical Greco-Roman past.

Tocqueville wrote, we must remember, in the era of Jackson's racist and rowdy populist democracy, scornful of both Hamilton's Bank of the United States and Marshall's principle of judicial review. Had he looked only a bit further back in America's own past, he would have seen evidence of quite a different culture, a culture itself more supportive of both classical and Enlightenment values. In recounting Americans' aversion to government, he seems not to have noticed the role of the state in the early development of some of the most "Ivy" of our universities, not least Harvard and Yale. In that respect, they quite closely, and consciously, reflected similar synergies and hybrid origins in the histories of all of the great universities of Europe—Oxford, Cambridge, Edinburgh, and the Sorbonne.

More significantly for America's future, Tocqueville might have taken greater notice of Thomas Jefferson's alma mater, the College of William and Mary, and his fondest legacy, the University of Virginia. William and Mary was founded very much on the European university model, as a hybrid of public and private funding and control. The University of Virginia was both more neo-classical and more republican. It was a creature of the Commonwealth of Virginia, and it was to be the capstone of a universal system of publicly funded education (Malone 1981, 243). It became the model, within a very few years, for state universities across much of the South.

Perhaps, we can now appreciate, Tocqueville should have looked ahead as well. From the perspective of the populist era in which he wrote, even as Tocqueville could not see back to Jefferson the Democratic-Republican, so he could not see ahead to Lincoln the Whig, advocate of an activist government, state and national, much less Lincoln the Republican, public opponent of popular sovereignty on the question of slavery (and probably private opponent of popular sovereignty *tout court*). His Grand Army of the Republic neither defended America against foreign invaders nor secured its independence from a distant prince; it crushed the effort of the legally enfranchised voters of the Southern states to establish, by majority vote, an independent nation of their own, even as their forebears and Lincoln's had done.

Lincoln may have had a vision of government "of the people, by the people, and for the people," but not without serious qualifications. He meant not to follow popular whim but to lead the people to a higher sense of themselves, individually and collectively. On the eve of the Union's unconditional triumph, in his second inaugural address, he commended the people to "the better angels of our natures." To ensure that the Union triumphed, and triumphed unconditionally, Lincoln's administration suspended the writ of *habeas corpus*, aggressively suppressed the rival press, and dispatched troops to New York and other Northern cities to press reluctant citizens into the Grand Army of the Republic.

And Lincoln the Republican, remember, was not only the author of the Emancipation Proclamation and the savior of the Union. He was also the signer of the Morrill Act, which established the land-grant college system. Remember, too, that the land grant colleges now count among their number not just my grandfather's Clemson and my brother-in-law's North Carolina State, but also the Ivy League's Cornell. Designed to focus on agricultural and mechanical subjects, very much as Tocqueville would have recommended (1972, 2:154)¹, all land grant colleges eventually developed liberal arts majors and required humanities courses even for students in their more "practical" programs. Nor did this development cost them their popular support or public subsidies.

The federal court order that admitted James Meredith to the University of Mississippi, like the GI Bill that funded my father's veterinary studies and flooded the Ivy League with students far more diverse than their pre-war Yankee clientele, was, in one sense, distinctly egalitarian: both struck down or at least diminished, directly or indirectly, distinctions of race, creed, ethnicity, and even wealth.

And yet, in an even deeper and more significant sense, the GI Bill and the

desegregation orders were neither egalitarian nor democratic, but meritocratic and republican. The doors that they opened, literally and figuratively, were the doors of universities. Even after the invidious, extraneous bars of race, religion, and poverty had been removed, one essential, salutary bar remained: individual talent. To attend the college of their choice, James Meredith, my father, and your parents or grandparents had to pass more or less rigorous admissions requirements. In that sense, universities are distinctly undemocratic; no adult citizen can be denied a vote in a liberal democracy, but many are regularly denied seats in our public universities. Even after admission, a student's success depends on nondemocratic, as well as nonmarket, criteria. The student body does not vote on the curriculum, nor are individual students entirely free to choose what courses they will take. They follow a prescribed course, a course traditionally set to include at least a basic knowledge of the culture of the West and the world, all the way back to their beginnings.

That tradition of liberal education, of course, has been gravely damaged by the cultural radicalism of the 1960s and 1970s and the fundamentalism and multiculturalism of the 1980s and 1990s; it may well succumb to the consumerism and fiscal crises of the 2000s and 2010s. But, at least for now, the great bulk of our universities, public and private, secular and religious, are recognizable as the lineal descendants of Plato's academy and Aristotle's lyceum, of either Jefferson's University of Virginia or the Puritans' Harvard and Yale Colleges. Our universities, that is to say, have long been supported, quite generously until relatively recently, by a majority of our citizens, including many who never had the ability or the opportunity to attend university themselves.

My point? American democracy need not be indifferent to merit, even excellence. Our democracy, in our parents' time if not our own, has proved itself capable of promoting a distinctly non-populist, non-consumerist institution, the traditional Western university. And that gives us reason to hope, if not expect, that our democracy, properly prompted by "the better angels" of our philanthropic sector, may yet choose still further to distance itself from Jacksonian populism and modern consumerism, yet more fully to remake itself in the image of Jefferson and Lincoln's neoclassical republicanism.

A Neoclassical, Republican Philanthropy

On the foundation of this solidly American tradition, it is eminently possible to build a model of neoclassical, republican philanthropy. This alternative vision of philanthropy is neoclassical in two related senses. First, it adopts the traditional

subsidy theory's two-part understanding of philanthropy's publicly beneficial function: on the one hand, to ensure that the most needy receive the basic necessities of life; on the other, to encourage the highest forms of human excellence. Second, it interprets both halves—relief of need and promotion of excellence—in neoclassical terms, terms traceable back through America's republican origins to the Greco-Roman classics themselves.

This second kind of neoclassicism has several implications. For one thing, it focuses on a particular vision of human excellence, the most fully developed individuals in service of the public good. This is, of course, the model of Plato and Aristotle, and one could find no better exemplars than Thomas Jefferson and Abraham Lincoln. For another, the principal focus of its relief program would be to ensure that no Lincoln fails to achieve his or her potential on account of humble origins. Every Lincoln, on this model, would be the beneficiary of the kind of subsidized public education that Jefferson envisioned. With Jefferson, in other words, neoclassical philanthropy would reject the libertarian myth that Lincoln was born in a log cabin he built with his own hands. Thus the relief of distress and promotion of excellence are essentially different aspects of the same neoclassical republican goal: enable everyone in the Republic to become a leader of the Republic.

As this reference to Jefferson's educational ideal suggests, this neoclassical version of philanthropy would have no particular preference for philanthropic as opposed to state provision of essential services, either in the form of the relief of distress or the promotion of excellence. It would, in other words, seek the most efficient provider in terms of real productive efficiency, without the current system's heavy hand on the private side of the scale. And it would have a preference for public rather than private funding, taking into account the analysis, above, of the fundamental unfairness of private funding's "double tax" on virtue.

Finally, like both classical republican philosophers and the founders of the American republic, neoclassical republican philanthropy would be essentially secular, although not necessarily atheistic.² Any argument in favor of a particular form of relief or promotion of excellence would have to be made in secular terms. Private religious opinions and purported divine revelations would be respected, even legally protected, but they could not form the basis of the laws of the Republic.

The neoclassical republican philanthropy outlined here implies a very different treatment under the federal income tax code from the code's present preferential treatment of Tocquevillean philanthropy. The most salient differences

would be on the points at which our neoclassical critique found the current system to be problematic: its explicit embrace of alternative visions of the public good, its implicit assumption of the efficiency of private service providers, its implicit preference for funding public benefits with private donations instead of progressive taxes, and, as taken up in a longer treatment of these problems, its constitutionally suspect subsidy of religion (Atkinson 2011a).

The net effects of moving from the present subsidy of Tocquevillean philanthropy to a system of neoclassical republican philanthropy would be both a substantially smaller philanthropic sector and a substantially more restricted charitable exemption and deduction. Both would be displaced by the expansion of direct state provision of publicly beneficial goods and services, financed by appropriately increased and properly targeted taxes. This should mean both more publicly beneficial goods and services, as taxation addresses the free-rider problem of private contributions, and more equitable sharing of their costs, as taxation based on ability to pay replaces the current system's implicit double tax on virtue.

But here we must sound a serious, even proverbial reservation: The best is the enemy of the good, or will be, in the case of philanthropy, if we are not careful. Moving from the present system of Tocquevillean philanthropy to a neoclassical republican alternative poses a serious problem of the second-best. In the face of that blunt reality, the second-best solution, sad to say, is that the present system of subsidizing Tocquevillean philanthropy will have to stay pretty much as it is until the climate for progressive tax increases improves.

This is not to say that we who would advance Lincoln's republic have nothing to do but await the political millennium. In the neoclassical republican ideal, a primary function of both private philanthropy and the state is to educate citizens about public affairs. Promoting public debate about the dubious subsidy of Tocquevillean democracy is thus at least a step in the neoclassical republican direction. It will be a long haul, but all hauls begin the same way: shouldering the burden, striding forward with clear directions about the right path.

NOTES

¹ Tocqueville's views on education in a democracy were hardly what we would call democratic:

It is evident that in democratic communities the interest of individuals as well as the security of the commonwealth demands that the education of the greater number should be scientific,

commercial, and industrial rather than literary. Greek and Latin should not be taught in all the schools; but it is important that those who, by their natural disposition or their fortune, are destined to cultivate letters or prepared to relish them should find schools where a complete knowledge of ancient literature may be acquired and where the true scholar may be formed. A few excellent universities would do more towards the attainment of this object than a multitude of bad grammar-schools, where superfluous matters, badly learned, stand in the way of sound instruction in necessary studies (1972, 2:63).

² As I argue elsewhere, the same values that inform neoclassical republicanism can easily be found in the Scriptures and traditions of the West's three Abrahamist faiths, Judaism, Christianity, and Islam. See Atkinson, "The Future of Philanthropy" (2011b).

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