STANLEY CARLSON-THIES

Charitable Choice: Bringing Religion Back into American Welfare

According to the most influential metanarratives in American social-policy history, religion has been virtually irrelevant to the development of American welfare in the twentieth century. In crude terms, the main story line is that public welfare replaced religion—for good. The chief alternative story agrees that religion was replaced—but for bad. More carefully, the mainstream story portrays a "quasi-welfare state" supplanting the fragmentary assistance offered by local sectarian, voluntary, and municipal programs, and measures welfare progress by the growth of government provision at the expense of private and religious action.[1] The competing interpretation regards the creation of the government welfare system to constitute, in Marvin Olasky's terms, "the tragedy of American compassion," because effective, personal, and spiritual assistance was replaced by bureaucratic programs unable to address the deepest needs of the poor.[2] Although the two stories evaluate the outcome differently, they agree about the disappearance or irrelevance of religion to American public welfare.

But religion did not vanish. Care for the poor in twentieth-century America cannot rightly be understood without taking into account many roles of religion: providing a wide range of services outside the government welfare system, delivering government-funded services, advocating for changes in welfare policy, raising questions about how much and what kind of assistance is offered. Yet the metanarratives are right to this extent: as the American welfare state was constructed during the century, religion was marginalized, privatized; it became "boxed-in,"[3] sidelined. It did not disappear, but it was no longer a major player.

However, by the end of the century, a prominent role for religion was being revived. If in the early decades the growth of government involvement was applauded as a way to overcome the localism, moralism, and discre-

JOURNAL OF POLICY HISTORY, Vol. 13, No. 1, 2001.
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https://doi.org/10.1353/jph.2001.0020 Published online by Cambridge University Press

tionary nature of sectarian and private welfare, by the last decade many were welcoming an expanded role for religion precisely to reintroduce a personal, tailored, and value-centered approach. In its new role, though, religion would not be an alternative to government welfare but rather a supplement and even a partner. Federal welfare-reform legislation included a specific measure, the Charitable Choice provision, designed to make faith-based programs part of the mix of services offered by the public sector to families in need. Religion was being de-privatized, becoming explicitly part of the nation's public welfare system.[4] It is this more complicated story of religion and American welfare that I sketch here.

The Trajectory of Twentieth-Century American Welfare

Notwithstanding the rhetoric of some latter-day politicians and policy wonks, there never was a period in American history in which all care for the poor was provided by the churches. From the early days of European settlement, government played a role; indeed, in the colonial era local government was the main actor in the Poor Law system of assistance carried over from England. However, lacking a sharp division between church and state, even within this system religion was important; in the South, for instance, Anglican clergy administered public relief.[5] And as the new American nation took form after the Revolution and then matured, religious figures and organizations, along with other nongovernmental actors, assumed a major role in providing assistance.

Before the New Deal, arrangements in the new nation for care of the poor were fragmentary, locally diverse, and continually changing. After the Civil War, the federal government provided pensions to veterans and their dependents; in the early twentieth century, state governments began to operate workers compensation programs and to offer mothers' pensions. The main foundation of support throughout, however, was local government. But private and religious charities became essential resources: care for the needy was a prime example of that flowering of associational activity that so captured Alexis de Tocqueville's attention as characteristically American.

The flood of orphans produced by a mid-century cholera epidemic, for instance, prompted Protestant churches to organize the Chicago Orphan Asylum. Evangelical Christians burdened to rescue bodies as well as souls founded rescue missions in big-city slums to provide shelter, sustenance, counseling, and jobs, along with a Gospel message. The Salvation Army, brought over from England in 1880, is the best-known example. Olasky notes a wide range of efforts, such as New York City's Female Domestic Missionary Society for the Poor, started in 1816 to supply schooling as well as Bibles;

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the industrial school, "Working Girl's Society," and kitchen to prepare food for invalids that sprang from Grace (Episcopal) Church in Chicago; and the sewing schools, child-care facilities, and employment services organized by women from New York City synagogues. Catholics, to ensure that their needy received care compatible with their faith, or sometimes care at all, in the last quarter of the nineteenth century developed an extensive network of programs and facilities. [6] Some of these Catholic programs, as also some of the facilities and services organized by other religious groups, operated in conjunction with government, were funded in part by government and served as elements of the local welfare delivery systems.[7] African Americans after the Civil War, freed from slavery but excluded from the mainstream, started churches that were the center of community life and of self-help and charitable activity.[8] Settlement houses and Charity Organization Societies, efforts in the latter part of the century to make assistance more professional, themselves had religious roots.[9]

This dynamic and independent religious role dwindled, however, as a determined government welfare effort was launched in the 1930s. Indeed, the conventional story of welfare from the New Deal on hardly includes religion at all. In part this is simply a mistake: in fact, organizations such as Jewish Vocational Services, Catholic Charities, and the Salvation Army became essential elements of the welfare delivery system, and congregations and other religious organizations provided vital help to the needy outside of public welfare. Religion disappeared only from observers with secularist blinders.[10] Yet in a profound sense, the conventional story is correct, for the growth of government welfare spelled the marginalization of religion in welfare.

President Franklin D. Roosevelt's social legislation has been called the "big bang" of American public welfare.[11] His New Deal was a crisis response to the Great Depression and the overwhelming of private charity and state and local government assistance, to be sure. And yet it was also the catalyst and pattern, setting in motion the development of a new arrangement of social assistance that was then fleshed out in the postwar years and in the Great Society's War on Poverty in the 1960s. Religion was marginalized because of the way that pattern was woven, because of the particular path of American welfare development.

Two changes were key. One was the shift to a government-centered system of help, a change from a mix of local organizations, many of them connected with religion, to an arrangement of assistance in which the dominant element was a complex of secular government-operated and government-funded programs. Significantly, the very first regulation promulgated by the Federal Emergency Relief Administration, established in 1933 to funnel federal relief through state and local agencies, demanded the displacement of nongovernmental organizations. The regulation noted that state and

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local authorities depended on hundreds of private organizations to deliver welfare assistance but insisted that public funds henceforth could be spent only by public agencies. Personnel from private agencies would have to be made public agents if they were to handle government money.[12] This regulation initiated "the reversal of a tradition whereby voluntary agencies shaped the contribution of public agencies to social welfare." Enactment of the Social Security Act, two years later, "furthered the process and established the dominance of public welfare."[13]

Government had not been absent before and nongovernmental assistance did not now vanish. But the center of gravity had radically shifted. The major provider of services became government; direction and dynamism now came from government. And not just government: it would be the federal government that dominated as the senior partner even when programs had a joint federal/state structure. The content of welfare, the substance of society's care for the poor, would no longer be in large measure what local associations, religious as well as secular, devised. The major part of assistance became government assistance. And, given what the U.S. Constitution requires of government programs, government welfare meant secular welfare.

And welfare was government and secular even though, thanks to new federal rules in the late 1960s and early 1970s, the system increasingly came to depend on nonprofit organizations actually to deliver the services.[14] Such organizations were regarded as vendors, chosen to do what government specified, not as allies who naturally and legitimately would engage in the joint cause in their own way.[15] And while religious organizations could become vendors, what government sought and would accept from them was secular services. In principle, and to a significant degree in practice, religious organizations that decided to work with government welfare had to set aside their religion.[16]

The other key change was the trend to redefine welfare as nondirective assistance. For the "friendly visitors" of both religious and secular charities in the nineteenth century, and even for settlement-house workers and early social workers, who were additionally concerned about structural impediments, effective help for poor persons and families was understood in normative terms and dealt with choices and behavior. A growing preoccupation with disputes over "method"—social reform versus case work—and the professionalization of social work delegitimated such moral or normative concerns.[17] The New Deal welfare system, created in response to the economic crisis of the Great Depression in which the new poverty was obviously not the fault of the poor, and designed by activists more attuned to structural than behavioral causes,[18] gradually came to focus on income maintenance, not changes in life direction, despite recurrent reforms emphasiz-

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ing job training and employment.[19] Thus, by the early 1990s, as welfare advisers to Democratic President Bill Clinton ruefully noted, the symbol of public welfare had become the public assistance office, which devoted its effort not to helping families regain their footing but rather to determining the size of the government check to which they were entitled.[20] This was a style of assistance very different from the transformative and personal approach favored by earlier religious (and secular!) social activists—and by many current faith-based programs that operate outside the government system. The New Deal–Great Society welfare structure systematized and expanded care for the poor, but in a way that had little room either for the religious organizations that had been so prominent before or for some of their distinctive normative concerns.

The marginalization of religion in welfare was aided by trends in America's majority Protestant religion, which in the early part of the twentieth century was divided and weakened by the modernist-fundamentalist controversy over the relationship between the Bible and modern values.[21] Seeking spiritual purity, the evangelical or conservative current, in what one observer has labeled "the great reversal," abandoned its earlier commitment to social involvement,[22] and for much of the century also largely withdrew from cultural and political involvement in general. The mainline or liberal Protestant churches, by contrast, became even more involved in society and politics, but on a changed basis. In the nineteenth century, they crusaded to get their fellow citizens to adopt new ways so that America might become a Christian nation. Now the key concern seemed to be not so much the direction of the path as the pace of progress; in the Social Gospel movement, as Robert Handy suggests, "[t]he priorities had subtly been reversed" and Christian mission had become inspiration rather than the source of the goals.[23] As the government took over welfare, the mainline churches turned to urging it to assume ever greater responsibilities for the poor on behalf of society. In this new perspective, the role of religious institutions was subordinate to the government effort; thus the Presbyterian Church (USA) declared in 1989 that religious organizations collaborating with government ought to provide the services "in a way that does not support or advance religion."[24]

Most generally, the marginalization of religion in welfare was a signal instance of the sweeping redefinition in nineteenth- and twentieth-century America of the relationship between church and state, between religion and public life. What the U.S. Constitution requires, of course, is religious liberty and no established church—dual requirements originally thought compatible with the easy expression of religion in public life. As long as the vast majority was in some fashion Protestant, the resulting "informal and voluntary" establishment of Protestantism troubled few.[25] But it became problematic as the nation became increasingly heterogeneous in religious

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convictions. Catholics could see, for instance, that the supposedly common faith of the common school and purportedly superior moral upbringing offered to needy Catholic children in New York institutions were in fact Protestant creations that would displace Catholic beliefs.[26] Jews, a small minority with a long history of persecution, were always on guard against signs of official favoritism of Christianity. In a nation of many faiths, the dominance of one, even if not officially established, could not continue.

The U.S. Supreme Court's solution to the problem, promulgated in a series of decisions after World War II, was no-aid separationism: roughly, the government would support no religion and nothing government supported could be religious. The response to multiple faiths was for government to exclude all religion from those things it touched. This was not a workable doctrine for public policy, however. In the very case in which the Court announced that not a single dollar could go to religion, it authorized the state of New Jersey to pay to transport students to parochial schools (*Everson* v. *Board of Education,* 1947). Succeeding decisions are widely acknowledged also to lack consistency, and the justices have proposed various substitute interpretive schemes. Furthermore, the actual focus of the Court's no-aid decisions was K-12 schooling and not the wide range of government policy.[27] But no-aid separationism became the taken-for-granted meaning of the U.S. Constitution's church-state requirements, adopted without thinking even by some private foundations and corporations as if it prevented them, too, from aiding religious programs and organizations.

No-aid separationism obligated government's own welfare programs to be free of religion. It required also that the services government procured from nongovernmental providers had to be devoid of religion; one Supreme Court case thus held that "pervasively sectarian" organizations—thoroughly religious agencies—could not be government-funded providers because they would be unable to keep religion out of the services they would offer.[28] Such extreme fastidiousness about religion was more at the level of doctrine or aspiration than practice, to be sure: in fact, the various levels of government collaborated with organizations and programs that included significant religious practices. But the no-aid doctrine always put such collaborations at risk. At any time, lightening might strike and an official or a court might declare the arrangement illegal or unconstitutional.[29]

Inside the government welfare system that grew out of the New Deal's emergency response to the great economic crisis that overwhelmed the religious, private, and local-government programs that had constituted the nation's safety net, a variety of organizations of religious provenance were important players. But they were under great pressure to set aside their religious components. The rule of the government welfare system was this: no

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religion in government welfare and no religion in the services government buys from private providers. Religious organizations unwilling or unable to downplay the faith elements still did provide essential services as private parts of the nation's safety net; by one estimate, in 1997 their services were worth as much as $34 billion.[30] But such faith-based or pervasively sectarian organizations were outside the government system, outside the public welfare effort.

For people of faith, for whom caring for needy neighbors is a core religious requirement, the intentions of the New Deal–Great Society public welfare system, if not the practice, would have to be applauded. The system acknowledged that external or systemic causes of poverty could not be ignored and that families in need, whatever the cause, required and should receive assistance, even if local authorities and private charities were unable or unwilling to respond. And the rules excluding religion from public welfare were an attempt to preserve the rights and dignity of the poor, who, as most people of faith would readily acknowledge, should not be coerced into religious belief or treated as if need were the simple product of the absence of faith. Yet people of faith might legitimately wonder whether these gains had to be achieved in a way that so marginalized religion. Some faith communities—most Jews, the Catholic Church, mainline Protestants—willingly set aside "sectarianism" when they obtained government funds and were driven by their faith to advocate for improved government welfare. Yet their programs, too, had a distinct religious flavor, often including voluntary religious activities, religious symbols, and a readiness to discuss faith matters with clients.[31] How could they not? But such practices conflicted with the stated requirements of the system. Was such a welfare system the best way to assist those neighbors in need?

Reforming Welfare

American public welfare seems always to be the target of critique and reform, not so much with the aim of refinement but rather as an object of persistent battles about extent and value. Concerns about dependency—that is, in colloquial terms, whether programs are functioning as a "hand up" or only as a "handout"—have been particularly insistent. At the outset, President Roosevelt warned against the "dole" and sought to provide work opportunities wherever possible. In the 1960s renewed concern brought the introduction of modest work requirements for some welfare recipients. In 1988 continued concern about dependency led to the Family Support Act, combining a conservative demand for work requirements with a liberal demand for better government programs to prepare people for employ-

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ment.[32] Yet these reforms made only marginal changes in the actual operations and outcomes of public welfare.

In the mid-1990s radical welfare change arrived. Preceded by state experiments with various parts of the system under waivers from the federal government, in 1996 Congress and the president agreed to far-reaching changes designed to "end welfare as we know it," in President Bill Clinton's words. The changes affected most of the federal welfare system, and especially the core program, Aid to Families with Dependent Children, which was transformed into Temporary Assistance for Needy Families. The reforms on paper this time almost immediately began to be translated into changed practices on the ground.[33] Most significant of all, the 1996 reforms overturned the New Deal–Great Society design for public welfare, including its marginalization of religion. The 1996 federal welfare reform law reversed the trajectory of six decades of American welfare development.

Several trends set the stage for this dramatic change. One powerful factor was the growing belief by many, not only in the general public but also in government and academia, that much of the government welfare effort and expenditure had done little good and sometimes even did real harm to the poor. This was more than a revival of conservative animus against welfare and the federal government; if it took a libertarian like Charles Murray to propose as a "thought experiment" the abolition of welfare as the best way to help the poor, it was equally striking that progressive welfare scholar David Ellwood would chose the double-entendre title *Poor Support* for his book proposing fundamental changes to welfare on behalf of the needy.[34]

A renewed appreciation that poverty can have behavioral as well as economic roots was also important. No doubt people are often poor because of a lack of opportunity, racism, or other external factors. But scholars pointed out that sometimes persons and families were poor because of choices they themselves made: rejecting opportunities, falling into negative habits, responding to external challenges by giving up rather than redoubling their efforts.[35] If so, then to provide only income support or even job training without addressing problems of motivation or of mental preparedness to advance was to relegate people to a life outside the mainstream of society.

The other vital trend was the upsurge of interest in civil society and volunteerism. Activists in Communist-dominated Eastern Europe had turned to civil society as the social space for free action and thought to unmask and topple their totalitarian governments. In the United States, interest in civil society represented a renewal of that cultural instinct celebrated by De Tocqueville for Americans to turn to voluntary associations and personal activism, not first to government, to address social problems. Some conjured up a "nanny state" that had robbed civil society of its functions; the more general concern was whether, in building the government wel-

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fare system, the desire and capacity of people directly to help their neighbors had been allowed to wane and the appropriate place of nongovernmental assistance had been neglected.[36]

The 1996 federal welfare reform law, the Personal Responsibility and Work Opportunity Reconciliation Act, responded to these trends by changing the direction of welfare in three ways.[37] First, increasing federal dominance was replaced by increased state and local design and control of welfare. There is no longer a federal welfare system administered by the states according to detailed federal rules. In the new system, the federal government sends its welfare funds to the states as block grants, requiring the states to design and operate their own welfare programs within broad federal guidelines. Each state has its own welfare system now, and some have in turn authorized their counties to design their own programs. Government welfare is now able to take into account not only the particular characteristics of the welfare populations in the different jurisdictions but also the specific mix of economic opportunities and barriers and the particular set of nongovernmental resources.

Second, as suggested by the change of the name of the core welfare program to Temporary Assistance for Needy Families, the purpose of welfare has shifted from income maintenance to empowerment for self-sufficiency. Welfare is intended to prepare families to support themselves through employment rather than to be an alternative to work as a source of income. Certifying eligibility for cash benefits is no longer the dominant activity in welfare offices; instead, programs and rules are designed to provide both "help" and "hassle"—specific assistance such as job training, child-care assistance, and life-skills counseling coupled with pressure to move along: time-limits on benefits, employment requirements, and the like.[38]

Third, public welfare is being transformed from a government-centered activity to a collaborative effort with civil society, specifically including religious organizations. If the aim of welfare is helping people to attain self-sufficiency, then officials have to make connections with employers to find out how to prepare recipients for employment and to secure jobs for them, with churches and neighborhood groups to find mentors, and with schools, businesses, congregations, and social groups to patch together transportation alternatives. This turn to collaboration has been fostered as well by the devolution of welfare to the state and local levels, where decisions about welfare programs and case management are made by government officials who are closer to the actual institutions of civil society. The officials' need to find effective programs for recipients facing the new time limits on benefits has also fueled the search for new partnerships with nongovernmental organizations, including churches and other religious organizations that long existed outside the view of many officials.

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Congress, however, did more than give such indirect impulses to push public welfare into greater collaboration with civil society and with religious organizations. The federal welfare reform law contained a specific provision designed to expand the involvement of religious organizations in the public welfare effort. The law's Charitable Choice section specifically required state and local governments to open the door to faith-based organizations when buying services from nongovernmental sources. In reversing the trajectory of American government welfare, legislators set in motion a process to bring religion back into public welfare.

Ironically, this legislative effort was not the result of pressure from the faith communities, nor did it receive much initial support from them.[39] Their chief concerns focused on different issues. In simplest terms, mainline and progressive religious leaders put assistance to the poor high on their agenda and, regarding government as society's agent for good, pressed for expanded welfare programs and expenditures. Conservative religious bodies, concerned that open-ended government welfare creates dependency and convinced that religious institutions bear the primary responsibility for assisting the poor, advocated shrinking public welfare as the way forward. Neither perspective had much to contribute to legislators concerned at least as much with the quality of government welfare as with the hoary dispute about the quantity of government's effort.

In the welfare reform debates, progressive religious forces focused on cuts in federal welfare spending, the narrowing of welfare eligibility, the end of the legal entitlement to federal welfare, and the devolution of welfare control to lower governments. In their view, the legislative majority was pursuing not so much welfare reform as welfare abolition; what the process represented was the federal government's abandoment of its responsibility for the nation's poor. Talk about engaging civil society in public welfare was a sideshow; mainline churches already operated government-funded programs and did not need legislative changes to encourage or facilitate such involvement. And such talk was hollow at best, they argued, since cuts in government spending would actually reduce the resources available to such religiously affiliated programs. What the poor needed was more welfare help, not more religious charity.

On the conservative religious side, the focus of attention was the liberality of government welfare and not so much the movement to bring government and civil society closer together. The most active groups pushed to ensure that welfare would become more stringent, more focused on behavioral change and less on income support. For the Christian Coalition, the chief goal was the triumph of social-conservative aims such as time limits on benefits and discouraging unwed motherhood. This was not merely a bias for less government spending nor a crude attack on the

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poor; the incentives and disincentives of welfare were to be redesigned to encourage good choices by those unable to support themselves. But what is most striking is that groups such as the Christian Coalition paid little attention to the congressional impulse to bridge the gap between public welfare and religious assistance programs. Religious and other conservatives were more inclined to see government welfare and the churches as alternatives than as potential partners.[40]

The Promise of Charitable Choice

Buried in the pages of the long federal welfare law was a small section of legal language about religious service providers that has come to be called the Charitable Choice provision. In the welfare reform debates, there had been a great deal of loose conservative talk about abolishing the government's role in welfare and turning the task over to churches and private charities. But Charitable Choice was a different idea. It had to do with how government itself would carry out its welfare task. It was a guideline about procurement: Who could compete for government funds to provide welfare services, and on what terms? Charitable Choice did not substitute religious charities for government welfare. Instead, the new rules were meant to enable religious organizations to accept government funds without the pressure to sideline their religious character. The goal of Charitable Choice is to bring religion back into American public welfare.

The Charitable Choice provision, by its own declaration, is designed to permit religious organizations to collaborate with public welfare "on the same basis as any other nongovernmental provider," but "without impairing [their] religious character" and "without diminishing the religious freedom of beneficiaries."[41] To enable religious organizations to come inside the welfare system without leaving their religion behind the provision has four main features.

First, the new federal rule obligates state and local governments not to discriminate against religious organizations when making procurement decisions. That is, religious organizations, including churches and other congregations as well as religious nonprofit organizations, cannot be excluded from competing for contracts simply because they are religious, or too religious, or of the "wrong" religion.[42] But the aim is a level playing field, not one tilted in the opposite direction. Religious organizations get no preferences. Officials are to select whichever organization can best provide the services government has decided to offer to needy families.

Second, Charitable Choice obligates government to respect the religious character of religious organizations that do accept government funds

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to provide services. They do not become agents of government by winning contracts but retain their independent status as organizations defined and guided by religious belief. Specifically, Charitable Choice provides that the organizations have the right to display religious symbols and items in the places they provide government-funded services and, with some restrictions, to use moral and religious concepts and language in those services. Most important, religious organizations retain their right to hire only employees who agree with their religious principles. While such "discrimination" is extremely controversial, control of staffing is obviously vital to any organization with a particular mission, as both courts and legislatures have clearly affirmed for religious organizations not involved in procurement.[43]

Third, while protecting the faith character of religious organizations, Charitable Choice explictly protects as well the right of recipients to be assisted without religious coercion. Organizations may not use religion to discriminate against recipients seeking assistance. Recipients who enter a faith-based program can decline to take active part in any religious activities that are part of the program. And most important, the state or local government must be prepared to offer an alternative to any recipient who objects to receiving services from a religious provider. This requirement ensures that recipients are not forced to violate their convictions, makes it clear that government is not establishing any particular faith, and enables the religious organizations to manifest their convictions in their programs without fear of trampling on the rights of recipients.

Finally, Charitable Choice maintains the separation of church and state by requiring that religious organizations use the government funds for the public purpose of assisting needy families by means of specific services and not divert such funds to confessional activities such as worship, sectarian instruction, or proselytization.[44] Staff members, of course, are free to respond to clients' religious questions, and inherently religious practices like prayer or Bible study can be offered if funded by private money. But such activities must be optional parts of a program.

These new procurement rules constitute a string or condition that accompanies federal funds to state and local governments. That is, Charitable Choice established a new requirement for state and local procurement policy and thus also a new parameter for the redesign of state and local welfare services.[45] In the 1996 federal welfare law, Charitable Choice was attached to TANF funding—the core federal welfare money that can be spent on a wide variety of services. The next year Congress attached the provision to special services for hard-to-employ welfare recipients by adopting the Welfare-to-Work program as an amendment to the 1996 welfare law. In 1998, when federal legislators reauthorized the Community Services Block Grant Program, they added Charitable Choice language to funding

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for services administered by Community Action Agencies in low-income communities.

Charitable Choice, of course, does not mark the start of government procurement from religious organizations. As noted, American governments have for many years funded religious agencies to provide services to needy families. But the legitimacy of such collaborations has been in doubt and often the price of collaboration has been very high. Religious organizations seeking federal Community Development Block Grant funds, for example, have had to certify that they would hire staff without regard to religion, would "provide no religious instruction or counseling, conduct no religious proselytizing, and exert no other religious influence" in offering assistance, and would certify that the services would be provided in a place containing "no sectarian or religious symbols or decorations."[46] Such rules exclude many religious providers and cause many others to exclude themselves. Those service organizations that do participate have to so downplay their religious elements that they have come to be identified as "religiously affiliated" or "religion-sponsored" agencies to emphasize that their specifically religious elements have had to be muted or eliminated. A religious motivation for service was officially acceptable but a religious shaping or openness in the services was officially not. Some religious groups regarded the restrictions as acceptable: the opportunity to serve outweighed the limitations or the specific services involved needed no overt religious content. But there could be no doubt that, as far as the official government attitude went, the religious providers were welcomed despite, and not because of, their religious character.

Charitable Choice holds a very different emphasis. Here eligible religious organizations are typically termed "faith-based" to underline their right to retain their faith characteristics and to offer as part of the public welfare effort programs that embody a religious perspective. In this redesigned collaboration framework, government is charged with protecting, rather than suppressing, those religious characteristics that define the organizations and give their services their particular flavor. The presumption is that religious organizations have something unique to offer precisely because of their faith basis. If the government considers such an organization's services to be especially effective, then it is counterproductive to require the organization to strip away those things that define it and make it work. Charitable Choice ensures that religious organizations can bring their religion with them when they collaborate with the government welfare system, not leave the faith elements behind as irrelevant or unacceptable.

The redesigned rules for procurement presume and exemplify a new church-state framework. In place of no-aid separationism, Charitable Choice rests on the constitutional concept of government neutrality, an alterna-

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tive interpretative scheme which has found increasing favor with the Supreme Court.[47] Here the government's goal is not to avoid any possible assistance to religion, as if the First Amendment is intended to disadvantage people of faith and their institutions. What it must do, rather, is to treat on an equal basis people and organizations of any faith or none. When it selects service providers it should not uniquely disqualify religious organizations on the ground that they are religious or "pervasively sectarian" but instead evaluate all competitors by their promise of good and cost-effective assistance.

No-aid separationism requires religion to be kept out of government-funded services so that no client will be subject to coerced belief. Neutrality lets religion in and protects clients by ensuring that they can choose a different provider, if their conscience requires it. And rather than exclude "pervasively sectarian" providers in order to prevent government endorsement or support of religion, neutrality allows faith-based providers to accept government funding as long as they use the funds for the designated purpose of serving the needy, rather than for inherently religious practices. The neutrality principle claims that, through rules such as Charitable Choice, government can accept faith-based organizations into the public welfare effort without returning to the old and unconstitutional practice of an informal or formal religious establishment.

Some religious leaders regard even these new terms of collaboration as too restrictive. Fearing that any close tie with government will erode the spiritual mission of social ministries, some conservative religious and political figures have promoted expanded tax benefits for donations to religious and private charities as a better way than Charitable Choice for government to increase the resources of the faith sector.[48] Some evangelical and fundamentalist leaders, arguing that sharing the Gospel is the heart of an authentic helping relationship, worry that the bar on using government funds for proselytizing signifies a covert government bias against robust faith-based service programs. Others have criticized the requirement that clients be allowed not to actively take part in religious activities. Programs designed to transform the lives of the addicted or persistently homeless, they argue, will lose their effectiveness if clients can refuse to be fully engaged in every part of a program. The high value of preventing coercion is already secured by the guarantee of an alternative provider.

Other critics, both religious and secular, have condemned Charitable Choice for allowing too much religion into public welfare and into government's collaboration with religious providers. Separationists worry that religious coercion is likely because, notwithstanding the provision's features to protect clients, it does not specifically require governments or religious agencies to inform recipients of their option not to actively partici-

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pate in religious activities and their right to receive services from another provider. And even if notice is given, some worry that vulnerable clients may put up with objectionable practices for fear of losing benefits.

But these critics' most basic objection is to the very inclusion of faith-based providers in government-funded welfare. Such organizations cannot and will not separate out the (improper) religion from the (proper, i.e., secular) social services government wants to fund. Government will end up supporting religion; clients will end up indoctrinated, not assisted. The only solution is to exclude "pervasively sectarian" providers, allowing in only religious affiliated organizations, religious organizations that run separate, secular, social-service programs.

But that, of course, was the status quo before Charitable Choice. It rests on an interpretation of the Constitution that demands that government welfare assistance be secular and any assistance that incorporates religion be kept out on the private margins of society. This is a public policy position that requires religious programs to be excluded from public welfare, no matter how effective they are. By the end of the twentieth century, it was no longer so obvious to policy makers, analysts, and the public that such exclusion constitutes good welfare policy or is dictated by the Constitution. On the campaign trail for the Democratic nomination for president in 1999, Vice-President Al Gore made the case for including religion instead: "As long as there is always a secular alternative for anyone who wants one, and as long as no one is required to participate in religious observances as a condition for receiving services, faith-based organizations can provide jobs and job training, counseling and mentoring, food and basic medical care. They can do so with public funds—and without having to alter the religious character that is so often the key to their effectiveness."[49] These are just the features of Charitable Choice.

Religion and American Welfare in the Twenty-First Century

Charitable Choice is designed to make government welfare more inclusive by changing the policies that kept religion out. Government programs themselves have to be operated without reference to religion, but by purchasing services from faith-based providers government can bring religion back into public welfare. Procurement conducted according to Charitable Choice is designed to do just that: religiously affiliated providers that have traditionally accepted government funding no longer need to sideline their faith commitments[50] and faith-based organizations that always avoided government for fear of secularization—or that were prevented from participating because government officials rejected them as too religious—no longer need

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to remain outside of the government-funded welfare system. The legitimacy of these new arrangements no doubt will be tested in the courts. Assuming they survive Supreme Court review, can we expect that public welfare in the new century will be markedly more inclusive of faith-based providers and programs?

It appears that Charitable Choice is not merely a momentary fancy of a few politicians desperate for something different. Federal legislators have continued to propose new applications for the principle—to programs for the homeless and addicted, to juvenile-justice services and efforts to strengthen fatherhood, and even, in a "Charitable Choice Expansion Act," to all federal funds that flow to nongovernmental providers either directly or through lower governments.[51] A notable aspect of the presidential primary campaign in 1999 and 2000 was the commitment of both Al Gore, the leading Democratic candidate, and George W. Bush, the top Republican contender, to implementing and expanding Charitable Choice.[52] A public-opinion poll by the centrist Democratic Leadership Council in early 1999 showed that very large majorities of Republicans, Democrats, and independents agreed that America's social problems can better be solved by "closer collaboration" between government and religious and charitable associations than by either government or civil society acting alone.[53]

Many religious leaders have real concerns, however, and state and local officials have been slow to come into compliance with Charitable Choice. In the faith communities, theological conservatives worry about the risks of secularization, despite the new rules; progressives fear that expanded religious involvement will allow government to abandon its own welfare role, even though Charitable Choice is about government procurement, not government load-shedding. Yet, through the Christian Roundtable on Poverty and Welfare Reform, organized by the progressive-evangelical Call to Renewal movement, Protestant and Catholic leaders from all parts of the theological spectrum have endorsed Charitable Choice as one key tool in the fight against poverty,[54] and groups ranging from the National Association of Evangelicals to the Interfaith Community Ministries Network and the California Council of Churches have endorsed the concept. Despite the adamant opposition of most Jewish civil-liberties groups, some Jewish leaders have urged that Charitable Choice offers an appropriate and welcome way for faith to become reintegrated into public social services.[55]

State and local officials, charged with redesigning their welfare systems, have often found other issues more pressing than the task of ensuring that their procurement practices comply with Charitable Choice. Some have been paralyzed by fears of litigation from separationist groups; many resist making the Charitable Choice exception to their anti-discrimination laws. In any

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case, under the logic of devolution, the new requirement was passed along to the states without any direct federal guidance or oversight. Nevertheless, obligated to improve the effectiveness of welfare services, freed to experiment with new programs, and liberated by the national mood favoring involvement of the faith community, state and local officials in many places have actively pursued collaboration with faith-based organizations, most commonly by constructing nonfinancial arrangements in which volunteers from congregations are enlisted to provide mentoring to recipients making the transition from welfare to employment.

Changes in actual procurement policy and practice have been slower to take root. Research in nine states (California, Texas, New York, Illinois, Wisconsin, Michigan, Mississippi, Virginia, and Massachusetts) in 1999 showed that, three years after Charitable Choice was adopted, some 84 new financial collaborations with faith-based organizations had been arranged, many with groups that had never before worked with government. Although a modest number, many of the contracts involve multiple congregations and religious nonprofit agencies. And, just as with many of the new nonfinancial collaborations, often what the religious organizations are bringing to the partnerships and to the welfare families is something new for public welfare: "upclose and personal" assistance—counseling, supportive networks, advice, intensive life-skills and family-management training—help not only to find employment but to organize a life off welfare.[56]

A large expansion of religious involvement in public welfare is necessarily a matter of decades and not years: religious organizations have to change priorities, expand capacity, and develop new management capabilities; government agencies have to learn how to reach out to the faith community and they need to redesign procurement practices to remove bureaucratic obstacles to new participants. At this early stage, then, it is impossible to predict what ultimate effect Charitable Choice will have on the array of providers and programs that are part of American public welfare. Given current trends, the sweeping change in the trajectory of American welfare, and the growing interest in the role of religion and spirituality in life and society, it seems safe to expect that, via Charitable Choice or some other innovation, religious organizations will play a significantly larger role in American welfare in the new century. Such inclusion poses a series of challenges to the faith communities, to the government welfare system, and to the Charitable Choice idea itself.

For the government, an inescapable issue is how to balance the autonomy rights of providers (Charitable Choice asserts their "independence from Federal, State, and local governments") with its duty to maintain high standards and to protect the poor who receive services from nongovernmental

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providers. When is the voluntary sharing of a religious message too insistent? How can the requirement of demonstrated competence be softened to allow new providers to win contracts, but without a loss of quality? Equally pressing is the challenge of assuring adequate services throughout a jurisdiction when the delivery system is increasingly comprised of multiple providers offering a variety of services of varying quality in diverse locations. And, particularly in rural areas, the requirement of an alternative provider for clients who reject religious programs may become difficult to meet if government increasingly contracts with faith-based organizations.

The faith communities face the challenge of resisting cooptation as collaboration increases, a concern of both conservatives and progressives, albeit for different reasons. The latter worry that religious care for the poor may become confined to acts of charity, to the neglect of working for social justice, including pressing for adequate government social spending and programs.[57] Conservatives worry that, even if government funds can be obtained without secularizing requirements, those funds may have two pernicious effects. Faith-based organizations may become habituated to government support, chasing after welfare funding even when their mission and competence do not match the government requirements and even if restrictive conditions are reintroduced. And even without such problems, the availability of government funds can make organizations lose their dependence on the communities of compassion that gave birth to them, as energy formerly devoted to communicating with supporters and raising funds from them is diverted to grant writing and government paperwork.

Faith communities need to be concerned, as well, about becoming too identified with the ideology of welfare. Because not all life choices are equally positive for people and because it is a responsibility generally acknowledged by religious traditions that those able to do so should support themselves and contribute to others, faith communities generally seem to find it acceptable, at least in principle, that welfare assistance requires positive action by those requesting help. Nevertheless, unmerited help—mercy—is at the heart of the religious requirement to assist the neighbor in need. Faith-based organizations that choose to collaborate with government welfare, and the faith communities in which they are rooted, need to decide how they can cooperate with legitimate welfare requirements while still extending open arms of mercy to those unable or unwilling to meet the requirements.

A final set of challenges, for both government and religion, is to go beyond Charitable Choice. Charitable Choice is a rule for procurement, for government purchase of services. But the best response to need is a compassionate society and not only a generous and effective welfare system; a strong

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safety net includes assistance organizations in civil society that respond directly to crises without the orchestration of government. What then can government do to strengthen civil society? Is its only positive contribution to get out of the way, as libertarians urge? If there is an active role it can play, what is it? Charity tax credits, as some conservatives have proposed? Expanded deductions for charitable donations? Greater immunity from liability when mistakes are made in good faith? Technical assistance from government agencies?

A difficulty within Charitable Choice itself also requires attention. The concept presumes that religious organizations can best serve the poor if they are able to embody some specific religious vision. Effective services will be "sectarian"—not in the sense of demanding that clients learn esoteric dogma but because the programs reflect some particular religiously shaped diagnosis and remedy. To break free of a dependency on drugs or to accept the authority of some young upstart at work may require a narrative that is morally and religiously thicker than a general appeal to the American creed or the values of our consumer society. And yet, when procurement officials select a provider, they are required by Charitable Choice to disregard religion, treating effectiveness as if it had no connection with religion at all, neither the religion of the provider nor the beliefs of those who are seeking assistance. It is as if a school system, understanding at last that robust values undergird effective education, were to give the contract for operating all the schools of the district to the Catholic parochial school authorities, forgetting that robust values are specific so that good education is configured differently by different communities of belief.

The appropriate alternative to banishing religion from education is to fashion a system of school choice that honors the variety of educational/religious convictions of the district's families.[58] In the same way, the full promise of Charitable Choice may require accepting a positive tie between effectiveness and religion. Officials should seek a variety of providers, secular and religious, when the services they want to procure touch directly on morality and faith—services such as life-skills training, mentoring, substance-abuse treatment, overcoming chronic homelessness, abstinence education. The goal is not a quota system; officials should not presume that religious and denominational differences will always generate different welfare services. It should be up to the various faith communities and faith-based providers to decide if some different variety of service needs to be offered. But government officials will be on safe ground if they assume that no one provider, no one style of a service, is unambiguously the best, the most effective, for every family and person needing assistance. Some form of religious or world-view pluralism may be the ultimate reform, going beyond religious

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neutrality in procurement, as a solution to enforced secularism in public welfare.[59]

Religion was a large part of American welfare before welfare became (federal) government welfare. The construction of that government welfare system was, in many ways, a great advance. A strong government role meant care for the poor became more constant, less dependent on geographic location or the waxing and waning of moods of generosity. And with its presumption that poverty is largely a structural issue, the expanded government role redressed the over-moralization of the older approaches. But it was an unfortunate thing, for the poor, for religion, and for government, that in building the government welfare system religion was shoved to the margins.

The challenge for America is not to return to the days before the government became involved in welfare, but to move ahead to a new era in which religion will once again also be fully involved in welfare. Public welfare needs to be redefined not as the welfare government delivers, but as the joint effort of government and civil society, including faith-based organizations. What we need is a model of "equal partners,"[60] in the words of Luis Lugo. Care of the needy is the "shared responsibility" of various social institutions: government must play a key role, but the poor are not exclusively the government's responsibility. In particular, faith-based organizations have a major role to play. They "succeed because they minister to the needy in a way that is qualitatively different, one that addresses matters of the heart and draws on spiritual and moral resources largely beyond the reach of government." So collaboration is essential. But in that collaboration, faith must be given room. When faith-based organizations "cooperate with various levels of government in pursuit of common ends, [they must] guard jealously their religious identity, knowing that it is precisely because of it that they contribute to the common good."[61]

It is just such a collaborative relationship of respect that Charitable Choice institutes. The government's responsibility for the needy is not tossed out with a utopian hope that churches will miraculously reconstitute themselves as the national safety net. Instead religious organizations are brought into the public welfare effort—with their faith basis intact. But Charitable Choice does not replace the "naked public square"[62] with a theocratic welfare state. Instead choice is structured into welfare so that the religious liberty of recipients, both those who reject religion and those seeking holistic help, can be respected. The promise of Charitable Choice is a public welfare system enlarged to include religious organizations and the faith dimension of life.

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Notes

1. See, for example, Michael Katz, *In the Shadow of the Poorhouse: A Social History of Welfare in America* (New York, 1986), who also proposes the "quasi-welfare state" characterization. On the "Europe envy" of this main story line, see, for example, Ram A. Cnaan, with Robert J. Wineburg and Stephanie C. Boddie, *The Newer Deal: Social Work and Religion in Partnership* (New York, 1999), 86–87, and Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, Mass., 1995), 3ff.

2. Marvin Olasky, *The Tragedy of American Compassion* (Washington, D.C., 1992). See also James L. Payne, *Overcoming Welfare: Expecting More from the Poor–and from Ourselves* (New York, 1998).

3. Martin E. Marty, *The Modern Schism: Three Paths to the Secular* (New York, 1969), 98.

4. On the concept of "deprivatization," see José Casanova, *Public Religions in the Modern World* (Chicago, 1994).

5. Katz, *In the Shadow of the Poorhouse,* 14. In addition to Katz, particularly useful overviews of American welfare history for present purposes include Walter I. Trattner, *From Poor Law to Welfare State: A History of Social Welfare in America,* 4th ed. (New York, 1989), and June Axinn and Herman Levin, *Social Welfare: A History of the American Response to Need,* 3d ed. (New York, 1992).

6. These examples are drawn from Diana S. Richmond Garland, *Church Agencies: Caring for Children and Families in Crisis* (Washington, D.C., 1994); Norris Magnuson, *Salvation in the Slums: Evangelical Social Work, 1865–1920* (Grand Rapids, Mich., 1990); Diane Winston, *Red-Hot and Righteous: The Urban Religion of The Salvation Army* (Cambridge, Mass., 1999); Olasky, *Tragedy of American Compassion;* and Dorothy M. Brown and Elizabeth McKeown, *The Poor Belong to Us: Catholic Charities and American Welfare* (Cambridge, Mass., 1997).

7. For the struggle of Catholic organizations to be able to collaborate with public agencies, see Brown and McKeown, *The Poor Belong to Us*.

8. See, for example, C. Eric Lincoln and Lawrence H. Mamiya, *The Black Church in the African American Experience* (Durham, 1990), and Andrew Billingsley, *Mighty Like a River: The Black Church and Social Reform* (New York, 1999).

9. Cnaan, *Newer Deal,* 58ff.; Andrew W. Dobelstein, *Moral Authority, Ideology, and the Future of American Social Welfare* (Boulder, Colo., 1999), 60–75.

10. Ram Cnaan firmly establishes this point in his *Newer Deal*.

11. Theda Skocpol quotes the "big bang" characterization from Christopher Leman, albeit by way of criticizing the notion for minimizing earlier federal action and the complexity of American welfare history. Skocpol, *Protecting Soldiers and Mothers,* 4.

12. Axinn and Levin, *Social Welfare,* 185–201; the rule is reprinted at 204–5. See Brown and McKeown, *The Poor Belong to Us*, chap. 5, for Catholic Charities' battle to retain a public role despite the new rule.

13. Axinn and Levin, *Social Welfare,* 198.

14. Steven Rathgeb Smith and Michael Lipsky, *Nonprofits for Hire: The Welfare State in the Age of Contracting* (Cambridge, Mass., 1993), 53ff.; Lester M. Salamon, *Partners in Public Service: Government-Nonprofit Relations in the Modern Welfare State* (Baltimore, 1995).

15. Cf. Smith and Lipsky, *Nonprofits for Hire*.

16. Joe Loconte, *Seducing the Samaritan: How Goverment Contracts Are Reshaping Social Services* (Boston, 1997). For more nuanced views, see Stephen V. Monsma, *When Sacred and Secular Mix: Religious Nonprofit Organizations and Public Money* (Lanham, Md., 1996), and especially Charles L. Glenn, *The Ambiguous Embrace: Government and Faith-based Schools and Social Agencies* (Princeton, 2000).

17. Dobelstein, *Moral Authority,* chap. 3; Cnaan, *Newer Deal,* chap. 4.

18. Cf. Dobelstein, *Moral Authority,* chaps. 3–4; Axinn and Levin, *Social Welfare,* 199–200.

19. Of course, welfare broadly includes assistance for those unable to work and benefits tied to employment. The persistent concern about dependency has to do with nonwork (and more generally, isolation from society) by those who could support themselves and their

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dependents. On this aspect of the normative issue in welfare, see esp. James W. Skillen, "The Question of Being Human in Assessing the Requirements of Welfare Policy Reform," in *Welfare in America: Christian Perspectives on a Policy in Crisis,* ed. Stanley W. Carlson-Thies and James W. Skillen (Grand Rapids, Mich., 1996), 119–44; Lawrence M. Mead, *Beyond Entitlement: The Social Obligations of Citizenship* (New York, 1986); and Neal Gilbert, *Welfare Justice: Restoring Social Equity* (New Haven, 1995).

20. Mary Jo Bane and David T. Ellwood, *Welfare Realities: From Rhetoric to Reform* (Cambridge, Mass., 1994), 2–7.

21. See, for example, Mark A. Noll, *A History of Christianity in the United States and Canada* (Grand Rapids, Mich., 1992), chap. 14.

22. David O. Moberg, *The Great Reversal: Evangelism and Social Concern,* rev. ed. (Philadelphia, 1977).

23. Robert T. Handy, *A Christian America: Protestant Hopes and Historical Realities,* 2d ed. (New York, 1984), 142.

24. Presbyterian Church (USA), *"God Alone is Lord of the Conscience": Policy Statement and Recommendations Regarding Religious Liberty*, Report of the Committee on Religious Liberty and Church/State Relations (adopted by the 200th General Assembly, 1989), 31.

25. Robert T. Handy, *Undermined Establishment: Church-State Relations in America, 1880–1920* (Princeton, 1991), 7.

26. Charles Leslie Glenn Jr., *The Myth of the Common School* (Amherst, 1988); Brown and McKeown, *The Poor Belong to Us.*

27. Useful dissections of no-aid separationism include Monsma, *When Sacred and Secular Mix;* idem, *Positive Neutrality: Letting Religious Freedom Ring* (Westport, Conn., 1993); Carl E. Esbeck, "A Constitutional Case for Governmental Cooperation with Faith-based Social Service Providers," *Emory Law Journal* 46, no. 1 (Winter 1997): 1–41; and Douglas Laycock, "The Underlying Unity of Separation and Neutrality," *Emory Law Journal* 46, no. 1 (Winter 1997): 43–74.

28. The case is *Bowen* v. *Kendrick* (1988). For commentary on the case and dispute about its outcome and about the validity of the "pervasively sectarian" concept, see, for exmple, Carl H. Esbeck, "The Neutral Treatment of Religion and Faith-based Social Service Providers: Charitable Choice and Its Critics," and Alan Brownstein, "Constitutional Questions About Charitable Choice," both in *Welfare Reform and Faith-based Organizations,* ed. Derek Davis and Barry Hankins (Waco, Tex., 1999), at 173–217 and 219–65, respectively.

29. This is the strong argument of Monsma, *When Sacred and Secular Mix.*

30. Cnaan, *Newer Deal,* 181.

31. Monsma, *When Sacred and Secular Mix,* chap. 3.

32. Mead, *Beyond Entitlement;* and Lawrence M. Mead, *The New Politics of Poverty: The Nonworking Poor in America* (New York, 1992).

33. United States General Accounting Office, *Welfare Reform: States Are Restructuring Programs to Reduce Welfare Dependence*, GAO/HEHS-98-109 (Washington, D.C., June 1998); Richard P. Nathan and Thomas L. Gais, *Implementing the Personal Responsibility Act of 1999: A First Look* (Albany, N.Y., 1999).

34. Charles Murray, *Losing Ground: American Social Policy, 1950–1980* (New York, 1984); David T. Ellwood, *Poor Support* (New York, 1988).

35. Michael Novak et al., *The New Consensus on Family and Welfare: A Community of Self-Reliance* (Washington, D.C., and Milwaukee, 1987).

36. Peter L. Berger, and Richard John Neuhaus, *To Empower People: From State to Civil Society,* ed. Michael Novak, 2d ed. (Washington, D.C., 1996); Don E. Eberly, ed., *Building a Community of Citizens: Civil Society in the 21st Century* (Lanham, Md., 1994); E. J. Dionne Jr., ed., *Community Works: The Revival of Civil Society in America* (Washington, D.C., 1998).

37. For a summary of the law, see *Congressional Quarterly 1996 Almanac* (Washington, D.C., 1997), 6-13–6-21; *Congressional Quarterly 1997 Almanac* (Washington, D.C., 1998), 2-57–2-58, 6-31–6-36.

38. The "help and hassle" idea is from Lawrence M. Mead, "Welfare Employment," in *The New Paternalism: Supervisory Approaches to Poverty,* ed. Lawrence M. Mead (Washington,

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D.C., 1997), 61–63.

39. However, Charitable Choice's sponsor, Senator John Ashcroft (R-Mo.); the author of the idea, Carl Esbeck, at the time professor of law at the University of Missouri–Columbia; and the two organizations that worked most closely to craft and promote the concept, the Center for Law and Religious Freedom of the Christian Legal Society and the Center for Public Justice, all belong to the evangelical Protestant faith community.

40. Stanley W. Carlson-Thies, "'Don't Look to Us': The Negative Responses of the Churches to Welfare Reform," *Notre Dame Journal of Law, Ethics & Public Policy* 11, no. 2, "Entitlements" special issue (1997): 667–89.

41. Charitable Choice was section 104 of the federal welfare reform law, P.L. 104–93. The section is reprinted, with extensive commentary and guidance, in *A Guide to Charitable Choice: The Rules of Section 104 of the 1996 Federal Welfare Law Governing State Cooperation with Faith-based Social-Service Providers* (Washington, D.C., and Annandale, Va.: Center for Law and Religious Freedom of the Christian Legal Society and Center for Public Justice, January 1997).

42. States may require houses of worship to establish separate 501(c)(3) organizations to receive the government funds and provide the services; states cannot require those separate organizations to be secular.

43. Stanley W. Carlson-Thies, "Faith-based Institutions Cooperating with Public Welfare: The Promise of the Charitable Choice Provision," in *Welfare Reform and Faith-based Organizations,* ed. Derek Davis and Barry Hankins (Waco, Tex., 1999), 34–35.

44. When the government funds arrive via voucher rather than direct government contract, Charitable Choice does not require inherently religious elements to be separated out. The Court recognizes that, in the case of vouchers, the choice of provider is made by the recipient and not by government, eliminating establishment concerns. Of course, here, too, the government funds have to be used to provide the government-mandated social services.

45. Charitable Choice is the rule governing the federal funds even in states with "Blaine" amendments forbidding state funding of religious organizations; if necessary, such states have to keep the federal funds separate from their own funds and adhere to the Charitable Choice rules in expending the former. See *A Guide to Charitable Choice,* 25–26. Charitable Choice is an option for states only in the sense that, as a rule governing procurement, it is moot if a state uses none of the funds to purchase services from outside providers.

46. Quoted in Carlson-Thies, "Faith-based Institutions Cooperating with Public Welfare," 38. See also Monsma, *When Sacred and Secular Mix,* chaps. 3–5; Loconte, *Seducing the Samaritan;* and Carl H. Esbeck, *The Regulation of Religious Organizations as Recipients of Governmental Assistance* (Washington, D.C., 1996).

47. See, for example, Esbeck, "A Constitutional Case"; Esbeck, "Neutral Treatment of Religion and Faith-based Social Service Providers"; Monsma, *Positive Neutrality;* and Stephen V. Monsma and J. Christopher Soper, eds., *Equal Treatment of Religion in a Pluralistic Society* (Grand Rapids, Mich., 1998).

48. For example, Marvin Olasky, *Renewing American Compassion* (New York, 1996). For other views, pro and con, on Charitable Choice, see esp. Davis and Hankins, eds., *Welfare Reform and Faith-based Organizations*. Differing viewpoints are summarized in Carlson-Thies, "'Don't Look to Us,'" and in Martha Minow, "Choice or Commonality: Welfare and Schooling After the End of Welfare As We Knew It," *Duke Law Journal* 49 (1999): 493–559.

49. "Remarks As Prepared for Delivery By Vice President Al Gore On the Role of Faith-based Organizations," 24 May 1999 (www.algore2000.com campaign website).

50. Particularly noteworthy is how Charitable Choice has encouraged some in the Salvation Army to reconsider the acceptability of past government regulations. See Diane Winston, *Soup, Soap, and Salvation: The Impact of Charitable Choice on the Salvation Army* (Washington, D.C., 2000). The Army's constant emphasis on maintaining its integrity is emphasized in Glenn, *Ambiguous Embrace,* "Interlude: The Salvation Army."

51. Senator John Ashcroft (R-Mo.) introduced this measure in both the 105th and 106th Congresses.

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52. Gore, "Remarks"; George W. Bush, "The Duty of Hope," speech delivered in Indianapolis, 22 July 1999 (www.georgebush.com campaign website), and "'The Duty of Hope' Fact Sheet," 22 July 1999.

53. Mark Penn, "The Community Consensus," *Blueprint: Ideas for a New Century (Democratic Leadership Council)* 3 (Spring 1999), 52–53.

54. Jim Wallis, "Overcoming Poverty: A New Era of Partnership," in *Welfare Reform and Faith-based Organizations,* ed. Derek Davis and Barry Hankins (Waco, Tex., 1999), 160–61.

55. Marshall Breger, "The Jewish Community and Its Liberal Allies Are Prepared to Sacrifice the Needy and Indigent on the Altar of Church-State Ideology," *Moment,* August 1998, 18–19; Nathan J. Diament, "The Debate over 'Charitable Choice': The Case for Gore's Proposal," *New York Jewish Week,* 18 June 1999.

56. Amy L. Sherman, *The Growing Impact of Charitable Choice: A Catalogue of New Collaborations Between Government and Faith-based Organizations in Nine States* (Washington, D.C., March 2000).

57. For these and other concerns, see Davis and Hankins, eds., *Welfare Reform and Faith-based Organizations;* Glenn, *Ambiguous Embrace;* and Amy L. Sherman, *Restorers of Hope: Reaching the Poor in Your Community with Church-based Ministries That Work* (Wheaton, Ill., 1997), part 3.

58. Rockne M. McCarthy, James W. Skillen, and William A. Harper, *Disestablishment a Second Time: Genuine Pluralism for American Schools* (Grand Rapids, Mich., 1982); James W. Skillen, ed., *The School-Choice Controversy: What Is Constitutional?* (Grand Rapids, Mich., 1993); Joseph P. Viteritti, *Choosing Equality: School Choice, the Constituion, and Civil Society* (Washington, D.C., 1999); Minow, "Choice or Commonality."

59. James W. Skillen, *Recharging the American Experiment: Principled Pluralism for Genuine Civic Community* (Grand Rapids, Mich., 1994); Stanley W. Carlson-Thies, "The Meaning of Dutch Segmentation for Modern America," in *Sharing the Reformed Tradition: The Dutch–North American Exchange, 1846–1996,* ed. George Harinck and Hans Krabbendam (Amsterdam, 1996), 159–75; Stephen V. Monsma and J. Christopher Soper, *The Challenge of Pluralism: Church and State in Five Democracies* (Lanham, Md., 1997).

60. The "equal partners" concept valuably emphasizes that faith-based providers are of no lesser value than government agencies, but it de-emphasizes the enormous difference in power between the two kinds of institutions. An alternative term such as "collaborators" usefully connotes both working together and the potential for faith-based organizations to be co-opted (note that "collaborator" was the term in World War II for citizens who aided the enemy). Charles Glenn's notion of an "ambiguous embrace" is intended also to highlight both possibilities and dangers (Glenn, *Ambiguous Embrace*). Of course, the whole point of the Charitable Choice concept is to limit the government's distorting impact on faith-based organizations when the two sectors work together. In that sense, Charitable Choice is but one example of a global movement to recast the relationship between government and nongovernmental organizations. On that global trend, see Lester M. Salamon and Helmut K. Anheier, *The Emerging Nonprofit Sector: An Overview* (Manchester, England, 1996).

61. Luis E. Lugo, *Equal Partners: The Welfare Responsibility of Governments and Churches* (Washington, D.C., 1998), 15, 18, 19.

62. Richard John Neuhaus, *The Naked Public Square: Religion and Democracy in America* (Grand Rapids, Mich., 1984).

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