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SOCIAL PROGRAMS AND MANAGEABLE UNITS

SAUL LEVMORE*

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I. INTRODUCTION

Why do some social problems attract more private and public resources than others? How do we as individual voters and contributors come to devote our attention and energy to some causes or experiments over others? One implicit contribution of Martha Fineman's work is to draw attention to the fact that struggling families have not been high on our lists of causes.¹ There is something of a puzzle in this important lamentation, because there is a consensus that many of our serious social problems are caused or exacerbated by impoverished opportunities that might be statistically linked to poor, single-parent households.² Fineman's discussion targets neither poverty nor single-parent status.³ However, it is fair to say that she draws attention to the sad and frustrating persistence of an American underclass and that this underclass, is linked in both

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1. See Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 AM. U. J. GENDER SOC. POL'Y & L. 13 (2000).

2. See Sheryl L. Howell, *How Will Battered Women Fare Under the New Welfare Reform*, 12 BERKELEY WOMEN'S L.J. 140, 141 (1997) (stating that congressional findings in prelude to the welfare act identifies dilemmas of single family households, and further links them, in a gendered way, to societal problems).

3. See Fineman, *supra* note 1, at 18 (stating that caretaking work itself creates a collective societal debt).

perception and fact to poverty and family structure.⁴ If governments and private endeavors create great universities, build space stations, and generate fabulous national wealth, then why not some progress on the home front?⁵

One puzzle is the contrast between our successes and our failures. My first step is to frame this puzzle in terms of the range of successes of political, non-profit, and other entrepreneurs. Most social problems create opportunities for politicians to attract our votes.⁶ Many social problems set the stage for private entrepreneurs who see the potential for profit where they can outperform the public sector and capture resources that the public is inclined to spend. Social problems also stimulate the formation of not-for-profit intermediaries who are able to apply private contributions and sometimes public funds to social problems.⁷ The puzzle put forth and explored here is why the opportunities for entrepreneurial success touched on in the Fineman lecture does not seem to generate serious activity. Thus, in the case of the non-profit sector, our daily mail contains many solicitations that appeal to our concern for so many causes—but so rarely for programs that might make the plight of relatively poor families less desperate. In the political arena, politicians do not compete for our votes by promising to solve these problems or to do more than has been done in the past and at lower cost. As for profit-making opportunities, we do not find entrepreneurs advertising or bidding for serious privatization of social welfare programs.

Professor Fineman indicts our society for its failures, and implores us to do better.⁸ My reaction in this Comment is to focus on the puzzle of why things are as she describes them. I will suggest that understanding these puzzles about the agendas of public and social entrepreneurs may be useful in imagining solutions to the tragedies and disgraces around us.

4. Fineman, *supra* note 1, at 25.

5. See RICHARD R. NELSON, *THE MOON AND THE GHETTO* 13-18 (1977) (discussing the successes and failures of domestic social programs aimed at addressing poverty).

6. See, e.g., Glenn L. Pierce & Michael Radelet, *Challenging the Death Penalty: A Colloquium, The Role and Consequences of the Death Penalty in American Politics*, 14 N.Y.U. REV. L. & SOC. CHANGE 711, 720 (1986) (pointing to politicians' use of the death penalty in crime control platforms to help "manage" as an issue and garner public support).

7. See generally Rob Atkinson, *Altruism in Nonprofit Organizations*, 31 B.C. L. REV. 501 (1990) (detailing an in depth study of existence, motivation, and methodology of non-profit charitable organizations).

8. See Fineman, *supra* note 1, at 26 (urging for a more responsive and active state).

II. MANAGEABLE UNITS

A. *Universities versus the Fineman Plan*

My central thesis is that there are areas where social underinvestment can be traced to the unmanageable scope of the underlying problem—at least as presently formulated. The basic idea is that donors and other monitors need a way to see that their money is well spent. This requires a closed system that is comparable to competing systems. Competition requires common baselines or other means for making comparisons. Donors and other investors may shy away from opportunities where they fear that they will have no way of judging the performance of that which they support.

Consider, for example, the remarkable success of American universities. Rather than adducing evidence of particular research and intellectual accomplishments, rates of return on investments, or simply the international flow of students and faculty, I will simply assume that readers are willing to take the success of this industry as a given. But what are the features that explain this success? Notable characteristics that are not found in many other countries include a substantial non-profit but non-public sector, a parallel set of public competitors, important grant and scholarship programs funded by the federal government, and a history of substantial private fundraising (especially in the non-profit, private sector).⁹

Another important feature of the landscape is of course, the tax treatment of university activities. There is a charitable deduction available to donors and tax-exempt status for the universities receiving these funds.¹⁰ It is difficult to imagine our system of higher education in the absence of these tax rules, and it is perhaps too easy to take these features for granted, but I do not dwell on the tax angle. It is possible to think of the tax treatment as part of the funding offered by the federal (and state) government. Indeed, a good way to think about the tax deductions available to donors is as a kind of matching program which informs the government as to how to spend its resources.¹¹ In any event, inasmuch as my aim here is to understand our domestic social welfare programs and

9. See generally Douglas M. Saloway, Note, *UMIFA and Model for Endowment Investing*, 22 J.C. & U.L. 1045 (1996) (discussing university funding, comparing federal funding with growing importance of private endowments as a source of revenue).

10. Internal Revenue Code, 26 U.S.C. § 501 (1999) (providing for both tax exempt status for universities as well as authorizing a tax deduction claim for donors).

11. See Saul Levmore, *Taxes as Ballots*, 65 U. CHI. L. REV. 387, 405 (1998) (proposing a system through which private contributions to charitable organizations would be made through apportionment of tax payments).

opportunities—where similar tax treatment is available—it is useful to downplay the role of the tax system in influencing the success of the education system.

This is obviously not the place to insist on the few variables that might explain the success of American universities. But there is much to be gained from the observation that universities here are in “manageable units” from the perspective of states, private donors, and other investors who wish to compare these potential recipients of resources. There is competition in the sense that universities can be compared. Potential donors, students, and granting agencies can compare the performances of several universities. Graduates develop loyalty to their institutions and one reason this loyalty translates into financial support is that there is a sort of friendly, manageable competition among universities such that a substantial number of graduates do not like to see their own institution fall behind. I will try to avoid belaboring the point by rushing to several conclusions. First, we might simply say that collective action, selfishness, and other problems that might prevent universities from obtaining support from their graduates, state governments, and private firms are partly overcome by the fact that these universities are sufficiently self-contained and comparable. Second, potential donors are not so numerous that they cannot possibly imagine their own contributions doing some good. Finally, these donors are able to think of themselves as doing something worthwhile even as they enjoy the sport of competing with other universities.

Donors to a given university are able to monitor their university by observing indicia relating to students attracted to this university as compared with others, by observing prizes and other measures of faculty performance, by assessing the physical plant of the university so that impressive buildings reflect the investment of donated resources and send signals about the values of the university, and so forth. Universities are able to locate themselves in a kind of market niche and appeal to students and donors in this manner. The presence of competitors helps this process along.

Consider now the problem our governments and non-profit enterprises face in seeking to attract funds to such causes as supporting single-parent families and other programs that Professor Fineman’s lecture suggests.¹² We might focus on subsidiary programs, such as day care and worker training, but my argument is cleaner—and certainly more responsive to Professor Fineman’s lamentation—

12. See Fineman, *supra* note 1, at 22-23 (discussing the use of subsidies).

if we remain focused on her larger subject of wealth redistribution (reflecting what she calls interdependency) between the haves and the child-rearing have-nots.¹³ For ease of exposition I will imagine that the Fineman Plan consists of large-scale wealth transfers to working mothers well beyond those available through current programs.¹⁴ Different readers might imagine different programs, but even without specifying any single plan we might simply imagine a policy or program aimed at qualifying “providers.” An important feature of any such program is that it redistributes substantial financial resources to these providers (or those in their care). To be sure, these resources might prove an excellent investment, but in the short run redistribution of this kind must come either through the political process—as the recent plan put forward by Professors Ackerman and Alstott imagines¹⁵—or through a process of private contributions.

The first thing to see is that the Provider Program, as we might think of it, could not be more different from the university model. Recipients under the Program will be dispersed, numerous, and mobile, or at least potentially so. The Program’s goal of advancing the society’s interest in promoting equal opportunity and in making sensible investments in its citizens seems at least as attractive as education in terms of “selling” to donors. But, there is a serious problem in identifying or creating manageable, comparable units. The university example suggests not only the value of comparable and even competing units but also the disadvantages associated with the Program beneficiaries’ characteristics. Thus, the dispersed arrangement of recipients under the Program means that it is difficult to attract donors with geographic loyalties; difficult or in some sense “inefficient” to encourage donors to attach their names to facilities that might serve these recipients because such naming opportunities are likely to be far inferior to cash payments; and difficult for interested donors to monitor the program they empower.

The fact that recipients are numerous means that it is difficult for donors to see palpable results. Environmental and habitat-oriented organizations, for example, succeed by making the case for a given project such as acquiring acreage for park-land or taking steps to increase the population of a threatened species. This is very much like universities raising funds for a particular type of research, for a

13. Fineman, *supra* note 1, at 27 n.25.

14. Fineman, *supra* note 1, at 27.

15. See generally BRUCE ACKERMAN & ANN ALSTOTT, *THE STAKEHOLDER SOCIETY* (1999) (proposing a plan that redistributes financial resources).

new library, or even for student scholarships. In all of these cases it is easy to see that donors might identify with the proposed project and sense some accomplishment when they observe "results."

In contrast, I doubt that an organization which sought to raise money for "deserving students at colleges across the country" would attract much in the way of donations. Those who earmark their gifts towards more manageable units enjoy several advantages. They are likely to have some sense of control, they might compare recipient institutions, and they might be more likely to feel that their gifts had some impact or that they repaid some social debt. Universities, local museums, and some churches are thus well situated in the market for donors, but a large scale redistribution effort on behalf of working mothers with low incomes (to take one palpable example) is perhaps terribly situated.

B. Intermediate Charitable Solutions

I will return below to possible solutions, or ways of advancing the Provider Program idea. However, it is useful first to think of steps that might be taken in the direction of the program that Fineman suggests.¹⁶ As long as we continue to limit the discussion here to non-profit organizations and charitable giving, most of these steps will be familiar ones. Thus, a charity might seek funds for a school that trained mothers eager to join or improve their position in the workforce. Others might seek funds for a day care center or for a health care program.

To the extent that "entrepreneurs" are able to create manageable units to appeal to donors, some of what the Provider Program aims to accomplish can indeed be created without any serious change. The problem is that if the best program is one that transferred substantial resources to a large group of beneficiaries, such as single parents earning between \$10,000 and \$30,000, with few if any strings attached, then these intermediate programs may be inefficient in the sense that they channel resources to second best services. Money might be raised most easily for women's shelters, vocational schools or hospitals because these concrete projects offer donors some satisfaction or, more interestingly, because donors can compare the performance of such an institution against that of other institutions of comparable size. But these types of programs may be inferior to cash outlays that the beneficiary group can spend as it likes.

16. See generally Fineman, *supra* note 1, at 16 (proposing the concept of collective responsibility).

Efficiency minded donors, if we may think of them that way, who agree wholeheartedly with Professor Fineman's very economic claim that a Provider program would be an excellent social and economic investment,¹⁷ might be expected to think economically about their investments. They may see the advantage of redistribution with no strings attached—but they may fear that the impact of money invested in an open-ended pool of needy people will be impossible to evaluate. Such investors might wish to contribute instead to second best options such as shelters and emergency medical care funds. Their first choice, we might imagine, is to join in the Fineman Plan in transferring resources to single, working parents,¹⁸ but to do so in circumstances where this “experiment,” or the selection mechanism applied to recipients, can be monitored in order to be sure that future resources go where they do the most good.

It bears emphasizing that I am not claiming any evidence for the proposition that large cash outlays are the way to go. I merely begin by wondering why so much money is raised for so many causes but then so little for the sort of program that Professor Fineman has in mind.¹⁹ From there, it is a small step to the possibility that she is right (which is to say that a substantial subset of the population would vote her way if well informed about the problems and the available returns from redistributive investments)²⁰ but that charities do not successfully arise to take advantage of this intuition or set of preferences.

One can barely imagine novel steps in this direction. For example, if donors fear that some beneficiaries poorly spend transferred resources, and that this will bring bad publicity to the program as a whole, then donors might be encouraged to finance a kind scrip or voucher program that transfers near-money to beneficiaries. Schools, stores, and any number of other qualifying businesses would accept these vouchers, placing a hurdle in the way of those who seek to use these resources for drugs or perhaps certain luxury goods. Donors might be more inclined to contribute if there were some record-keeping of expenditures. This sort of voucher idea, reminiscent perhaps of food stamp programs and some local programs through which donors are encouraged to give such scrip (rather than cash) to homeless persons or panhandlers, is unlikely to be terribly successful on a large scale. Once again, a voucher program solves one likely

17. See Fineman, *supra* note 1, at 22 (discussing the role of subsidy programs).

18. Fineman, *supra* note 1, at 26.

19. Fineman, *supra* note 1, at 26.

20. Fineman, *supra* note 1, at 26.

concern of donors but it does little to make programs comparable.

Consider, in this regard, recent and well-publicized privately funded programs that promise an inner city fourth grade class, or some comparable target group, college scholarships for all members who succeed in continuing with their education and gaining college admission. These programs are clever in that they transfer resources that cannot easily be misspent, and they encourage a long term partnership among the targeted students, donors, and students' families. In some cases, the donors work to provide counseling and other assistance long before it is time for college. More to my point, the target group in these cases is fixed and is a manageable unit. It is possible to see how thirty students in a target class program benefits over the next ten or fifteen years as compared with other classes in the same, or neighboring schools. Additionally, the unit allows donors to sense that they are making, or at least offering, a meaningful contribution. If five of thirty would normally be expected to go to college, and the program succeeds rather wildly in sending ten additional class members to college, the cost will be that of associated fifteen college students (and earlier services). We might estimate this cost at \$2 million dollars, which seems like a reasonable amount for a foundation, wealthy individual, or graduating college class to contemplate.

Without belaboring the point, I will hold this up as an example of the best kind of modern innovation in fundraising and social experimentation. It may turn out in five or ten years that the school drop-out rates from these lucky, targeted classes do not differ much from other less fortunate classes that did not attract innovative donors. Perhaps it will develop that the students who do go to college in this manner do poorly because they had the money handed to them. However, it will be unusual if a college education turns out to be a poor social (or private) investment. But the point is that at least we might learn something from these experiments. We will also learn something, precisely because the targeted group forms a manageable unit that will be much studied in the near future. We may learn that the money alone is enough, that less money and more counseling along the way is better, that attention is more important than money, or that teachers need to be rewarded in order to raise the percentage of students who go to college. In comparison to a broadly structured program that simply offers money to poor students, the very nature of this type of program makes it more likely that we will learn something. Moreover, donors are more likely to feel that their marginal contributions make a difference.

Returning to Professor Fineman's concerns, it is perhaps

unfortunate that single, working parents do not come bundled in classrooms or similar convenient packages. But it is possible that social entrepreneurs are missing small-scale opportunities to imitate the class-to-college examples. Thus, a women's shelter administrator might note that twenty of thirty women who needed the shelter in a given period seemed to fit the model of single working parents with young children who might thrive with a cash transfer, or annual stipend promised for five or ten years, so long as certain conditions were met for renewal.

III. GOVERNMENT PROGRAMS

I have suggested thus far that Professor Fineman's lamentation raises the positive question of why some social problems do not generate significant private or charitable efforts while others bring out enormous energy and resources. It is conventional to lament further and to suppose that problems of perception, selfishness, and even racism explain the absence of apparent concern and action in some quarters. But I have suggested that private effort may be much more likely when donors are offered manageable units. The units compete with one another and with the *status quo* in ways that permit donors not only to feel that they have accomplished something but also to reach some judgments as to whether their resources are well spent. My primary aim has been to ask and answer this positive question. It is apparent, however, that if the answer I offer (regarding manageable units) is on the mark, then there is a third step to be taken in the form of likely solutions to the obvious normative question of what it is that social entrepreneurs might do to overcome the disinclination of donors. I have devoted fewer words to that step, suggesting only that groups of beneficiaries might be "organized" into manageable units.

But my analysis has necessarily focused on private efforts, especially of the non-profit kind. Professor Fineman's implicit claim, on the other hand, is that our society should by democratic decision-making engage in "interdependent calculations" and re-distributions.²¹ It is useful, therefore, to translate the claim about manageable units into the public sector. This is easily done and I have, of course, been using the example of higher education for just this reason.

Why are states and cities more likely to invest in and experiment with institutions of higher education than to invest in the sort of program Fineman has in mind? A valuable clue is that public

21. Fineman, *supra* note 1, at 26-27 n.25.

universities are not state-wide or nation-wide programs but rather are very much sized in the manner of their private counterparts. Even when state universities are parts of state-wide systems, there is significant on-campus decision-making and distinct reputations and characteristics are encouraged. McDonald's may try for homogenization in the market for fast food, but inasmuch as state universities do not seek itinerant repeat customers, they offer product differentiation within their systems. More to the point, even if they do not intend to differentiate, they benefit from offering manageable units because graduates are more likely to feel loyal, and because performance can more easily be assessed by taxpayers, politicians, and consumers who will, in turn, be more likely to invest resources in these institutions. It goes almost without saying that the competition between public and private schools, and between public systems in the various states, offers further advantages.

This sort of thing is much more difficult to do with redistributive programs of the kind Fineman has in mind. If a state offers stipends to qualifying care givers, for example, taxpayers and politicians fear that the state will become a magnet for needy care givers. Universities can exclude students more easily than can welfare programs, and families that migrate to take advantage of good schools are more likely to include valuable taxpayers than are low-income care givers. Moreover, a state-wide program is difficult to assess and monitor. Local governments might do better in this regard but then of course, they face more serious problems in terms of attracting beneficiaries.

This particular "problem" of mobility is not unlike that faced in health insurance schemes. If employees do not move jobs, and employers do not hire and fire, based on health care considerations, then the employment unit works fairly well as an insurance or pooling unit. But where mobility concerns are serious, it may actually make sense to organize insurance schemes around a fixed group (not unlike the once-proposed regional alliances), such as all people born in a certain town. The town might bargain on behalf of this group in order to secure services from health care providers. People might move to and from the town, but the idea is to keep the bargaining unit fixed. If *X* moves from town *A* to *B*, *X* continues to be part of *A*'s group in this scheme, and *A* is responsible for buying health care for *X* in town *B*. We might expect *A* to bargain with *B* to move *X* into *B*'s group, perhaps exchanging members on a large scale basis, but neither *A* nor *B* need do so. Presumably, enough of the original members in group *A* will stay in town *A* so as to provide some monitoring and democratic control over the management of the

group in a direct fashion or through A's existing political system.

The same idea might be applied to other programs including the kind Professor Fineman encourages.²² Fifty low-income working parents who live near one another might be lumped in a group regardless of whether some move away or others move into the area. But this is obviously not the place to explore the details of such manageable units. The point is simply that most private and public (and parallel) successes appear in manageable units. Enterprises ranging from hospitals to universities to operas and museums all seem to come in manageable units. Other redistributive projects might do well to copy this pattern. Purely public projects also try to foster comparisons and competition. Yosemite and Yellowstone National Parks develop distinct reputations—and indeed it would not be startling to find such national parks privatized or placed in non-profit forms where they appeal better to private donors, but we would expect them to remain in manageable units rather than bundled together.

IV. CONCLUSION

Professor Fineman offers a valuable lamentation that encourages us to think of the world we might construct around us. My own inclination is to puzzle over the way the world is organized. We all know many people who share the vision of more egalitarian wealth distribution or more support for, or payments to, those who do more than their "share" of child-rearing and the like. The question, then, is why organizations and politicians do not materialize to tap into these preferences or instincts. I have tried to suggest here that such political and social entrepreneurs are more likely to succeed, and therefore to arise, where the projects they put forth are of manageable size. Donors will be more likely to support programs that can be compared and monitored, and that generate a sense that each contributor provided something worthwhile. Politicians who respond to voters and taxpayers may have similar preferences.

It is possible that this argument about manageable units offers some hints as to how our world might indeed be different. Political, social, and even profit-oriented entrepreneurs might see ways to capitalize on the manageable unit idea. But it is possible that the problem is more formidable and that the moon is simply a more manageable target than the ghettos.

22. Fineman, *supra* note 1, at 26-27 n.25.

