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Making the World Safe for Philanthropy

The Wartime Origins and Peacetime Development of the Tax Deduction for Charitable Giving

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Making the World Safe for Philanthropy

As Washington wrestles with its long-term fiscal problems—and its near-term political gridlock—the tax deduction for charitable giving has been getting some special attention.[1] As one of the nation's most costly tax expenditures—and its third most expensive itemized deduction—the deduction is an obvious target for reform.[2] Add to this its less-than-progressive incidence, and you open the door to meaningful change.[3]

Or maybe you don't. Proposals to abolish the deduction are not unknown,[4] but neither are they popular. As Gene Sperling, director of President Obama's National Economic Council, has observed,

> It is hard to design a better way to unite the most-well off Americans and those representing the poorest Americans, non-profits, churches, universities and hospitals, against a single idea than proposing to completely eliminate the charitable deduction.[5]

But if scrapping the deduction seems unlikely, scaling it back seems plausible. In recent years, plans to curb its cost have been floated by the National Commission on Fiscal Responsibility and Reform (a.k.a. the Bowles-Simpson commission),[6] the Domenici-Rivlin Debt Reduction Task Force,[7] and the White House itself, through a series of annual budget proposals.[8] These plans differ in detail and approach, but all would curb the current deduction in the name of fiscal responsibility.

Not surprisingly, representatives of the charitable sector have vigorously opposed these plans. "We are fully committed to helping lawmakers understand the unique nature of the charitable deduction—and that it's not a loophole, but a lifeline," explained Sandra Swirski, executive director of the Alliance for Charitable Reform, in a typical statement of opposition.[9] As a whole, the nonprofit sector has mounted a broad campaign to blunt reform efforts and protect the deduction in its existing form (or something very close to it).

Lobbyists for the nonprofit sector have found allies across the ideological spectrum, with both Democrats and Republicans rallying to their cause. But support for the deduction has been particularly strong among conservatives, many of whom tend to view the issue in starkly ideological terms. According to these defenders of the deduction, efforts to curb the provision are an integral part of the liberal agenda.

"Progressives enjoy herding people to the door step of governmental assistance," argued a writer for the *American Thinker* recently. "Food stamps and disability payments and the entire cornucopia that is federal assistance are their pet programs. Charities are an obstruction to a full and total reliance on government.[10]

Howard Rich, a libertarian activist, has made a similar case, adding in a dose of American Exceptionalism. As a people, he argued, Americans are uniquely benevolent. "This is why it is so disturbing to see the Obama administration continue to attack this spirit of generosity—and the nonprofit economy it supports—as part of an effort to expand the public-sector welfare state."[11]

Such arguments—in favor of the deduction and against proposals for substantial reform—have deep roots in American politics. Since the charitable deduction first appeared in 1917, its fate has been bound up with arguments over the nature and size of government, as well as the relationship between government and the private sector.

For many of its most ardent champions, the charitable deduction has been a crucial constraint on the size of the federal state. It has succeeded in this task, they insist, because it taps essential qualities of the American national character. Americans, they have argued, believe deeply in the value of an independent and decentralized charitable sector.

"We trust one another, and not just the government, to make important decisions and to take action," explained Yale economist Robert Shiller in a recent article on the deduction for charitable giving. "We don't rely on government to set all of our goals—even our social goals, our wishes for the nation's future. The essential question we all must answer is how we can achieve the good society."[12]

For advocates of a charitable deduction, the answer to that question is simple: charities will help us build that good society, just as they always have. And just as charities are vital to this civic project, tax deductions for vital to charities.

More specifically, advocates of the deduction for charitable giving have offered four interrelated arguments for their cause:

1. *Social Value:* Charities provide essential services, often more effectively than government ever could.
2. *National Character:* As a people, Americans are uniquely benevolent; the charitable deduction simply reflects this element of the American character.
3. *Limited Government:* Government will do what charities cannot; in the absence of a well-funded nonprofit sector, government will expand its social, political, and economic ambit.

4. *Fairness:* Charity deductions are consistent with core principles of tax fairness, since taxpaying capacity is directly affected by the amount of charitable giving done by a taxpayer.

These arguments have been remarkably consistent over time, although they have never been unchallenged. Indeed, our current debate over the charity deduction, while more restrained that some previous ones, is hardly unprecedented. The deduction has always been popular, but it has never been unquestioned.

This paper examines historical debates over the deduction for charitable giving, focusing on three key periods: 1917, when the deduction was first added to the tax system; 1944, when the introduction of the standard deduction seemed to threaten the efficacy of the charity deduction; and 1981–86, when the extension of the deduction to non-itemizers was quickly followed by a debate over curbing the deduction substantially as part of general tax reform.

1917

The deduction for charitable contributions is one of the oldest preferences in the tax law, having made its debut during World War I. After a failed effort to include it in the original 1913 tax act, lawmakers eventually added it in the War Revenue Act of 1917.[13] This law was a legislative behemoth, at least by standards of the era. And it involved no small amount of experimentation.[14] Observers fretted about how its numerous provisions would function in operational practice, not just legislative theory. Arguments over personal and corporate income taxation—and the excess profit tax in particular—were particularly confusing and contentious.

But in this sea of legislative uncertainty, the charity deduction was actually an island of relative calm. At least initially, its language seemed straightforward, and lawmakers were confident that it would function as intended. As the statute read, taxpayers were allowed a deduction against income for

> contributions or gifts actually made within the year to corporations or associations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or to societies for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual, to an amount not in excess of fifteen per centum of the taxpayer's taxable net income as computed without the benefit of this paragraph. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.[15]

According to its champions, this provision was necessary if charities were to survive the war. Heavy new taxes on incomes and estates threatened to dry up the reservoir of private funds that sustained these worthy organizations. Relieved of their "surplus" income by the war's new levies, wealthy donors would simply stop giving. As Sen. Henry French Hollis, D.-N.H., explained:

> Usually people contribute to charities and educational objects out of their surplus. After they have done everything else they want to do, after they have educated their children and traveled and spent their money on everything they really want or think they want, then, if they have something left over, they will contribute it to a college or to the Red Cross or for some scientific purposes. Now, when war comes…that will be the first place where wealthy men will be tempted to economize, namely, in donations to charity.[16]

This was a distinctly unromantic view of charity. While, presumably, altruism still figured in the decision of donors to give, it was clearly a secondary concern. It was charity without sacrifice, or even much discomfort.

Two other points can be distilled from Hollis's statement. First, the war was crucial to the deduction, since it had failed in peacetime and only gained traction when war taxes underscored the issue. Second, educational institutions seemed to figure prominently in the argument for creating a deduction. Hollis, in fact, emphasized in his remarks the degree to which higher education had come to depend on private philanthropy.[17]

On its editorial page, the *New York Times* echoed Hollis's concerns about the effect of war taxation on charitable giving. The paper began by lamenting the class-based rhetoric that surrounded the recent rise in income and estate taxes. "Rich men are doing, and are willing to do, their part in this war," the editors wrote. "They are ready to pay, some of them have already paid, their children's lives to the defense of democracy; and they should be taxed, and are willing to be taxed, high. They ought not to be maligned in addition."[18]

Even more important than a rich man's feelings, however, were a rich man's donations. Higher education, in particular, faced a short-term crisis. "The Presidents of the colleges, whose incomes from tuition and dormitory fees will be notably lessened by the war service of so many collegians, so many 'rich men's sons,' and sons of the well-to-do, are in grave perplexity."[19]

Those poor, perplexed presidents were the innocent victims of soak-the-rich tax policies. "There is a necessary social effect to this taxation of great incomes," the paper warned. "It diminishes or dries up the springs of philanthropic eleemosynary and educational life."[20]

Other newspaper editors agreed with these concerns. The *Washington Post* was explicit in its warning to lawmakers. Invoking arguments about the distinctive role of charity in American society, the paper urged lawmakers not to take this heritage for granted. "This country cannot abandon or impoverish the great structure of private charity and education that has been one of the most notable achievements of American civilization," the editors wrote.[21]

In arguing for a new deduction against income, the *Post* also warned that weaker charities meant stronger—and bigger—government. "If the government takes all or nearly all of one's disposable income or surplus income, it must undertake the responsibility for spending it, and it must then support all those works of charity and mercy and all the educational and religious works which in this country have heretofore been supported by private benevolence," the editors wrote.[22]

In another editorial, the *Post* used the Red Cross to underscore its point. The organization had recently sought, and received, donations of $100 million to support its wartime work. "If the money thus contributed were subject to taxes," the paper said, "it would be a penalty upon generosity and an inducement for the retention by individuals of all moneys which they formerly contributed to charitable, scientific and educational institutions." Eventually and inevitably, "the burden of maintaining such national auxiliaries as the Red Cross would fall entirely upon the Federal Government."[23]

Such arguments took a distinctly benign view of charitable organizations, but not everyone felt so kindly toward exempt organizations. Indeed, suspicion about the social influence of charities had surrounded their exemption from early income taxes in the first place (that exemption having predated the deduction for charitable contributions by several years).[24]

Laws creating the corporate excise tax of 1909 and the corporate income tax of 1913 both included explicit exemptions for charities.[25] Such provisions had been readily approved by lawmakers. But they were not universally embraced. Critics of big business saw private foundations—and many other charitable organizations—as disguised extensions of plutocratic power. In 1916, for instance, the congressionally chartered Commission of Industrial Relations issued a report sharply critical of both private foundations and private educational institutions.

> The domination by the men in whose hands the final control of a large part of American industry rests is not limited to their employees, but is being rapidly extended to control the education and "social service" of the Nation.
>
> This control is being extended largely through the creation of enormous privately managed funds for indefinite purposes, hereinafter designated "foundations," by the endowment of colleges and universities, by the creation of funds for the pensioning of teachers, by the contributions to private charities, as well as through controlling or influencing the public press.[26]

Such worries were not powerful enough to derail the drive for charity tax preferences once the war began. As the economist Edwin R.A. Seligman later explained, lawmakers moved ahead with the deduction because it was the right—and quintessentially American—thing to do. Failing to create a deduction, he insisted, would have been "deplorable in a country where charity is overwhelmingly of a private character."[27]

Still, a few critics continued to raise questions. Frank Anderson, writing in the *Journal of Political Economy*, argued that falling donations in the face of heavy taxation would be inconsequential. Reversing the argument advanced by small-government advocates of a charity deduction, Anderson welcomed the effects of heavy wartime tax system unrelieved by a donation deduction.

> The tax policy, on the other hand, if it temporarily cuts down the gifts of the charitable, *also provides the means for public subsidies* [emphasis in the original] to indispensable agencies (like the Red Cross) out of taxes on both the charitable and the uncharitable. [28]

In other words, the decline of charity *would*, in fact, provide a boost to government. But that was all to the good, from Anderson's perspective, since the social value of private charity was highly overrated. Indeed, he wrote, the only real loss associated with failing to create a deduction would be to the "self-gratulation" of donors. "If it [heavy taxation without a deduction] also cuts down luxurious consumption and nonessential charities," he concluded, "that is just what furthers the supreme end in war time."[29]

Anderson's argument was vigorous but ineffectual. The war made the drive for a deduction irresistible: if World War I made the world safe for democracy, it also made the tax laws safe for philanthropy.

But the efficacy of the charitable contribution deduction was left unclear by the wartime experience. According to at least one press report, the deduction was underutilized; in 1920, the *Washington Post* reported that only about 10 percent of returns showed a deduction for charitable gifts.[30] Still, the World War I debate established the parameters of public discourse about the charitable deduction. Champions argued that such a provision was necessary to defend the distinctive American tradition of private philanthropy, especially in the face of high tax rates. They also introduced the notion that healthy charities were a desirable alternative to big government: if people didn't want the state to absorb full responsibility for social welfare, then the tax system must find a way to encourage (or at least not penalize) charitable giving.

1944

In a bid to radically simplify the tax system, Congress created the standard deduction in 1944.[31] These were the early years of mass-based personal income taxation, with middle class Americans only recently added to the tax rolls in the face of wartime fiscal pressures. As part of this change, Congress had also introduced withholding, with the goal of encouraging compliance from an inexperienced taxpaying populace.[32]

Withholding accomplished this task admirably, but it also caused some problems, especially for charities. Lobbyists for the nonprofit sector insisted that withholding was hurting donations, as Americans struggled to make gifts from shrunken paychecks. As first introduced, withholding was relatively inflexible, with only a limited capacity to adjust tax payments to individual circumstances (including, among other things, their expected charitable donations). According to nonprofit lobbyists, this inflexibility had caused a notable drop in donations immediately after the introduction of withholding.

Charities proposed a solution to this problem, urging Congress to adopt a pay-as-you-go tax credit for charitable contributions. Under their plan, taxpayers would be allowed to adjust their withholding to account for expected charitable contributions over the course of the year.[33]

Lawmakers listened sympathetically but did not act—at least not as charities had hoped. Congressional leaders were actually far more worried about a rise in tax complexity than they were about a (possibly temporary) decline in charitable contributions. In a bid to make the new income tax simpler for millions of neophyte taxpayers, they established a standard deduction. Set at 10 percent of adjusted gross income up to a maximum of $500 (for single taxpayers) or $1000 (for married taxpayers), the standard deduction was designed to allow for "taxation without irritation."[34]

Charities were not happy with the innovation.[35] In fact, churches and other nonprofits treated it as an existential threat. In early 1944, representatives from a variety of churches and educational institutions formed a new Council on Taxes and Philanthropy to lobby on behalf of the existing charity deduction. Withholding was bad enough, they contended, having "jeopardized tax-exempt gifts to churches, colleges, hospitals, and other philanthropic institutions."[36] But the standard deduction promised to be much, much worse.

The council endorsed a plan to restore the special tax deductibility of charitable contributions, even for those choosing to use the new "short form" and its standard deduction.[37] Such an accommodation was critical, they insisted, especially if the name of equity. "It is utterly unfair to give a profligate spendthrift who seldom gives a penny to charity the same credit and tax deduction as the devout widow or the conscientious contributor who gives a tithe or sacrificially gives 15 percent or more, in order to share with those who are less fortunate," the group declared. [38]

Lumping all possible deductions into a single standard deduction also made for intolerable moral ambiguity. "The pastor and priest share in the deductions for the other man's alimony deductions," the council insisted. The end result was distinctly anti-American. "It savors of communism to make work simpler for the bookkeeper," the council declared. [39]

Such language was intemperate but not unusual. One Baptist attorney, serving as chair of the Northern Baptist Tax Vigilance Committee, chose a different epithet, labeling the standard deduction "fascist." "When they knocked out the 15 per cent income tax exemption for church and charity under the guise of simplification, it was a fraud on church and charity," declared Romain Hassrick. "It is the first long step down the road toward the destruction of religious freedom and toward federal subsidy and control of education and charity. That is fascism."[40]

Calls for simplification rang hollow in the ears of many charity advocates. "There is no such thing as 'simplification' to the point of totalitarian regimentation, squeezing out the vital spark of personal freedom," Hassrick wrote.[41]

This was strong language in defense of sweeping claims. But such arguments were buttressed by more prosaic calls for tax fairness. By treating a donor the same as a non-donor, the standard deduction imperiled the very nature of philanthropy itself. As one unhappy member of Congress insisted:

> It has been the basic policy in America that our tax program is one that considers a gift to the U.S.O, the Red Cross, a children's home, a hospital, a home for the aged, a college, a mission, a church, or any other institution rendering service and mercy, an expenditure for the public good, and, therefore exempt from taxation.[42]

The new deduction, by contrast, would abandon this policy, since "a heavy contributor has the same amount taken out of his wages or salary as one who contributes nothing."[43]

For most charities, however, the bottom line was money. The standard deduction seemed likely to reduce the incentive to give, thereby further depressing contributions to charitable organizations. Not everyone, however, was convinced by such claims. Rep. Absalom Willis Robertson, D-Va., predicted that the absence of an itemized deduction (at least for those filing the new short form) would not affect giving.[44]

Similarly, House Ways and Means Committee Chair Robert Doughton, D-N.C., maintained that most people donated money not for the tax savings, but to advance the work of worthwhile organizations. His Senate counterpart, Sen. Walter F. George, D-Ga., agreed. "The committee does not believe that it can be proved that a tax incentive has been an important factor" in the making of gifts by taxpayers of modest means, he stated. And in any case, people who ended up contributing more than the standard deduction could choose to claim those deductions when filing a tax return in the spring. And finally, George said that the bill actually increased the contributions eligible for deduction by those who continued to itemize; under existing law, such contributions were deductible up to 15 percent of net income, while under the proposed legislation, taxpayers could deduct up to 15 percent of adjusted gross income.[45]

With the leadership unmoved, calls by charity lobbyists to rethink the standard deduction were doomed to failure. Congress approved the Revenue Act of 1944, and it won a quick signature from President Franklin Roosevelt. While acknowledging the importance of charities to the American social fabric, policymakers had been won over by the prospect of "painless extraction" (at least for the 30 million Americans expected to use the new standard deduction).[46]

For their part, rank and file taxpayers seemed to agree with Congress, not charity lobbyists. In a December 1944 poll, respondents said that only people who actually made charitable contributions should be able to deduct them—a point that charities were certain to endorse. But 47 percent also believed that the law still embodied that rule—which it did for everyone still choosing to itemize.[47]

Were taxpayers confused about the operation of the new standard deduction? Or did they simply believe that given the option to itemize, generous donors would still get the tax benefit of their outsize generosity (as well as the filing burden of the full Form 1040)? It's impossible to know from the poll data. But either way, charity lobbyists had failed to make the case when they described the standard deduction as a threat to philanthropy. In 1944, tax simplification carried the day.

Still, the 1944 debate was illuminating, if only for its reaffirmation of longstanding arguments on behalf of the charity deduction. Supporters had emphasized the social value of services provided by charities. They had identified these charities as key players in American society. Indeed, they had extended this argument to make any revision of the charity deduction a challenge to bedrock American values of religious freedom and political liberty. And they had stressed the unfairness of taxing taxpayers equally even when they differed in their taxpaying capacity (by virtue of their divergent giving patterns, now masked by the standard deduction). Charities may have lost this new legislative battle, but they had not abandoned their tried-and-true arguments on behalf of the deduction.

1981–86

In 1981, Congress opened a new chapter in the history of the charity deduction when it gave non-itemizers a chance to claim a version of it. This expansion of the deduction followed a decade of debate over how to treat charitable contributions. Occasioned at least in part by President Richard Nixon's controversial deduction for the donation of his vice-presidential papers to the National Archives, this debate also reflected a growing sense that wealthy taxpayers were manipulating the charity deduction to avoid paying their fair share of taxes.[48] This debate put the deduction in play, politically speaking, but at least initially, lawmakers responded by making the deduction more, not less, generous.

In the run-up to the 1981 expansion, public opinion about the charity deduction had not seemed to demand its expansion. Poll data suggested that changes to the deduction—making it either more or less generous—were likely to make little difference to giving patterns. When asked in a 1974 survey, for instance, whether a less generous deduction would induce them to donate less money to charity, 67 percent of respondents said it would not.[49] And in 1979, as lawmakers began to consider a new above-the-line deduction for charitable gifts, only 17 percent of respondents said such a change would prompt them to give more; 78 percent said it wouldn't affect their decision.[50]

Congress, however, was undeterred, and in 1981, lawmakers extended the charity deduction to non-itemizers. The Treasury had opposed the move, arguing that it would have scant effect on the taxpayers most likely to use it, since they were also likely to be in a relatively low bracket.[51] But Congress believed, according to the Joint Committee on Taxation, that such an expansion would stimulate charitable giving, "thereby providing more funds for worthwhile nonprofit organizations, many of which provide services that otherwise might have to be provided by the Federal Government."[52]

The ink was hardly dry on the 1981 extension before policymakers began mulling proposals to curb the deduction, both above and below the line. As talk of tax reform heated up, pollsters asked voters whether they would be willing to trade the charitable deduction (among others) in exchange for lower rates. In a 1982 survey, 66 percent of respondents said they would not.[53] Two years later, that number had risen to 73 percent.[54] Apparently, voters liked the deduction quite a bit.

At the same time, however, polls suggested that the deduction wasn't having much effect on giving patterns. Asked in 1982 if abolishing the deduction would affect their giving, 74 percent said it wouldn't;[55] in 1984, 81 percent gave the same answer.[56]

Other polls, however, were less clear about this effect. In 1984, one survey found the public almost evenly split, with 49 percent saying that abolishing the deduction would affect their donations and 48 percent saying it wouldn't.[57] This same poll found that limiting the deduction might cause 35 percent of respondents to donate more, while it would prompt 34 percent to give less, and 22 percent to make no change at all.[58] In another survey, 26 percent said the deduction was a major consideration in deciding how much to give, while 43 percent said it a minor consideration, and 29 percent said it didn't affect their decisions.[59]

When cast in general terms, however, questions about the charity deduction produced unambiguous results: American liked it. Large majorities repeatedly endorsed the deduction for itemized deduction for donations, as well as the above-the-line deduction. Charity deductions won support from 72 percent of respondents in 1984,[60] and 81–82 percent in 1985.[61] By January 1986, these number had dropped substantially, with 63 percent eager to keep the deduction and 32 percent willing to give it up.[62] This decline may well have reflected the rising tide of tax reform, which put many deductions in play.

In general, however, lawmakers might be forgiven if they were confused about public attitudes, because the public itself seemed pretty confused, too. They valued the deduction and wanted to keep it. But at the same time, they didn't believe it made much of a difference to their own giving decisions.

The debate over the deduction heated up in 1984 when the Treasury Department released a sweeping plan for tax reform, commonly known as *Treasury I*. If adopted intact, the plan would have had a major impact on charities. Its large rate reductions, of course, would have reduced the value of the deduction for almost everyone. But the Treasury plan would have repealed the 1981 extension to non-itemizers, and would only have limited deductions to the amount in excess of 2 percent of adjusted gross income. Deductions for gifts of appreciated property, moreover, would have been limited to the donor's inflation-adjusted basis in the property, not its current market value.[63]

Charities attacked the Treasury plan immediately. Many focused on the proposal to repeal the 1981 extension to non-itemizers, arguing that it would discriminate against low income taxpayers. "Because the president's bill repeals this deduction, it fails the fairness test by discriminating against the vast majority of Americans who do not itemize their tax returns," one charity official told the *Washington Post*.[64]

Of course, charities were also worried that the good news of tax reform—lower rates—would hurt their bottom line. "We have a dilemma," said one official of the United Way of America. "Any lowering of the tax rate is going to result in the net cost of the gift being more. We don't want to be against lower rates, so we're looking for alternatives to replace the money we would lose."[65] Or as another United Way statement observed, "We are not against tax reform or tax simplification, but these proposals would do serious harm to all non-profits."[66]

As Congress began to seriously consider tax reform, charities came out in force to limit the threat. "The provisions on charitable contributions in the tax bill are dangerous to our society," declared Jean Mayer, president of Tufts University in 1985 remarks to Congress. "America's position in the world rests less on out military power than on the educated brains of our people and our reputation as a just, caring and effective society."[67]

Independent Sector, an umbrella lobbying group for the charitable sector organized in 1980, minced no words in opposing most of the proposed reforms. "The contradiction here is there has never been a President who says he is more supportive of the work of voluntary organizations," one organization official said, "but who is allowing others in his Administration to almost viciously attack the capacity of voluntary organizations to do their business."[68]

In an op-ed for the *New York Times*, Richard Lyman, president of the Rockefeller Foundation, argued that non-itemizers should get to keep the deduction. The provision was intended to compensate for the decline in the number of people who chose to itemize, he said; non-itemizers had grown from 52 percent of filers in 1970 to 64 percent in 1983. Tax reform promised to push even more people in the same direction, making the above-the-line deduction even more important.[69]

Lyman couched his argument in claims about the very nature of philanthropy and American society. Eliminating the deduction extension would produce, he contended, "an ominous identification of the charitable contributions deduction with [the] wealthy minority still in a position to make use of it."[70] That would be bad for the political status of the deduction, of course, but it would be even worse for the nation's social fabric. "The message that we as a nation will be sending to ourselves and to successor generations will be that private giving and volunteering are not, as we have hitherto argued, central to the kind of society we want to be, but merely a peripheral exercise in which only a privileged minority of the public participate or has an interest. [71]

"The glory of the above-the-line deduction is that it proclaims a great truth about the United States," Lyman concluded. "It says, loud and clear, that our vision of democracy is one in which the Federal Government has no monopoly on working in the public interest, or on providing money for the public good, but one in which all citizens, rich and poor, contribute their time and substance to these ends." [72]

Lyman was echoing comments made the previous year by New York lawyer Frederick B. Campbell in his own *Times* op-ed. "Limiting the deduction for charitable contributions would give the Federal Government a monopoly on tax-free provision of services in human resources, education and other traditional charitable enterprises," Campbell wrote. "The Government does not always provide the best services in these areas, and there is little reason to assume that its performance would improve with reduced competition."[73]

Lee Cobb, vice president of the U.S. UNICEF Committee, described the original Treasury plan as "an unmitigated national disaster," further insisting that it would severely harm charities. Eventually, he warned, the social services provided by these nonprofit organizations would suffer and "government is going to have to pick up the slack."[74]

Other charity lobbyists made similar points, emphasizing the tradeoff between private and public provision of social services. "We feel this is extremely unfair in terms of what we do to help the public good," one charity lobbyist told Rep. Charles Rangel, D-N.Y. "You also have to think about who would pay the cost of these services if donations were cut back," added another.[75]

Spending cuts had added further urgency to arguments on behalf of the deduction, as charity expert Charles T. Clotfelter pointed out. "Because proposals to reform the income tax would have the effect of reducing the incentive to make contributions, such proposals are likely to dampen the level of giving at the very time that Federal budget cuts are making private support more important," Clotfelter wrote. "The philanthropic sector, which receives 88 percent of its private contributions from individual donors, has much at stake in the debate over Federal income tax reform. So too does the nation as a whole because of our traditional reliance on private charity and other nonprofit organizations."[76]

Charity lobbyists did not confine their arguments to discussions of national character or a preference for limited government. They also offered a fairness case for leaving the charity deduction intact. Repealing or substantially limiting it would work a great injustice on taxpayers, noted Frederick Campbell. "It taxes income that taxpayers do not obtain," he wrote. "Someone who earns $25,000 and gives $500 to charity actually has only $24,500 for himself. For the Government to tax that $500 would be ludicrous."[77]

In a similar vein, Peter Swords argued in the *New York Times* that the deduction was simply a matter of good tax policy. "Contributions to charities should not be in the tax base to begin with," he wrote. "When someone transfers funds to an organization to provide goods or services that benefit the whole community (only in these circumstances is a charitable contribution allowed) and for which no tangible return is received, it makes tax sense to affirm that such funds should not be taxed."[78]

Time and again, however, the most passionate arguments on behalf of the deduction sought to connect it to the nation's essential character, including its outsize benevolence and distaste for big government. Treating the deduction as a tax expenditure, wrote Swords, implied that government should have some control over how charitable donations were spent. "To those who view charitable contributions as tax expenditures, private control is being allowed over the use of government funds, which, they object, should be controlled solely by government officials."[79]

In fact, Swords wrote, the genius of the deduction was the freedom it gave the private sector in deciding how to use these funds. The deduction allowed people to find new ways to help society without government interference or oversight. "Out of this system has grown our country's matchless and unique charitable, educational and religious nonprofit sector," he concluded.[80]

Such arguments were powerful and well-rooted in the history of U.S. tax policy and the charity deduction. And they managed to protect the deduction from its most serious challenge, including any effort to substantially curb its value. The Tax Reform Act of 1986 did eliminate the deduction for non-itemizers. And many of its other changes reshaped the operation of the itemized deduction, including a general reduction in marginal rates, an increase in the standard deduction, and changes to a variety of other personal deductions (the last two changes having increased the incentive to skip itemization in favor of a standard deduction).[81]

In retrospect, it seems unlikely that the charitable deduction was ever in any serious danger in the run-up to tax reform, although it might have seen more substantial reform. Support for the deduction in its current form remained strong, even in the face of the base broadening fever that animated the 1986 act. Longstanding arguments on behalf of the deduction—and perhaps the deduction's age itself—protected its place in the tax system.

Conclusion

1986, of course, was not the end of the story. During the 1990s, proposals for some sort of "flat tax" gained popular currency, and talk of eliminating the charity deduction reappeared. Spending reductions, including proposed cuts to Medicaid, again raised the stakes, as supporters of the deduction were quick to point out: charities seemed headed for an even larger role in the provision of social services, making the deduction even more indispensable.

"Charities are being asked to expand their work in serving citizens, and I believe it is essential that charities continue to receive favorable tax treatment, and charitable gifts continue to be encouraged under the law," contended Edward Hayde, director of gift planning at the Catholic Foreign Mission Society.[82] "Charities are being asked to do much more today," added Ralph Gregory of the United Way of Westchester County, NY. "We believe that not-for-profit organizations are not going to be able to pick up all the vital services that may no longer be available in other ways." Unless, of course, they were allowed to keep their deduction.[83]

Such comments of course, were simply the next installment in a long running story about the charity deduction and its defenders. Time and again, the deduction had been defended with a variety of durable and interconnected arguments: that charities were important, providing vital services, often more effectively than government ever could; that charities had played a unique historical role in American society, reflecting our national preference for private charity over government activism; and that had long stood as a bulwark against growing government, a vital check on the otherwise inexorable growth of the state.

Add to such arguments a variety of points rooted in notions of tax fairness—including the concept of "ability to pay" that undergirds so much of the progressive income tax—and you end up with a powerful, multifaceted case for preserving the charity deduction. The argument was not bulletproof, of course, especially when it came to the vital question of whether the deduction actually shaped individual giving decisions; critics of the deduction made sure that no one ever forgot the persistence of these empirical issues. But the overall case for a charity deduction had powerful intuitive appeal, and its political success was evident over the decades.

Today, with the charitable deduction under scrutiny again, arguments on its behalf have a familiar ring to them. In Robert Shiller's defense of the deduction, quoted at the start of this article, we can discern the past in almost every statement about the present. This familiarity is especially evident in Shiller's comments about the productive tension between private sector charity and public sector spending. "Undoubtedly, charitable giving can substitute for a good part of the things that the government would otherwise be doing itself, a factor that is rarely introduced into budget calculations," Shiller wrote. "Indeed, in many cases, individual philanthropy may be more effective than government expenditures."[84]

Here, in neatly distilled form, is one of the most powerful arguments for preserving the deduction. In a country where distrust of government and reverence for the private sector is an article of rhetorical faith (if not always practical application), such a case can be very powerful and extremely durable.

Notes

1 In addition to the income tax deduction for charitable giving, there is also a deduction applicable to estate and gift taxes. This paper focuses on the former.

2 Sean Lowry, "Itemized Tax Deductions for Individuals: Data Analysis" Congressional Research Service, 8 (2013).

3 Joseph J. Cordes, "Re-thinking the Deduction for Charitable Contributions: Evaluating Effects of Deficit-Reduction Proposals" *National Tax Journal*, 1009–10 (2011).

4 For suggestions to eliminate the deduction entirely, see (among others) Jack Shakely, "It's Time to Write Off the Charitable-Giving Tax Deduction," *Los Angeles Times*, December 18, 2011, http://articles.latimes.com/2011/dec/18/opinion/la-oe-shakely-deduction-20111218, and comments from Daniel J. Mitchell of the Cato Institute, quoted in "Should We End the Tax Deduction for Charitable Donations?" *Wall Street Journal*, December 14, 2012, http://online.wsj.com/article/SB10001424127887324469304578143351470610998.html?mod=googlenews_wsj#U90207703721TWE.

5 Jackie Kucinich, "Charities fight possible changes on tax deductions," *USA Today*, December 9, 2012, http://www.usatoday.com/story/news/nation/2012/12/09/charitable-deduction-lobbying/1750943/

6 While the commission never adopted a final set of recommendations, its chairmen included a limit on the charitable contribution in their much-noted draft proposal. See National Commission on Fiscal Responsibility and Reform, "Co-Chairs' Proposal," November 2010, 26, http://www.fiscalcommission.gov/sites/fiscalcommission.gov/files/documents/CoChair_Draft.pdf.

7 Bipartisan Policy Center, Debt Reduction Task Force, "Restoring America's Future," November 2010, 33–34.

8 President Obama's plans proposal to limit the deduction has embedded in his larger suggestion to limit the value of itemized deductions for high-income taxpayers. See, for example, Office of Management and Budget, "Fiscal Year 2013 Budget of the U.S. Government," February 13, 2013, at 39.

9 Bernie Becker, "Charitable coalition launches new website," *The Hill*, April 4, 2013, http://thehill.com/blogs/on-the-money/domestic-taxes/291905-charitable-coalition-launches-new-site#ixzz2Ppbdjeuw

10 Bruce Johnson, "Explaining the Progressive Attack on Charitable Deductions," *American Thinker*, December 5, 2012, http://www.americanthinker.com/blog/2012/12/explaining_the_progressive_attack_on_charitable_deductions.html.

11 Howard Rich, "Big Government Targets Charitable Deductions," *Washington Times*, December 6, 2012, http://www.washingtontimes.com/news/2012/dec/6/big-government-targets-charitable-deductions/#ixzz2PVAFG8Hf

12 Robert Shiller, "Please Don't Mess With the Charitable Deduction," *New York Times*, December 15, 2012, http://www.nytimes.com/2012/12/16/business/the-charitable-deduction-and-why-it-needs-to-stay.html.

13 Ellen P. Aprill, "Churches, Politics, and the Charitable Contribution Deduction," *Boston College Law Review* 848 (July 2001). On the 1913 effort, see J. S. Seidman, *Seidman's Legislative History of the Federal Income Tax Laws, 1938–1861*, 944–945 (New York: Prentice Hall, 1938).

14 Roy G. Blakey, "The War Revenue Act of 1917," 7 *The American Economic Review*, no. 4 810 (1917).

15 War Revenue Act, ch. 63, 40 Stat. 300, § 1201(2), 330 (1917).

16 Quoted in Charles T. Clotfelter, *Federal Tax Policy and Charitable Giving*, National Bureau of Economic Research monograph. 31 (Chicago: University of Chicago Press, 1985); Ellen P. Aprill, "Churches, Politics, and the Charitable Contribution Deduction," 42 *Boston College Law Review* 849 (2001).

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[18] "The Conscription of Wealth," *New York Times*, August 24,1917, 6.

[19] Ibid.

[20] Ibid.

[21] "Exempting Charity," *Washington Post*, August 25, 1917, 6.

[22] Ibid.

[23] "Charity Exempted," *Washington Post*, September 10, 1917, 6.

[24] Kenneth Liles and Cynthia Blum, "Development of the Federal Tax Treatment of Charities: A Prelude to the Tax Reform Act of 1969," *Law and Contemporary Problems*, Autumn 1975, 6–56, at 25.

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[27] Edwin R. A. Seligman, "The War Revenue Act," *Political Science Quarterly* 33, no. 1 (1918): 20–21.

[28] Frank F. Anderson, "Fundamental Factors in War Finance," *Journal of Political Economy* 25, no. 9 (1917): 873.

[29] Ibid.

[30] Justin Fair, "Thousands of Letters Inquiring Into Financial Privacy of Taxpayers Flood Offices of Income Division," *Washington Post,* September 5, 1920, 12.

[31] On the origins of the standard deduction, see John R. Brooks II, *Doing Too Much: The Standard Deduction and the Conflict Between Progressivity and Simplification*, 2 *Colum. J. Tax. L.* 203 (2011), 210–212. See also Aprill, "Churches, Politics, and the Charitable Contribution Deduction," 843.

[32] On the development of World War II tax policy, see Joseph J. Thorndike, *Their Fair Share: Taxing the Rich in the Age of FDR* (Washington, DC: Urban Institute Press, 2013).

[33] "Tax-Exempt Bodies Ask Relief in Bill," *New York Times*, December 5, 1943, 1.

[34] "'Easy' Tax Bill Moves toward Senate Action," *Christian Science Monitor*, May 19, 1944.

[35] Clotfelter, *Federal Tax Policy and Charitable Giving*: 32.

[36] "Act to Aid Philanthropy," *New York Times*, March 4, 1944, 11.

[37] "Tax Amendment Urged," *New York Times*, July 20, 1944, 31.

[38] Rev. John Evans, "Churches Seek Amendment to Income Tax Act," *Chicago Daily Tribune*, July 31, 1944, 18.

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[40] Rev. John Evans, "Simplified Tax Called 'Fraud Upon Churches," *Chicago Daily Tribune*, July 30, 1944, 9.

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[43] "Simplified Taxes Debated in House," *New York Times*, May 4, 1944, 25.

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[54] *Business Week*/Harris Poll, Nov, 1984.

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[56] *Time*/Yankelovich, Skelly & White Poll, Dec, 1984.

[57] Gordon Black/*USA Today* Poll, Nov, 1984.

[58] Gordon Black/*USA Today* Poll, Nov, 1984.

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[71] Ibid.

[72] Ibid.

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[75] Anne Swardson, “Charities Over Tax Reform Barrel,” *Washington Post*, January 30 1985, A4.

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[80] Ibid.

[81] Aprill, "Churches, Politics, and the Charitable Contribution Deduction," 855.

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