

Subsidiarity and the Use of Faith-Based Organizations in the Fight Against Poverty

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For those who mourn the decay of our cities and hate the violence, abuse, destitution and despair that reign there, the ultimate goal has never been just “ending welfare as we know it.” The ultimate goal is transforming broken lives and renewing distressed communities. Radically reforming the government welfare system was one prerequisite for genuine progress towards this goal, a necessary but insufficient task. Even more challenging work lies ahead.¹

Introduction

Despite decades of attempts to address the problem of poverty, the United States continues to be a country of poverty in the midst of plenty. It is a “nation blessed, by almost any international or historical standard, with abundant opportunities,”² and yet has a higher child poverty rate than any other industrialized country.³ The growing income and wealth inequality in this country is well documented⁴ and the most recently released

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¹ Amy L. Sherman, *Where Do We Go From Here?*, in TRANSFORMING WELFARE: THE REVIVAL OF AMERICAN CHARITY (ED. JEFFERY J. SIKKENGA) (1997), available at www.acton.org/publicat/books/transformwelfare/sherman.html.

² Daniel T. Lichter & Martha L. Crowley, *Poverty in America: Beyond Welfare Reform*, 57 POPULATION BULLETIN 1, 3 (June 2002).

³ Susan J. Stabile, *One for A, Two for B, and Four Hundred for C: The Widening Gap in Pay Between Executives and Rank and File Workers*, 36 U. MICH. J.L. REFORM, 115, 151 (2002). One-sixth of American children grow up poor. See United States Conference of Catholic Bishops, *A Place at the Table: A Catholic Recommitment to Overcome Poverty and to Respect the Dignity of All God’s Children*, A Pastoral Reflection of the U.S. Catholic Bishops, at §II, available at <http://www.usccb.org/bishops/table.htm>. Worldwide, over 30,000 children die every day from the effects of poverty. *Id.*

⁴ See David Kamin and Isaac Shapiro, *An Uneven Recovery: New Government Data Show Corporate Profits Enjoying Unusually Large Gains, While Workers’ Income Lag Behind*, CENTER ON BUDGET AND POLICY PRIORITIES, Sept. 3, 2004, available at <http://www.cbpp.org/9-3-04ui.htm>; See also The Hierarchy; *Income Inequality in the United States*, MULTINATIONAL MONITOR, May 2003, vol. 24 no. 5, available at <http://multinationalmonitor.org/mm2003/03may/may03interviewsbernstein.html>; see also Ed Vulliamy, US

figures of the U.S. Census Bureau show an increase in the poverty rate to 12.5% in 2003 from 12.1% in 2001, with the result that 35.9 million Americans live in poverty.⁵ Those figures include an increase in the poverty rate for children from 16.7% in 2002 to 17.6% in 2003.⁶ Although being “poor in our country is far different from being poor in sub-Saharan Africa,” American poverty “diminishes the lives and undermines the dignity of many families who live in our midst.”⁷

Our approach to addressing the problem of poverty in the United States has changed over the years. The period from the New Deal until the mid-1990s was characterized by a movement away from local private and governmental efforts and an increasing federalization of efforts to address poverty, leading to the growth of what has been termed a welfare state.⁸ However, toward the end of the 20th century, that notion

in Denial as Poverty Rises, *GUARDIAN* (London), Nov. 2, 2002, Observer News pg. 22; *See also* Robert Pear, Number of People Living in Poverty Increases in US, *NEW YORK TIME*, Sept. 25, 2002, at A1.

⁵ U.S. Census Bureau, *News Conference on 2003 Income and Poverty Estimates From the Current Population Survey*, Aug. 26, 2004, available at <http://www.census.gov/Press-Release/www/2004/2004IncPov-weinberg.html>.

The gap between rich and poor that exists in the United States is replicated in other countries, both developed and undeveloped. For example, Australia has experienced a widening gap between the very rich and the rest of the country, with the annual income of the top 5% of the population being roughly equivalent to the bottom 40%. *The Conspiracy of Silence on Poverty*, *THE AGE*, May 8, 2003, available at <http://www.theage.com.au/articles/2003/05/05/1052280321906.html>. More sobering, the UNDP 2003 Human Development Report, released in July 2003, reported that 54 nations are poorer today than they were in 1990. UNITED NATIONS DEVELOPMENT PROGRAMME, *HUMAN DEVELOPMENT REPORT 2003: MILLENNIUM DEVELOPMENT GOALS: A COMPACT AMONG NATIONS TO END HUMAN POVERTY 2* (Oxford U. Press 2003). In Latin America and the Caribbean, the Arab States, Central and Eastern Europe and in sub-Saharan Africa, the number of people living on less than \$1 per day increased in the last ten years, and in far too many countries, more children die before the age of five and fewer receive education than a decade ago. *Id.* at 5.

⁶ U.S. Census Bureau, *News Conference on 2003 Income and Poverty Estimates From the Current Population Survey*, Aug. 26, 2004, available at <http://www.census.gov/Press-Release/www/2004/2004IncPov-weinberg.html>.

⁷ United States Conference of Catholic Bishops, *A Place at the Table*, *supra* note 3, at §III.

⁸ One author has suggested that there existed a broad “political consensus that supported the concept of welfare as an entitlement provided by the federal government.” Vincent D. Rougeau, *A Crisis of Caring: A Catholic Critique of American Welfare Reform*, 27 *HARV. J. L. & PUB. POL’Y* 101, 105 (2003).

started to be replaced, culminating in the passage in 1996 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”).⁹ The PRWORA, turned over to the states significant responsibility for the fight against poverty, eliminating welfare as a federal entitlement and replacing federal welfare programs with a state-based system that includes rigid judgments about who among the poor are deserving and who are not. At the same time, the PRWORA also contained provisions designed to allow faith-based nonprofit organizations a greater role in addressing poverty.

The Republican promotion of the movement started by the PRWORA, captured in its mantra of compassionate conservatism, relies heavily on the rhetoric of the subsidiarity principle.¹⁰ Rick Santorum, one of the drafters of the welfare reform bill and an outspoken defender of compassionate conservatism makes frequent explicit references to the Catholic teaching of subsidiarity.¹¹

The principle of subsidiarity has much that is useful to contribute to our notions of how best to address poverty, with its focus on decentralization and the desirability of, where possible, addressing problems by families and other nongovernmental institutions before resorting to governmental entities. The changes in federal law designed to

⁹ The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in multiple sections of the U.S.C.).

¹⁰ “Bush advisers have said that Catholic principle of ‘subsidiarity’ played a notable part in fleshing out his mantra of compassionate conservatism.” William Bole, *Lowering the Safety Net: Say you want devolution?*, OUR SUNDAY VISITOR, Nov. 26, 2002, available at <http://www.osv.com/periodicals/show-article.asp?pid=362> (also calling welfare reform “a synonym of devolution”). See Robert K. Vischer, *Subsidiarity as a Principle of Governance: Beyond Devolution*, 35 IND. L. REV. 103, 103-107 (2001) (discussing link between compassionate conservatism and subsidiarity).

¹¹ See, e.g., Rick Santorum, *Subsidiarity at Work: a Catholic's Vision of Social Policy*, CRISIS, June 1999, at 31-35. Rick Santorum, Remarks at The National Press Club Meeting From Promise to Policy: A Discussion of the White House Office of Faith-Based and Community Initiatives (Jan. 30, 2001) (transcript available at <http://pewforum.org/events/index.php?EventID=4>) (“As a Catholic we call the principle subsidiarity, and I really truly believe that if we're going to change our society and we're going to transform our communities then we have to have more ownership of the problems and looking to ourselves to solve them”).

facilitate the activities of faith-based organizations thus represents a step consistent with the principle of subsidiarity in its best sense. Faith-based organizations have tremendous advantages over the provision of direct benefits by the federal or state governments, being capable of steering a course between welfare as an entitlement for all and state-based determinations as to what general criteria make one worthy of receiving governmental assistance. The fact that they are closer to the problem allows them to better tailor aid and solutions to the situations of those they serve. The fact that they are community-based allows them to better facilitate the full development of the human personality of those who they touch. The fact that they are faith-based allows them to capture benefits of attempting to address some of the behavioral contributors to the difficulty of improving the lives of those they serve.

However, subsidiarity emphasizes action at the level most suited to address a problem, not merely action at the lowest level. It is thus important that subsidiarity not be used as an excuse to merely devolve responsibility downward without assurance of effectiveness, that it not be used as an excuse for the federal government to abdicate responsibility to provide for the social welfare of its citizens, viewing social welfare as the responsibility of states and localities, aided by private actors. Doing so would be inconsistent both with the concerns underlying the principle of subsidiarity and with subsidiarity's context within the broader body of Catholic social teaching, and would be little more than merely a ruse for simply reducing federal expenditures. It is thus important to recognize that the effective provision of social services requires multiple actors. While it is desirable that faith-based organizations play a significant role, the federal government must also retain a significant role both in enabling faith-based

organizations to do their job and in doing those things that can not be done effectively by such organizations. Ultimately, the government must remain the ultimate backup to ensure that no one is left behind.

The rhetoric of compassionate conservatism recognizes this ultimate government obligation.¹² However, the reality is that the current federal efforts fall short of fully meeting the responsibility of the federal government.

This Article explores the role, and the advantages of the increased use of, faith-based organizations in the fight against poverty. In doing so, it examines where the compassionate conservative agenda is consistent with the principles underlying subsidiarity and where it falls short. Although suggesting there is more the federal government could and should be doing to fulfill its obligation to provide for the social welfare of all its citizens, the Article sees the movement to expand the role of faith-based organizations as positive. Part I of the Article briefly traces the shifts in the government's approach to addressing poverty. Part II asks what the principle of subsidiarity contributes to our thinking about how best to address poverty. With the principle of subsidiarity in mind, Part III discusses the role and potential advantages of faith-based organizations, both exploring the reasons faith-based organizations offer advantages in addressing poverty and providing examples of where faith-based organizations have made and can make a difference. Finally, Part IV considers ways the work of faith-based organizations can be facilitated, while recognizing that they offer only part of a strategy for ending poverty in this country.

I. From Federal Welfare State to Local and Non-Governmental Response to Poverty

¹² See *infra* text accompanying notes 238.

A. *Pre-1996*

Prior to the New Deal, poverty was a social problem addressed primarily at the local level, with a significant reliance on voluntary secular as well as religious providers of services.¹³ Communities and religious groups took care of their own needy and there develop a number of charitable organizations providing services of various types. This approach was very effective during the 19th Century and during the early part of the 20th Century; millions of people moved out of poverty as a result of the efforts by “tens of thousands of local, private charitable agencies and religious groups.”¹⁴

The New Deal saw a shift away from private and religious providers toward the government as the primary provider of social services.¹⁵ The change came as a response to the enormity of need created by the Great Depression, which overwhelmed the capacity of voluntary providers. From 1920 to 1932, “at least four hundred of the nation’s private welfare agencies went under.”¹⁶

Following the New Deal, there developed a notion of welfare as an entitlement provided by the federal government. The Aid to Families with Dependent Children (“AFDC”),¹⁷ for years the primary federal welfare statute, provided means-tested welfare benefits. The program was essentially an entitlement to a guaranteed income from the federal government to eligible low-income mothers and children.

¹³ The history of the provision of services to the poor has been discussed at length by Marvin Olasky. See MARVIN OLASKY, *THE TRAGEDY OF AMERICAN COMPASSION* 6-150 (Regnery Publishing 1992); MARVIN OLASKY, *RENEWING AMERICAN COMPASSION* 34-63 (Free Press 1996).

¹⁴ OLASKY, *RENEWING AMERICAN COMPASSION*, *supra* note 13, at 29 (also noting the existence of tremendous optimism, in contrast to the current “demoralization among the poor and cynicism among the well-off”).

¹⁵ See BOB WINEBURG, *A LIMITED PARTNERSHIP: THE POLITICS OF RELIGION, WELFARE, AND SOCIAL SERVICE* 27 (Columbia U. Press 2001).

¹⁶ OLASKY, *THE TRAGEDY OF AMERICAN COMPASSION*, *supra* note 13, at 150.

¹⁷ 42 U.S.C. §60 et seq. (1982).

Objections grew over time to what came to be characterized as the welfare state. Conservatives like Newt Gingrich deplored the “culture of entitlement and redistribution.”¹⁸ Moderate Republicans objected that “the safety net has become a snare,” and that government assistance should give people “an opportunity instead of a handout.”¹⁹ Even Democratic voices were heard in a similar refrain, with Bill Clinton promising in the 1992 campaign to “end welfare as we know it.”²⁰ In fact, “[a]ll sides expressed a desire to make significant changes in what was universally perceived as a ‘failed welfare system.’”²¹ The concerns included the belief that entitlement creates dependency and that the receipt of benefits should not be completely divorced from a notion of personal responsibility, both of which suggested that the better approach is to avoid a government handout. Philosophically, some believed that the development of the welfare state was the product of an excessive promotion of liberal values of individualism and personal autonomy.

B. 1996 Welfare Reform

The 1996 passage of the PRWORA²² represented a major shift in the government’s strategy for addressing poverty in two respects. The first is a shift from

¹⁸ ED GILLESPIE & BOB SCHELLHAS (EDS.), *CONTRACT WITH AMERICA: THE BOLD PLAN BY REP. NEWT GINGRICH, REP. DICK ARMEY AND THE HOUSE REPUBLICANS TO CHANGE THE NATION 65-77* (Times Books of Randon House, Inc. 1994).

¹⁹ *More Voices on Welfare*, CONG. QUARTERLY WEEKLY REPORT, p.2118, Jul. 27, 1996.

²⁰ Richard L. Berke, *Clinton: Getting People Off Welfare*, N.Y. TIMES, Sept. 10, 1992; Demetrios James Caraley, *Ending Welfare as we Know It: A Reform Still in Progress*, 116 POL. SCI. Q. 525, 527 n.5 (2001) (discussing Clinton campaign ad promising to end welfare as we know it).

²¹ THOMAS MASSARO, S.J., *CATHOLIC SOCIAL TEACHING AND UNITED STATES WELFARE REFORM xi* (Minnesota: Liturgical Press 1998).

²² President Clinton, who signed the PRWORA after rejecting two previous versions of welfare reform, called the legislation “far from perfect...but on balance...a real step forward for our country, our values, and for people who are on welfare.” *Text of President Clinton’s Announcement on Welfare Legislation*, N.Y. TIMES, Aug. 1, 1996, at A24.

entitlement to conditional provision of social services. The second is the devolution of welfare from the federal government to the states. These shifts represent the belief that government welfare programs as they existed prior to 1996 were a failure and the sense that the problem could be better addressed by levels other than federal government.²³

The PRWORA abolished the AFDC program, replacing it with the Temporary Assistance to Needy Families (“TANF”) program, a program providing for block grants to the states, who are then free to design their own welfare programs.²⁴ Although the PRWORA gives the states substantial discretion regarding eligibility and benefits, it also contains various conditions which state programs must impose on recipients of benefits. These include a work requirement and a time limit on the receipt of benefits as well as the imposition of certain program rules, the failure to comply with which may result in withdrawal of benefits. The PRWORA also establishes certain categories of persons from whom certain assistance may be withheld, such as unwed teenage mothers, felons, and drug abusers. It enforces its aims by providing financial incentives for states to meet various federal standards; states are rewarded for reducing the number of families on welfare and sanctioned for not doing so. At the same time that it replaced AFDC with TANF, the PRWORA also tightened eligibility criteria for the Food Stamp program,

²³ As then President Clinton characterized it, “[t]he era of big government is over.” Stanley W. Carlson-Thies, *Don’t Look to Us: The Negative Responses of the Churches to Welfare Reform*, 11 NOTRE DAME J. L. ETHICS & PUB. POL’Y 667, 668 (1997) (quoting Clinton’s 1996 State of the Union address).

²⁴ The authorization of TANF was originally set to expire on October 1, 2002, requiring reauthorization. Subsequently Congress enacted several short-term extensions of TANF and related welfare programs. The latest extension was approved on September 30, 2004, which has the effect of extending TANF to March 31, 2005. See PUB. L. NO. 108-308, 108th Cong. 2d Sess. (Sept. 30, 2004).

reduced or eliminated funding for child nutrition and meal programs, and narrowed the definitions for eligibility of children for Supplemental Security Income.²⁵

The rhetoric of the shift of responsibility from the federal government to the states was one of responsiveness to local needs and compassionate conservatism;²⁶ the reality may be the federal savings expected to be obtained from the program.²⁷ Whichever explanation is more persuasive, there is no question that the PRWORA emphasizes a work-based solution to the problems of the welfare state.²⁸ Moreover, its conditions on eligibility also represent judgments of the merits of welfare recipients. This latter has been a particular source of criticism of the PRWORA,²⁹ which allows states the discretion to impose more stringent requirements than those mandated by the PRWORA. States have responded to the authority granted to them by, for example, putting family caps that deny benefits to children born while their family is receiving welfare benefits and imposing restrictive time limits on the receipt of benefits.³⁰ Indeed, states “have an

²⁵ See Judith E. Koons, *Motherhood, Marriage, and Morality: The Pro-Marriage Moral Discourse of American Welfare Policy*, 19 WIS. WOMEN’S L.J. 1, 7 (2004) (discussing changes wrought by PRWORA).

²⁶ See Erin Holland, *From Welfare to Work: What the 1996 Welfare Reform Initiative Has Meant for Children*, 11 GEO. J. ON POVERTY L. & POL’Y 115, 118 (2004) (discussing as the rationale for giving state discretion regarding design and implementation of welfare programs the desire to allow states to create systems more responsive to the needs of its citizens and allowing states to experiment with different strategies).

²⁷ It has also been suggested that a significant driving force in the design of the PRWORA was a desire to promote marriage and strengthen the family. See Koons, *supra* note 25 at 20-21 (discussing Congress’ finding of facts supporting passage of the PRWORA, which speak in terms of the importance of marriage and the government interest in preventing out-of-wedlock pregnancies).

²⁸ President Clinton, who signed the PRWORA into law, expressed the belief that “[t]he best antipoverty program is still a job.” Press Release, Office of the Press Secretary, The White House, Statement by the President (August 26, 1996), available at <http://clinton6.nara.gov/1996/08/1996-08-22-president-statement-on-welfare-reform-bill.html>.

²⁹ See Rougeau, *supra* note 8; Koons, *supra* note 25 (criticizing the shift from entitlement to a devolved contractual model and the accompanying classification of persons as deserving or undeserving).

³⁰ See, e.g., United States Conference of Catholic Bishops, *Welfare Reform*, Feb. 2000, available at <http://www.usccb.org/sdwp.national/welfare.htm> (also citing Rutgers University study finding that the effect of the family cap policy has been to increase abortion rates among welfare recipients).

economic incentive to take actions...that will reduce caseloads and create fiscal savings.”³¹ Among other concerns is the fear that the new approach can not succeed during times of economic downturns.³²

The PRWORA represented the beginning of a further shift as well – a shift from government to nongovernmental groups, including faith-based organizations, to address the social services needs of citizens. In his 1996 State of the Union address, then President Clinton spoke of the need to replace “big government” with a more collaborative approach that involved civic and charitable associations and churches and synagogues in efforts to assist the poor.³³

Implementing this vision, the PRWORA included a charitable choice provision applicable to the newly established TANF program.³⁴ The goal of the provision was to enable religious organizations to obtain access to federal funds without jeopardizing their religious character and mission, while at the same time not diminishing the religious freedom of beneficiaries of the services of such organizations. The legislation sought to achieve that goal by doing several things. First, it provided that when the government contracts with non-governmental providers, it can not discriminate against a faith-based social service provider “on the basis that the organization has a religious character.” Second, the provision protects the religious character of faith-based institutions in several ways, including eliminating the requirement that religious organizations set up separate

³¹ Sheryll D. Cashin, *Federalism, Welfare Reform, and the Minority Poor: Accounting for the Tyranny of State Majorities*, 99 COLUM. L. REV. 552, 562-63 (1999).

³² See Holland, *supra* note 26, at 120-22 (discussing fact that those leaving welfare have difficulty obtaining and keeping jobs and that even those that do may not earn enough to keep them out of poverty).

³³ See Carlson-Thies, *supra* note 23, at 669.

³⁴ 42 U.S.C. §604a.

501(c)(3) entities in order to receive funds to provide welfare services;³⁵ providing that “control over the definition, development, practice” of the religious beliefs of a faith-based organization cannot be impaired;³⁶ and allowing religious organizations to retain the right to hire and fire based on religious criteria. Third, the provision protects the religious freedom of the beneficiaries of social services by requiring that faith-based organizations not discriminate “on the basis of religion, a religious belief, or refusal to actively participate in a religious practice,” thus protecting recipients from being coerced into taking part in religious activities of the religious organization, and giving beneficiaries who do not want to receive services from religious entity “an alternative provider that is accessible to the individual.” The provision also prohibits the diversion of government funds to pay for sectarian programs and instruction, proselytizing or worship activities.

Making it clear that charitable choice was now a real part of the welfare landscape, charitable choice language was also included in a 1997 amendment to the PRWORA adopting the Welfare-to-Work program and in the 1998 Community Service Block Grant Program. Then Vice-President Gore praised the charitable choice vision in 1999, saying that “[a]s long as there is a secular alternative for anyone who wants one, and as long as no one is required to participate in religious observations as a requirement 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

³⁵ Prior to this legislative change, any funding of faith-based organizations, had to be through a 501(c)(3) organization established by the entity.

³⁶ This means, for example, that religious organizations are free to display religious symbols in places they use to provide government funded services. They may also use moral and religious language in providing their services. See Stanley Carlson-Thies, *Charitable Choice: Bringing Religion Back into American Welfare*, 13 J. POLICY HISTORY 1 (Winter 2001).

funds and without having to alter the religious character that is so often the key to their effectiveness.”³⁷

Despite these provisions, the charitable choice provisions of the PRWORA and subsequent legislation did not have a tremendous effect. The Clinton administration did little to implement the provisions³⁸ and a number of procedural requirements limited the ability of faith-based organizations to participate and compete for federal funds.³⁹ The removal of such barriers to access federal funds became a major campaign issue for Bush and one of his priorities when he became president.⁴⁰

C. Bush’s Faith-Based Organizations Initiative

In January 2001, shortly after taking office, President Bush issued two executive orders affecting faith-based organizations.⁴¹ The first created the Office of Faith-Based and Community Initiatives in the White House, charging it with the responsibility of identifying and removing obstacles to the ability of faith-based organizations to

³⁷ Vice President Al Gore, *Al Gore’s Speech on Faith-Based Organizations*, May 25, 1999, available at <http://www.conservativenews.org/specialreports/gore990525a.html>.

³⁸ AMY E. BLACK, DOUGLAS L. KOOPMAN & DAVID K. RYDEN, *OF LITTLE FAITH: THE POLITICS OF GEORGE W. BUSH’S FAITH-BASED INITIATIVES* 62 (2004) [hereinafter “OF LITTLE FAITH”].

³⁹ See Press Release, George Muckleroy, White House, Office of Faith-Based and Community Initiatives, *Unlevel Playing Field: Barriers to Participation by Faith-Based and Community Organizations in Federal Social Service Programs*, (Aug. 16, 2001), available at <http://www.whitehouse.gov/news/releases/2001/08/unlevelfield.html>.

⁴⁰ See e.g., Mike Allen, *President Urges War on Poverty*, WASH. POST, May 21, 2002, at A1 (quoting President Bush regarding America’s “long tradition of accommodating and encouraging religious institutions when they pursue public goals”); Tim Jones, *Bush Touts Faith-Based Aid to Poor*, CHI. TRIB., May 21, 2001, at 1 (quoting Bush regarding fact that although the government “should never fund the teaching of faith,” it should provide financial support for the social works of religious institutions).

⁴¹ Executive Order 13198, Establishment of White House Office of Faith-Based and Community Initiatives, 66 FED. REG. 8497 (Jan. 29, 2001); Executive Order 13199, Agency Responsibilities with Respect to Faith-Based and Community Initiatives, 66 FED. REG. 8499 (Jan. 29, 2001).

participate in the provision of social welfare programs.⁴² The second created satellite Faith-Based and Community Initiatives offices in five executive departments.⁴³

In the meantime, efforts in Congress to pass faith-based legislation failed. H.R.7, the Community Solutions Act, passed the House in the summer of 2001.⁴⁴ In addition to including a charitable deduction for taxpayers who don't itemize and who contribute to religious or charitable groups and protecting corporate donors who make such contributions, the bill included a charitable choice provision allowing religious groups to solicit government funds for their social service activities. H.R. 7 became embroiled in partisan debates and, even had it not, September 11 shifted the focus of Congress to terrorism and war.

In 2002, the CARE Act was introduced in the Senate.⁴⁵ CARE was much less ambitious than its House counterpart. It contained some religious nondiscrimination language but did not expand charitable choice. "To charitable choice proponents, CARE was little better than nothing. To charitable choice opponents, CARE was completely unnecessary, but not quite harmless."⁴⁶ Weak as it was, CARE also faced strong opposition and ultimately died without any floor consideration.⁴⁷

In response to the failure of Congress to pass any faith-based legislation, President Bush signed two further executive orders in December 2002. The first added

⁴² Executive Order 13198, 66 FED. REG. 8497.

⁴³ Executive Order 13199, 66 FED. REG. 8499. The five departments were Justice, Education, Labor, Health and Human Services and Housing and Urban Development.

⁴⁴ H.R.7, 107th Congress, 1002)

⁴⁵ S.1924, 107th Cong. (2002).

⁴⁶ OF LITTLE FAITH, *supra* note 38, at 5.

⁴⁷ Subsequent legislative efforts have also failed to yield fruit. *See infra* text accompanying notes 225-228.

faith-based satellite offices in two executive offices that previously did not have them.⁴⁸ The second unilaterally implemented the controversial religious nondiscrimination provisions of the CARE bill.⁴⁹ The aim of the latter is to allow faith-based organizations to compete on equal footing with nonfaith-based providers for federal funds. The executive order does not set aside any funds for faith-based providers; it merely removes obstacles to their ability to access generally available funds. While some legislators called Bush's action a "constructive step forward,"⁵⁰ other individuals and groups expressed strong opposition.⁵¹ The effect of President Bush's executive orders has been to increase the amount of money going to faith-based organizations allowing them to provide more and a greater diversity of services.⁵²

In the wake of the passage of the 2002 executive orders, the federal government has shown a marked reluctance to devote additional expenditures to programs for the poor.⁵³ The executive orders themselves provide no increase in total federal

⁴⁸ Executive Order 13280, Responsibilities of the Department of Agriculture and the Agency for International Development With Respect to Faith-Based and Community Initiatives, 67 FED. REG. at 77,145-46 (Dec. 12, 2002).

⁴⁹ Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, 67 FED. REG. 77,141 (December 12, 2002).

⁵⁰ Dana Milbank, *Bush Issues 'Faith-Based Initiative' Orders*, WASH. POST, Dec. 13, 2002, at A1 (quoting Sen. Lieberman); see OF LITTLE FAITH, *supra* note 38, at 6 (quoting Rep. Watts description of Bush's executive orders as an "excellent step toward the full deployment of the armies of compassion").

⁵¹ See OF LITTLE FAITH, *supra* note 38 at 5.

⁵² See White House Office of the Press Secretary, Fact Sheet: Compassion in Action: Helping America's Charities Serve Those Most in Need, Mar. 3, 2004, available at <http://www.whitehouse.gov/news/releases/2004/03/20040303-2.html> (discussing substantial increase in grants awarded to faith-based organizations); Corine Hegland and Kellie Lunney, *Reinterpreting God and Country*, NATIONAL JOURNAL, May 22, 2004, at p.1642, 1642 (observing that "more government dollars are flowing to religious groups than even before" as a result of the PRWORA and Bush's faith-based initiatives"); Amy L. Sherman, *Collaborations Catalogue: A Report on Charitable Choice Implementation in 15 States*, (2002).

⁵³ I don't mean to suggest that federal cuts did not begin until this time. The Reagan-Bush years also were ones of budget cuts for social services. See, e.g., Martha M. Hamilton, *Reagan Budget Cuts Trim 30,000 Jobs in D.C. Area*, WASHINGTON POST, April 13, 1981, at 18 ("During fiscal year 1982, it has been estimates that local governments will receive \$43 million less in impact aid, categorical grants, vocational

contributions to programs aimed at alleviating poverty; the faith-based initiative merely expands the pool of those eligible to seek governmental funds, it does not commit additional resources.⁵⁴ Proposals to provide additional federal funding, either in the form of block grants to the states or otherwise, have been defeated.⁵⁵

The combined effect of the PRWORA and subsequent executive action has been a shift from an understanding that the federal government has an obligation to address the needs of the poor toward putting that obligation in the hands of the state, aided by private efforts. At a philosophical level, the PRWORA also reflects a shift from a view of poverty as caused by economic and external factors to being a sign of weakness and individual fault.⁵⁶ The next section explores what the principle of subsidiarity has to say about these shifts.

II. What Subsidiarity Contributes to Our Thinking about How to Address Poverty

A. The Catholic Social Thought Principle of Subsidiarity

education and school lunch programs”); *Lawmakers Decry Drug-Project Cuts*, NEW YORK TIMES, at 11NJ8 (discussing how federal budget cuts under the Reagan have had an adverse effect on the war on drugs); Spencer Rich, *Administration Acknowledges Depth of Planned Welfare Cut; Schweiker Admits Budget Cut Impact on Welfare Families*, WASHINGTON POST, Mar. 12, 1981, at A1.

⁵⁴ It has been suggested that the lack of increased funding reflects the belief on the part of the Bush Administration that “more potential providers will lead to more effective and efficient social services, serving more needy people with the same number of dollars.” OF LITTLE FAITH, *supra* note 38, at 39.

⁵⁵ See Diana Jean Schemo, *Kennedy Demands Full Funding for School Bill*, N.Y. TIMES, April 7, 2004, at B9; Sheryl Gay Stolberg, *Churning Out Votes, Senate Clears Spending Package*, N.Y. TIMES, Jan. 24, 2003, at A19 (discussing how Republicans cast a series of votes against Democratic efforts to increase spending for domestic security, health care and education”); Sheryl Gay Stolberg, *Republicans Wield New Control as Debate Begins on \$390 Billion Spending Measure*, N.Y. TIMES, Jan. 17, 2003, at A23 (noting complaint of senior Democratic Senators that “Republicans were shortchanging domestic programs just as states face record budget shortfalls and governors are crying for help”); Robert Goodrich, *Metro East care groups say they are overwhelmed*, ST. LOUIS POST-DISPATCH, Aug. 28, 2004, at 15 (discussing reduction of federal assistance to social service agencies).

A significant part of the logjam preventing passage of a measure to allow individuals who don’t otherwise itemize deductions to take a deduction for charitable contributions was due to an inability of Congress to agree to provide additional funding for social services, a measure supported by the Senate but not by the House. See *infra* note 227.

⁵⁶ See WINEBURG, *supra* note 15, at 4, 11 (describing as the current view one that believes the individual controls her fate and that those who become poor do so due to lack of moral strength).

One of the key themes of Catholic social teaching is the principle of subsidiarity, which finds its roots in natural law.⁵⁷ As expressed by Pope Pius XI in 1931,

[I]t is a fundamental principle of social philosophy, fixed and unchangeable, that one should not withdraw from individuals and commit to the community what they can accomplish by their own enterprise and industry. So, too, it is an injustice and at the same time a grave evil and a disturbance of right order to transfer to the larger and higher collectivity functions which can be performed and provided for by lesser and subordinate bodies. Inasmuch as every social activity should, by its very nature, prove a help to members of the body social, it should never destroy or absorb them.⁵⁸

This foundational principle recognizes the “dignity of each individual created in God’s image,”⁵⁹ which leads to a bias against collectivism.⁶⁰ As explained by the Congregation

⁵⁷ See Robert A. Sirico, *Subsidiarity, Society, and Entitlements: Understanding and Application*, 11 NOTRE DAME J. L. ETHICS & PUB. POL’Y 549, 549 (1997) (observing that subsidiarity derives primarily from the natural law tradition and Roman Catholic social teaching and that it “lies at the core of the Western concept of the free and virtuous social order”). It has been suggested that one can find discussions of subsidiarity dating back to Marcus Aurelius. J.E. Linnan, *Collegiality, Catholic Diversity, and their Relevance to Apostolic Visitations*, 49 THE JURIST 399, 403 (1989). See also Vischer, *supra* note 10, at 108 (arguing that the principle of subsidiarity can be grounded in nontheological sources, yet recognizing the importance of acknowledging the Catholic roots of the doctrine in invoking it in public policy debates).

⁵⁸ Pope Pius XI, *Quadragesimo Anno* (After Forty Years) ¶ 79 (May 15, 1931). See Catechism of the Catholic Church ¶ 1883 (1994) (“A community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with the view to the common good”) (quoting *Centesimus Annus*).

⁵⁹ Congregation of the Doctrine of the Faith, *Instruction on Christian Freedom and Liberation* ¶ 73 (Mar. 22, 1986).

In *A Century of Social Teaching*, the U.S. Catholic Bishops put it this way: “[t]he human person is not only sacred, but social. We realize our dignity and rights in relationship with others, in community... The family has major contributions to make in addressing questions of social justice... We also have the right and responsibility to participate in and contribute to the broader communities in society... A central test of political, legal, and economic institutions is what they do *to* people, what they do *for* people, and how people *participate* in them.” U.S. Catholic Bishops, *Pastoral Message, A Century of Social Teaching: A Common Heritage, A Continuing Challenge* (1990), *reprinted in U.S. Bishops’ Meeting: “Rerum Novarum’s” Centenary*, 20 ORIGINS 394, 395 (1990). See also U.S. Catholic Bishops, *Sharing Catholic Social Teaching: Challenges and Directions* (1998), available at <http://www.nccbuscc.org/sdwp/projects/socialteaching/socialteaching.htm> (observing that “our tradition proclaims that the person is not only sacred but also social. How we organize our society... directly affects human dignity and the capacity of individuals to grow in community.... [H]uman beings grow and achieve fulfillment in community.”)

⁶⁰ See Paul D. Marquardt, *Subsidiarity and Sovereignty in the European Union*, 18 FORDHAM INT’L L.J. 616, 619 (1994) (“Catholic social theory casts society as a complex web of family, social, religious, and

of the Doctrine of the Faith in its *Instruction on Christian Freedom and Liberation*,⁶¹ the principle of subsidiarity means that

Neither the State nor any society must ever substitute itself for the initiative and responsibility of individuals and of intermediate communities at the level on which they can function, nor must they take away the room necessary for their freedom. Hence the Church's social doctrine is opposed to all forms of collectivism.⁶²

Subsidiarity expresses a preference for addressing social needs at the lowest possible organizational level that can be effective. Thus, as a directive about governmental action, the principle of subsidiarity suggests that governmental functions should be performed at the lowest possible level to perform the function effectively; higher levels of government should be utilized only where the need in question cannot be met at a more local level. "To empower higher authorities as anything but second-best solutions or even last resorts endangers the rights and liberties of those who are most affected."⁶³ As a prescription to meeting social needs, the subsidiarity principle also suggests that governmental solutions should not be called for unless problems can not be addressed by nongovernmental community entities such as churches or community or family groups or other voluntary associations.

The principle of subsidiarity reflects several notions. One is the belief that those closest to a problem are best able to understand and solve it, a belief that inevitably leads

governmental ties with the ultimate goal of encouraging and empowering the individual exercise of responsibility); J. Verstraeten, *Solidarity and Subsidiarity*, in PRINCIPLES OF CATHOLIC SOCIAL TEACHING (David A. Boileau ed., 1998), p.33 (observing that subsidiarity implies a rejection of collectivism).

⁶¹ Congregation for the Doctrine of the Faith, *Instruction on Christian Freedom and Liberation*, Mar. 22, 1986.

⁶² *Id.* At ¶ 73.

⁶³ Sirico, *supra* note 57, at 549. See David A. Bosnich, *The Principle of Subsidiarity*, 6 RELIGION AND LIBERTY (July-Aug. 1996), available at <http://www.acton.org/public/randl/article.php?id=200> (arguing that subsidiarity addresses the respective roles of the state and federal governments and that "[w]hen the federal government usurps the rights and responsibilities of state and local governments, a flagrant violation of the principle of subsidiarity has occurred").

to the conclusion that the government should not step in unless it is clear that intermediate communities are not able to function effectively.⁶⁴

Second is the notion of the importance of participation, of empowering individuals and groups to be involved in the life of their community.⁶⁵ The idea here is that the purpose of society is to facilitate individual development and achievement of aspirations. “Human development and achievement of aspirations require initiative. Social organizations are the means of assisting participants in the association to help themselves, or to permit them initiatives of commitment and action.”⁶⁶ This point was emphasized by Pope John XXIII in his encyclical *Mater et Magistra*,⁶⁷ when he warned that government action should never interfere with the full development of human personality, but rather should be aimed at augmenting individual freedom and development, encouraging individuals to take an active part in ordering their lives.⁶⁸ This empowering of individuals is important not only for the individual but for the health of society as a whole.⁶⁹ The aim, then, of subsidiarity is the furthering of human development.

⁶⁴ See Sirico, *supra* note 57 at 552 (observing that those “closest to the problem at hand are the ones with the strongest moral claim to finding a solution”).

⁶⁵ This is also part of the recognition of the human dignity of the person. “[G]oods beyond subsistence (participation, equity, some measure of equality) may be identified as further and necessary implications of a commitment to human dignity.” MASSARO, *supra* note 21, at 7-8; see Pope Paul VI, *Populorum Progressio* ¶ 47 (1967) (discussing conditions for leading a fully human life); MASSARO, *supra* note 21, at 41 (discussing importance of theme of participation in Catholic social teaching).

⁶⁶ Dinah Shelton, *Subsidiarity, Democracy and Human Rights*, in BROADENING THE FRONTIERS OF HUMAN RIGHTS (Ed. Donna Gomien) 43, 47 (Scandinavian Univ. Press 1993).

⁶⁷ Pope John XXIII, *Mater et Magistra* (On Christianity and Social Progress), May 15, 1961.

⁶⁸ *Id.* at ¶ 45, 55.

⁶⁹ See Vischer, *supra* note 10, at 109 (suggesting that subsidiarity embodies the notion “that a society’s health is a function, in great part, of the vibrancy and empowerment of individuals acting together through social groupings and associations”).

Third, Catholic social teaching's focus on subsidiarity also reflects the Christian notion of responsibility for those in need. Christians are commanded by Christ to serve one another, to care for those who suffer. Thus, the emphasis on family, churches and other intermediary organizations, with the government only as a last resort, an emphasis that both allows and encourages individuals to meet their Christian responsibility. Robert Vischer suggests that subsidiarity's casting of "social action as the responsibility of those who are in closest proximity to a given problem reconfigures the modern citizen as a proactive moral agent, not simply as a reactive subject of higher authority."⁷⁰

All three of these notions suggest that a better role for government is facilitating private action rather than stepping in to displace such action, unless and until it becomes clear that facilitation will not be effective. Pope John Paul II made this point in *Centesimus Annus* when he suggested that where necessary, communities of a higher order should support smaller communities rather than take over their functions.⁷¹

B. Subsidiarity and the Welfare State

In 1997, one scholar suggested that "[s]ocial policy's new leading concept is the idea that the institutions of civil society – families, neighborhood groups, schools, churches, non-profit social agencies, volunteer mentoring programs, and the like – need to be revitalized and brought to the forefront of the fight against social distress and

⁷⁰ Robert K. Vischer, *Subsidiarity as Subversion: Local Power, Legal Norms, and the Liberal State*, [presented at CST symposium].

⁷¹ Pope John Paul II, *Centesimus Annus* (The Hundredth Year), Encyclical Letter of Pope John Paul II on the Hundredth Anniversary of *Rerum Novarum*, ¶ 48 (May 1, 1991). See also U.S. Catholic Bishops, *Economic Justice for All, Pastoral Letter on Catholic Social Teaching and the U.S. Economy*, ¶ 124 (1986) (role of government is not to "replace or destroy smaller communities" but to "help them contribute more effectively to social well-being and supplement their activity when the demands of justice exceed their capacities").

poverty.”⁷² However, the idea that such mediating institutions should have an important role in promoting social welfare was hardly a new concept in 1997.

In his 1991 encyclical, *Centesimus Annus*, Pope John Paul II spoke harshly about the “Welfare State.” Although recognizing that the expansion of state intervention to address poverty was motivated by a desire to “respond better to many needs and demands, by remedying forms of poverty and deprivation unworthy of the human person,”⁷³ he suggested that such expansion did not give proper regard for the principle of subsidiarity and for the appropriate role of the State. This failure to do so has devastating consequences:

By intervening directly and depriving society of its responsibility, the Social Assistance State leads to a loss of human energies and an inordinate increase of public agencies, which are dominated more by bureaucratic ways of thinking than by concern for serving their clients, and which are accompanied by an enormous increase in spending. In fact, it would appear that needs are best understood and satisfied by people who are closest to them and who act as neighbors to those in need. It should be added that certain kinds of demands often call for a response which is simply not material but which is capable of perceiving the deeper human need.⁷⁴

There are two concerns illuminated in the above-quoted language. First is the more obvious preference for decentralization; the bias against a centralized bureaucracy. That concern is addressed by preferring private efforts to address poverty over governmental ones, and in the case where government intervention is necessary, state and local initiatives over federal efforts. Second, is the notion that governmental approaches respond only to material and not non-material needs.

⁷² Carlson-Thies, *supra* note 23, at 699.

⁷³ Pope John Paul II, *Centesimus Annus* (The Hundredth Year), Encyclical Letter of Pope John Paul II on the Hundredth Anniversary of *Rerum Novarum*, ¶ 48 (May 1, 1991).

⁷⁴ *Id.*

Centesimus Annus also suggests that there is an inconsistency between the principle of subsidiarity and the notion of welfare as “entitlement.” When the government creates an entitlement to welfare, it is not stepping in to address a failure of a lower order institution. Rather, it is “assuming that failure is a constant pattern of the lower order, and robbing them of the opportunity to provide better care for those who need. Indeed, with an ‘entitlement,’ the competence or incompetence of the lower orders in accomplishing the task of charity is not even an issue.”⁷⁵

Entitlement runs counter to the notion of the importance of participation and empowerment discussed in Section A. Facilitating individual development in this context means that the goal of any approach to poverty must include the reintegration of the weakest members of society into society and giving them a meaningful ability to participate both in their own future and the future of their community. The goal of welfare can not be simply to provide food, clothing and shelter, but an ability to fully participate in the life of community; it must address the social isolation of the poor as well as their basic material needs.

C. Necessary Cautions in Using Subsidiarity In Welfare Reform Discussions

The foregoing discussion of the subsidiarity principle suggests that an attempt to seek alternatives to the notion of welfare as a federal entitlement is a sound one. The question is how best to implement reform keeping in mind both subsidiarity and its place within the total scheme of Catholic social teaching. The devolution of responsibility from the federal government to the states and the creation of incentives to spur greater

⁷⁵ Sirico, *supra* note 57 at 564. Rev. Sirico also argues that the “very concept of a welfare ‘entitlement’ runs contrary to the scriptural understanding of aiding the poor: helping other is a moral duty that springs from spiritual commitment and is not essentially exercised through coercion of government mandates.” *Id.* at 565.

private actions both appear to be positive steps. However, there are several things that have to be kept in mind and that suggest cautions about the current compassionate conservative agenda.

1. Higher Level Must Step in When Lower Level Fails

The rhetoric of the PRWORA's shift of primary responsibility for addressing poverty to that state level rather than the federal government, that the states could be more responsive to the needs of its citizens and could be free to devise programs uniquely suited to their population,⁷⁶ seem to resonate with subsidiarity's instruction to address problems at the lowest level at which they can be effectively addressed.

The first response is to question the assumption that states in fact are better able than the federal government to be responsive to the particular needs of the poor in their jurisdiction. To say that the state government is a lower order than the federal government does not say it is sufficiently close to the needs of their people to actually bring the empowerment and participation that subsidiarity seeks to achieve. In fact, it would appear that what the devolution to the states accomplishes is very little in terms of being more proximate to the needs of the people, with the states responding by making broad based determinations of merit that do not take into account individual circumstances. Thus, there would be a question whether PRWORA's shift to the states of the authority to design and implement welfare programs achieves what subsidiarity seeks; if all welfare reform accomplished was movement downward from the federal government to the state, it would be very little.

⁷⁶ See *supra* note 26 and accompanying text.

Additionally, financial pressures on states generally, contributed to by potential sanctions for not getting people off the welfare rolls combine to make for an environment that can't possibly be successful, as demonstrated by the increasing number of persons living in poverty. Subsidiarity's answer to this is clear, calling for a higher level of government to step in if the resources or will of the local community is insufficient to address the problem.

As is more fully explored in Section III, the move to facilitate the work of faith-based institutions does provide the advantages that mere devolution to the states does not. However, the move to facilitate the work of faith-based institutions cannot be an excuse for governmental withdrawal from the scene. Within Catholic thought, the "government has a positive role because of its responsibility to serve the common good, provide a safety net for the vulnerable, and to help overcome discrimination and ensure equal opportunity for all."⁷⁷ The size of a problem has a great effect on what body can appropriately address it. Given the pervasiveness of poverty, it is clear there is a role for the federal government here.

Subsidiarity means action at the level most suited to address the problem, not merely the lowest level.⁷⁸ Devolution of responsibility to the states or to nongovernmental entities can not be an excuse for the federal government not exercising its proper role, and excuse for federal withdrawal from the scene. Where nonfederal

⁷⁷ United States Conference of Catholic Bishops, *A Place at the Table*, *supra* note 3, at §VI. See Vischer, *supra* note 10, at 114 (discussing Catholic position on role of government in promoting the common good); MASSARO, *supra* note 21, at 42-43 (discussing government duty to provide safety net).

⁷⁸ See Sirico, *supra* note 57, at 567 (observing that subsidiarity does not mean all solutions have to be private, it means private efforts should not be crowded out by government efforts).

governmental or nongovernmental approaches fail or cannot be effective, subsidiarity contemplates that the federal government will intervene.⁷⁹

2. Subsidiarity is not a Stand-Alone Principle

Viewed in isolation, the principle of subsidiarity is capable of manipulation. The danger is that subsidiarity will be used as an argument for a laissez faire approach by the government, leading to an excessive individualism, which the Church views as just as problematic as collectivism. The way out of this danger is to see subsidiarity, not as a stand-alone principle divorced from its context in Catholic social teaching, but as part of a core set of fundamental principles of Catholic thought.

Subsidiarity stands along with dignity of human person and solidarity as equally fundamental principles. The principle of human dignity, based on the creation of all individuals in God's image, is the basic grounding of all human rights.

Of particular importance here is the principle of solidarity,⁸⁰ which recognizes that a basic element of human existence is interdependence and relationship; living as human means living in community. Solidarity reminds us of our relationship with other members of our human family, i.e., that all are our neighbors, entitled to share in the "banquet of life to which all are equally invited by God."⁸¹ As expressed by Pope John Paul II, solidarity "is not a feeling of vague compassion or shallow distress at the

⁷⁹ In Section IV, I address more directly ways the federal government must stay involved in addressing the problem of poverty.

⁸⁰ David Hollenbach has suggested that "a revival of commitment to the common good and a deeper sense of solidarity are preconditions for significant improvement of the lives of the poor." DAVID HOLLENBACH, *THE COMMON GOOD AND CHRISTIAN ETHICS* 173 (2002).

⁸¹ Pope John Paul II, *Sollicitudo Rei Socialis* (On Social Concern) ¶ 39 (Dec. 30, 1987). In the words of Thomas Massaro, "to invoke the virtue of solidarity as a central value of ethical life is to call new attention to the relations among individuals. In order to be truly morally good, these relationships must be characterized by mutual concern for the well-being of others and by a willingness to make necessary sacrifices for the common good of the human community as a whole." MASSARO, *supra* note 21, at 8-9 (describing solidarity as "a regulative norm for judging the working of social institutions").

misfortunes of so many people, both near and far. On the contrary, it is a *firm and persevering determination* to commit oneself to the common good; that is to say to the good of all and of each individual, because we are *all* really responsible *for all*.”⁸²

Related to the principle of solidarity is the notion of a preferential option for the poor. As expressed by Pope Leo XIII in *Rerum Novarum*,⁸³ “the poor and helpless have a claim to special consideration.”⁸⁴ Pope John Paul II speaks of the special presence of Christ in the poor, a presence that demands of Catholics a preferential option for the poor and vulnerable.⁸⁵

Robert Vischer has argued effectively for the need to reconnect the doctrines of subsidiarity and solidarity to each other, suggesting that without that reconnection, the individual doctrines “can become unhelpfully malleable, empty vessels waiting to be filled by a whole range of preexisting agendas.”⁸⁶ Divorced from each other and from their roots, the one “becomes a conservative mantra used to justify the devolution of government power with little concern for the common good,” and the other is no more than “a largely empty feel-good slogan for a whole range of random and ungrounded, if

⁸² Pope John Paul II, *Sollicitudo Rei Socialis* (On Social Concern) ¶ 38 (Dec. 30, 1987). The virtue of solidarity is derived from the recognition of interdependence among individuals and nations. *Id.*

⁸³ Pope Leo XIII, *Rerum Novarum* (On the Condition of Labor), May 15, 1981.

⁸⁴ *Id.* at ¶ 29. *Rerum Novarum* recognizes that while the well off “have many ways of protecting themselves, ... those who are badly off have no resources of their own to fall back upon.” *Id.*

⁸⁵ See, e.g., Pope John Paul II, *Novo Millennio Ineunte* (Apostolic Letter to the Bishops, Clergy and Lay Faithful at the Close of the Great Jubilee of the Year 2000) ¶ 49 (Jan. 6, 2001) (speaking of the option for the poor as a “testimony to the nature of God’s love, to his providence and mercy”).

⁸⁶ Robert K. Vischer, *Solidarity, Subsidiarity and the Consumerist Impetus of American Law*, in SELF-EVIDENT TRUTHS: CATHOLIC PERSPECTIVES ON AMERICAN LAW (M. SCAPERLANDA & T. COLLETT EDS.) (forthcoming).

often noble, social causes.”⁸⁷ Indeed, Vischer suggests the prophetic message of subsidiarity cannot be fully grasped unless it is linked to the call of solidarity.⁸⁸

III. The Role and Potential Advantages of Faith-Based Organizations

Avery Dulles once observed that in the United States “we seem to be caught between the seductions of the welfare state and libertarian capitalism.”⁸⁹ Faith-based organizations offer the potential to steer a course between those seductive poles.

The discussion of subsidiarity in Section II suggests that the desire to seek an alternative to welfare as a federal entitlement is one to be applauded. At the same time, the discussion suggests a problem with simply pushing the responsibility to provide for social welfare down to the states, accompanied by mandates that force harsh judgments about who is deserving of help. However, the notions underlying subsidiarity also provide reasons to believe that the increased use of adequately supported faith-based organization, supplemented by necessary governmental steps, can provide the kind of support necessary to help those who are able to transition off welfare and to provide in the best possible way for those who cannot.

A. Why Faith-Based Organizations in the Fight Against Poverty?

There are several reasons to believe that faith-based organizations can play a vital role in addressing poverty in this country. These reasons help address two related questions: why favor a nongovernmental approach and why favor a faith-based approach.

1. Greater Access by Faith-Based Organizations to Those in Need

⁸⁷ *Id.*

⁸⁸ See Vischer, *supra* note 70.

⁸⁹ Rev. Avery Dulles, S.J., *Centesimus Annus and the Renewal of Culture*, 2 MARKETS AND MORALITY, Spring 1999, available at http://www.acton.org/publicat/m_and_m/1999_spr/dulles.html.

Subsidiarity teaches that those closest to a problem are best able to deal with it effectively. One reason for this is access. Faith-based groups offer a means of access to segments of the population that are otherwise difficult to reach. The reality is that “[i]n low income communities, those [who have the] most contact with the people are religious institutions propelled by religious instinct... Religious based organizations have the access to the poor.”⁹⁰ Indeed in some disadvantaged communities, “[a] church group may be the only structure that a disadvantaged community has,”⁹¹ making that group more accessible to community members than other providers of social services.

An example of where this is particularly true is in Latino communities. The vast majority of Latino churches and faith groups are located in low-income barrios.⁹² As a result, funding faith-based initiatives in such areas provides “an opportunity for all barrios in the country because it means that funds will get to the people who know the barrio best.”⁹³

There is another aspect to access. Precisely because FBOs are not governmental organizations, they have a kind of access government programs do not. The pastor of one Methodist church engaged in education and training, job development and job placement reported that

“We can minister to people and to extended family. Many times, someone will come in to us with a significant problem that is caused by someone in their family

⁹⁰ *Poverty Lawyers Look to Faith-Based Resources*, FORDHAM ONLINE (Feb. 2003), available at http://www.fordham.edu/general/Whats_New/Poverty_Lawyers_Look9951.html (quoting Martin Needelman, Brooklyn Legal Services Corp).

⁹¹ *Faith-Based Microlending*, AEO EXCHANGE (Dec. 2002), p.1 (quoting Elliott Wright, consultant for National Congress for Community Economic Development).

⁹² Rodolpho Carrasco, *Faith-Based Initiatives a Welcome Assault on Poverty*, PASADENA STAR NEWS, June 2, 2001, available at <http://www.urbanramps.com/rc/poverty.html> (quoting remarks of Rev. Luis Cortes, executive director of Nueva Esperanza Community Development Corp. in Philadelphia).

⁹³ *Id.*

that is on public assistance. We, because we're a church, can knock on doors and go into situations that a public agency cannot go in. We have had situations where clients were victims of abuse. They could come in to us. If we were a public agency, we couldn't say what we say as a church."⁹⁴

2. Community-Based Approach

Consistent with the discussion of subsidiarity in the previous section, the community approach adopted by many faith-based organizations offers a superior means of addressing the problems of the poor.

First, the problems of a community are better understood by those within the community, meaning that faith-based institutions have the ability to operate more efficiently and be more responsive to individual needs. As understood by the principle of subsidiarity, the importance of addressing problems at this local level can not be overstated, particularly in our increasingly multicultural society. "The more diverse a society is in terms of its demographic, religious, and normative makeup, the more its functions must be devolved to the lower orders where problems can be understood and dealt with on their own terms. A centralized authority lacks the information necessary to proscribe solutions for a diverse society; it must of necessity treat citizens and community as relatively homogeneous...The more heterogeneous the society's makeup, the more the subsidiarity principle needs to be recognized and practiced."⁹⁵

⁹⁴ See *The Role of Community and Faith-Based Organizations in Providing Effective Social Services*, Hearing before the Subcommittee on Criminal Justice, Drug Policy and Human Resources of the House Committee on Government Reform, 107th Cong., 1st Sess., Apr. 26, 2001, at p. 76 [hereinafter, Hearing: Role of Community and FBOs] (statement of Donna Jones, pastor of Cooke United Methodist Church). See also OLASKY, *RENEWING AMERICAN COMPASSION*, *supra* note 13, at 29-30 (discussing need for "personal involvement with the needy, suffering with them, not just giving to them").

⁹⁵ Sirico, *supra* note 57 at 558. See Matthew Diller, *Form and Substance in the Privatization of Poverty Programs*, 49 *UCLA L. REV.* 1739, 1747-48 (2002) (suggesting that the appeal of privatizing measures to address poverty lies in the belief that local solutions are a form of community empowerment, may "have an ethos and culture that is different than government agencies providing the same service," and appear to be "more attentive to the needs of clients").

Second, a community based approach allows for better integration of the recipients of social services into a supportive community network. As discussed earlier, underlying the principle of solidarity is a concern with empowering individuals, facilitating their development and their ability to participate in a community. Government programs “treat recipients as atomistic, isolated, self-contained units,” which ignores “a person’s need for social connectedness and belonging.”⁹⁶ Approaches to poverty that are community-based help address the social isolation of the poor, inviting their participation in the life of their community.

Third, a community based approach not only provides advantages for the beneficiary of the provided services, but community programs strengthen the community in which poor people live. It is a truism that “[c]ommunities cannot be created from without; they must be built from within.”⁹⁷ Services provided for members of a community by those outside of the community do nothing to help the recipients of their community develop. “They simply continue the mentality of dependency that the welfare state has created in so many of our urban centers and that suppresses the dignity of the

⁹⁶ OF LITTLE FAITH, *supra* note 38, at 280.

⁹⁷ RICHARD A. EPSTEIN, SIMPLE RULES FOR A COMPLEX WORLD 324 (1995).

people there.”⁹⁸ In contrast, faith-based organizations provide services to people in their neighborhoods, and in so doing, “provide an important anchor in their neighborhoods.”⁹⁹

3. Integrated Approach Addressing Material and Non-Material Needs

The use of faith-based organizations allows for a comprehensive approach that responds to the needs of the poor in a noncompartmentalized way, addressing a spectrum of needs rather than requiring people to go to different agencies and groups to meet different things. However, faith-based organizations do more than comprehensively meet material needs, they heed the call in *Centesimus Annus* “for a response which is simply not material but which is capable of perceiving the deeper human need.”¹⁰⁰

It is self-evident that a government approach can address only the material needs of the poor. Yet, as religion has always recognized, one does not live by bread alone,¹⁰¹ and merely dispensing food, clothing and housing to the poor is of limited value in effecting a real sustained improvement in their lives. As the discussion of subsidiarity in Section II suggests, the ultimate aim is the flourishing of the human person. While it is the case that nongovernmental organizations can do many things well, it remains that

⁹⁸ Michael Barkey, *Models of Effective Compassion: Dr. John M. Perkins and the Three R's of Community Development*, ACTON COMMENTARY, June 29, 2000, available at <http://www.acton.org/ppolicy/comment/article.php?id=19> (quoting Dr. John D. Perkins, chairman, Christian Community Development Association) (suggesting that while external aid does nothing to help community development, “[i]n Christian community development, we want to empower people to take responsibility for their lives and to have the consciousness of their own dignity and worth that comes from being able to have such control.”). See also Sirico, *supra* note 57, at 566 (observing that “The more the state takes care of us, the less shall we feel called upon to take care of ourselves and our family, and the less we feel inclined to do so.”).

⁹⁹ See Hearing: Role of Community and FBOs, *supra* note 94 at 48 (Katie Humphreys, Sec’y of Indiana Family and Social Services Administration).

¹⁰⁰ Pope John Paul II, *Centesimus Annus* (The Hundredth Year), Encyclical Letter of Pope John Paul II on the Hundredth Anniversary of Rerum Novarum ¶ 48 (May 1, 1991). See *supra* text accompanying note 74.

¹⁰¹ Deuteronomy 8:23 (“man does not live by bread alone, but by every work that proceeds out of the mouth of God doth man live”); Matthew 4:4 (Jesus quoting Old Testament language that “man shall not live by bread alone”).

faith-based organizations alone can provide a holistic approach that address both the material and non-material needs of the poor.

A faith-based approach addresses personal responsibility and behavior, attempting to change the lives and behavior of the poor, not simply meet their immediate material needs.¹⁰² Let me acknowledge that many are critical of any mention of personal responsibility and behavior, seeing it as an attempt to blame poverty on individual weakness rather than on economic and structural factors, as a means of ignoring the contribution of the capitalist system to poverty.¹⁰³ However, although it is indisputable that economic and structural factors are significant contributors to the problem of poverty that exists in this country, it is also the case that certain behaviors and lack of values, including crime and substance abuse, also make a contribution to the problem, affecting both the individuals engaging in such activity and their neighborhoods.¹⁰⁴ Thus, any complete solution to the problem of poverty must address those factors as well,

¹⁰² Interestingly, while demanding more of those who receive, such efforts also place additional demands on those who provide support. “The most creative, long-term solutions to the problems of the poor are coming from grassroots and church-based efforts – people who see themselves as the replacement, the agents, for Jesus here on earth...Acts of charity can be dangerous because givers can feel good about actions that actually accomplish very little, or even create dependency. Overcoming a [false] attitude of charity is a difficult task because it requires givers to demand more of themselves than good will. God’s people have solutions that are qualitatively different from any other approach to the poor.” Michael Barkey, *Models of Effective Compassion: Dr. John M. Perkins and the Three R’s of Community Development*, ACTON COMMENTARY, June 29, 2000, available at <http://www.acton.org/ppolicy/comment/article.php?id=19> (quoting Dr. John D. Perkins, chairman, Christian Community Development Association).

¹⁰³ See Rougeau, *supra* note 8, at 103-04; Koons, *supra* note 25, at 24 (noting right wing perspective that “poverty is created by individual moral failure”); OLASKY, RENEWING AMERICAN COMPASSION, *supra* note 13, at 76 (discussing how efforts at categorization and discernment were seen as plots to blame the poor rather than the socioeconomic system that trapped them). The skepticism is not wholly without merit, as there are many who have framed their argument in ways that suggest they blames the poor – both in the U.S. and abroad – for being poor. See, e.g., Taylor Humphrey, *The Public Tends to Blame the Poor, the Unemployed, and those on Welfare for their Problems*, HARRIS INTERACTIVE; THE HARRIS POLL #24, May 3, 2000; Jeffery D. Sachs, *Don’t Blame the Poor for Poverty*, PROJECT SYNDICATE, Nov. 1998, available at http://www.project-syndicate.org/commentaries/commentary_text.php4?id=209&lang=1&m=series; Matt Young, *Congress Urged Not to Blame the Poor for Poverty*, RELIGION NEWS SERVICE, July 12, 2002, available at <http://pewforum.org/news/display.php?NewsID=1347>.

¹⁰⁴ See *infra* notes 149 and 152.

attempting to affect attitude and behavior.¹⁰⁵ “Spiritual transformation [is] the only true remedy for persistent poverty and destructive addictions.”¹⁰⁶ Evidence showing a correlation between religious participation and rejection of crime and substance abuse bear this out.¹⁰⁷

This is an important point to understand. At one level, the spiritual development of citizens is not the concern of the government. However, alleviating poverty is a government concern. If spiritual transformation is an important aspect of the remedy for poverty, then allowing faith-based organizations to do what the government can’t do – work to achieve that transformation – is essential.

Moreover, addressing people’s spiritual needs, helping change their lives rather than just providing for their material needs, empowers them.¹⁰⁸ As explained by the head of one faith-based organization,

“Members of a congregation become aware of the complexity of the problems [facing the poor]. They come to understand the personal circumstances, strengths and weaknesses, and resources available to the household. The Church offers love, personal encouragement, creative solutions, and, when necessary, specifically catered services and material aid. Church members can be involved in solutions that strengthen marital, family and neighborhood bonds instead of weakening them.”¹⁰⁹

One of the changes wrought by the charitable choice provisions of the PRWORA – the elimination of the requirement that religious organizations set up separate 501(c)(3)

¹⁰⁵ See OLASKY, RENEWING AMERICAN COMPASSION, *supra* note 13, at 138 (arguing that people “change from the inside out,” and that successful antipoverty programs have always been based on the provision of not just material aid but by spiritual challenges leading to a change in values).

¹⁰⁶ Carlson-Thies, *supra* note 23, at 679.

¹⁰⁷ See *infra* notes 150 and 153.

¹⁰⁸ Byron R. Johnson, David B. Larson & Timothy C. Pitts, *Religious Programs, Institutional Adjustment, and Recidivism among Former Inmates in Prison Fellowship Programs*, 14 JUSTICE QUARTERLY 11 (1997) (citing findings of Clear and Myhre) (“In an environment where status degradation is common, spirituality can be empowering, especially to those who find themselves in trouble and alone.”).

¹⁰⁹ Sirico, *supra* note 57, at 567.

entities in order to receive governmental funds to provide welfare services – positively affect the ability of faith-based organizations to address the needs of the poor in an integrated fashion. The 501(c)(3) requirement “had the effect of separating the program from many of the other dimensions of church life – the ability of churches to shore up and strengthen broader personal, familial and community commitment and standards.”¹¹⁰

TANF has the germ of this idea, in that it does put focus on behavioral and other issues. However, its response is simply to cut off those it deems underserving. It makes harsh judgments about who among the poor are deserving and who are not, adopting a rigid cost-benefit approach that can not be admired. That rigidity (and fixedness) of judgment of undeservedness is reflected in the family caps adopted by many states, which have the effect of “[d]enying benefits to poor children as a way of punishing their mothers.”¹¹¹ One commentator complains that TANF is a reflection of a stereotypical notion of a “poor” person that is very different from the “married white women who had lost wage-earner husbands and needed to support legitimate children,” viewed as “deserving poor.”¹¹² This discussion suggests that this is an area where faith-based organizations can succeed where the state cannot.

B. Faith-Based Organizations in Action

An examination of some of the successes of different faith-based organizational approaches demonstrates how such organizations can be used in the fight against poverty.

¹¹⁰ Philip J. Murnion, *Parishes and the Public Arena: An Exploration*, PAPER PRESENTED AT THE COMMONWEAL FALL 2000 COLLOQUIUM, Oct. 27-29, 2000, available at <http://www.catholicsinpublicsquare.org/papers/fall2000commonweal/murnion/murnion1.htm>.

¹¹¹ Rougeau, *supra* note 8, at 108; see Koons, *supra* note 25, at 29-31, 43 (discussing notion of undeservedness reflected in approach to poverty and lamenting suffering caused by “punitive social policies that have cut off subsistence to children and forced poor mothers into the low wage labor market”).

¹¹² Rougeau, *supra* note 8, at 109-110.

The organizations highlighted in this discussion¹¹³ suggest that the comprehensive, community-based approach employed by faith-based organizations can do more to provide the kind of assistance that helps break the cycle of poverty than can government provision of social services.

1. Community Economic Development

Community economic development aims at helping the poor by conducting development activities designed to benefit poor neighborhoods by providing jobs, greater services and public and private investment. It seeks to transform the lives of a total community, rather than merely addressing the individual needs of those living in poor neighborhoods.

As discussed above, the community approach adopted by many faith-based organizations helps strengthen and revitalize the communities in which the poor live. An example of such successful community redevelopment is that accomplished by the Lawndale Community Church (“LCC”) in Chicago.

Thirty years ago, Lawndale, devastated by riots occurring in the late 1960s, was one of the twenty poorest communities in the United States. Very few of its youth went

¹¹³ There is a tremendous variety of programs and organizations that can be described as faith-based organizations and a number of organizations could be used for illustrative purposes. The inclusion of the ones I’ve chosen to highlight in this section is not intended as a claim that they are necessarily the best providers in their categories, although most of them have received awards of various kinds for their efforts. Rather they are intended as simply a sampling of the kinds of faith-based organizations providing services. Similarly, although I discuss several categories of programs, those categories are not meant to be exhaustive. An example of an initiative in a category I do not discuss is Interfaith Legal Services in Ohio, a faith-based legal services pro bono program. For a discussion of this program, see David T. Ball, *Interfaith Legal Services: Taking Stock of a Faith-Based Initiative*, 72 UMKC L. REV. 301 (2003) (discussing value of providing legal services through faith-based organization, as well as some of the difficulties that had to be faced by the project). See also Mary Medland, *Religious Counsel*, ABA JOURNAL, Dec. 2003, at p.20 (discussing provision of legal services by faith-based legal organizations).

to college and its infant mortality rate made it look like a third-world country.¹¹⁴ Today, things are very different in Lawndale, and no small amount of the credit belongs to the LCC and its ministries.

LCC is a nondenominational Christian church founded in 1975 which describes as at the heart of its ministry its “commitment to compassionately renew lives and revitalize [its] community” by “creatively meet[ing] the needs of people, striving to empower them along the way.”¹¹⁵ LCC’s ministry arms include the Lawndale Christian Development Corporation (“LCDC”), which focuses on providing low-income housing, community advocacy and educational enrichment such as college preparation, and the Lawndale Christian Health Center, which provides over 75,000 patients a year with “holistic, affordable and quality health care services.” In addition to its own ministries, the health center collaborates with neighborhood organizations in order to enhance community development.¹¹⁶ LCC also operates Hope House, a recovery home for men recently released from prison or who want to stop using drugs and alcohol.¹¹⁷

LCC can boast many successes. As a result of its health ministries, Lawndale’s infant mortality rates have dropped 60%.¹¹⁸ The graduates of LCDC’s College

¹¹⁴ Rin Sider, *Faith-Based Anti-Poverty Programs Work*, Dallas Morning News, available at http://www.cephasministry.com/world_anti_poverty_in_us.html.

¹¹⁵ Lawndale Community Church website, available at <http://www.lawndalechurch.org>; <http://www.lawndalechurch.org/history-purpose.htm>. Richard Townsell, the executive director of the Lawndale Christian Development Corporation, described LCC as a “church for people at the margins.” *Lived, Online Interview with Leadership for a Changing World Awardee Richard Townsell*, April 29, 2004, Ascribe News, available at 2004 WL 64394146.

¹¹⁶ Lawndale Community Church website, available at <http://www.lawndale.org/Mission/default.htm>. See also George W. Bush, *Remarks at the National Religious Broadcasters Convention*, Feb. 10, 2003, 2003 WL 13972974 (Feb. 17, 2003) (discussing partnering of LCC and Chicago Christ Church to serve in Lawndale’s health care clinic).

¹¹⁷ See Amy Nevala, *Addicts, Ex-Cons Finding Hope for Recovery in Song*, CHICAGO TRIB., Nov. 8, 2002, at p.8.

¹¹⁸ See Sider, *supra* note 114.

Opportunity Program have an 85% matriculation rate to four-year colleges¹¹⁹ and has produced more than 100 college graduates, many of whom return to work in the community,¹²⁰ its Tech Center has provided computer training and internet access to 450 youths in the last four years and its after-school Young Legacies program provides needed academic enrichment for younger students.¹²¹ Hope House has a 90% success rate, with only about one in ten of those who join its recovery program returning to drugs or alcohol.¹²²

LCDC's housing efforts have perhaps had the greatest effect in helping turn Lawndale from a place of business flight and deteriorated housing into an attractive community. LCDC's development arm saved vacant buildings from demolition and rehabilitated them for resale.¹²³ During a ten-year period, it rehabilitated 50 single family homes and condominiums and 115 affordable apartments in multi-family buildings.¹²⁴ LCDC's "homeownership efforts – new construction, single-family/condominium restoration, and homebuyer education – help to stabilize entire blocks in Lawndale by filling in vacant land, rehabilitating vacant property and increasing the number of concerned homeowners. Moreover, they allow low- and moderate-income households to build equity through homeownership, typically for slightly more than they were spending

¹¹⁹ See Ascribe News, *supra* note 114.

¹²⁰ See Sider, *supra* note 114.

¹²¹ See Ascribe News, *supra* note 114.

¹²² See Amy Nevala, *Addicts, Ex-Cons Finding Hope for Recovery in Song*, CHICAGO TRIB., Nov. 8, 2002, at p.8.

¹²³ See Jeanette Almeda, *Profile: North Lawndale*, CHICAGO TRIB. (ONLINE ED.), Nov. 3, 1997, available at <http://www.chicagotribune.com/classified/realestate/communities/chi-profile-69963.story>.

¹²⁴ Jeanette Almeda, *Computer Center to Rise on Ogden*, CHICAGO TRIB., Mar. 26, 2000, at p.5D.

as renters.”¹²⁵ The result is to bring “hope where people had no hope,” turning streets that were drug infested and which had bad reputations into neighborhoods where “[e]verybody looks out for each other, and they’re more concerned about the street.”¹²⁶

LCC’s success comes from a holistic approach that ministers to both material and spiritual needs and one that works within the community to rebuild the lives of its people. The success of such an approach is seen in the work not only of LCC, but of similar faith-based organizations aiming to empower the poor and enhancing their communities.¹²⁷

2. Holistic Approach to Provision of Social Services

There are any number of examples of faith-based organizations providing social services with greater effectiveness than the government because they provide more than just material needs, offering instead an approach that treats the whole person. Two of those are the Austin Street Center (the “ASC”) in Dallas and the Mississippi Faith and Families program.

The ASC, a faith-based nonprofit organization, has had a positive effect on the homeless poor in Dallas. ASC emphasizes a “whole person” concept and provides a full range of services to the homeless community in Dallas “in a compassionate Christian community, so that the person in need might be better able to make responsible choices

¹²⁵ Dana Bykowski, *Nehemiah Community Foundation Makes \$10,000 Grant to Chicago’s Lawndale Christian Development Corporation*, U.S. Mayor Articles (U.S. Conference of Mayors, Dec. 8, 2003), available at http://www.usmayors.org/uscm/us_mayor_newspaper/documents/12_08_03/nehemiah.asp.

¹²⁶ *Residents Work to Resurrect Downtrodden Neighborhood*, ST. LOUIS POST-DISPATCH, Jan. 9, 1989, at p.31; see also Rosaland Briggs, *Pizzeria Serves North Lawndale Dream Slice With Extra Toppings*, CHICAGO TRIB., July 17, 1995, at p.1.

¹²⁷ Another example is Goodcity, a faith-based organization also operating in Chicago, which aims at “supporting God’s plan for justice in the holistic transformation of the Chicago area’s economically disenfranchised communities by engaging neighborhood, religious, business and civic leaders [and] empowering residents to effectively address local needs.” Goodcity website, available at <http://www.Goodcitychicago.org>.

and changes in their lives.”¹²⁸ Serving the poor is viewed at ASC not as a job, but as a “vocation to love those who sometimes can be the hardest to love.”¹²⁹ ASC offers emergency shelter and related services to the homeless, including a work therapy program, a day program and psychiatric and medical care.¹³⁰ Its programs also include a separate, freestanding facility, the Pathway House, offering transitional housing and rehabilitative services designed “to meet the needs of those working their way back from poverty to productivity,”¹³¹ a drug treatment center and a thrift store, as well as church services. It sees as a particular ministry that of caring for those with physical and mental disabilities who cannot care for themselves.¹³²

ASC is Dallas’ largest homeless shelter,¹³³ yet it accepts no government funding, preferring the freedom to serve as a faith-based organization with no restrictions on its religious activity.¹³⁴ Its annual budget of approximately \$900,000 comes solely from donations.¹³⁵ Despite its financial limitations, it has received numerous awards in

¹²⁸ See Austin Street Center webpage, available at <http://www.austinst.org/mission/htm>.

¹²⁹ *A Call to Comfort*, DALLAS MORNING NEWS, Dec. 16, 2001, at p.3F; see Steve Blow, *Left Out of the Good Times*, DALLAS MORNING NEWS, Nov. 28, 1999, at p.4P (suggesting that at ASC, the poor “are not an urban development ‘challenge,’” but rather “people – with names, with stories, with feelings, and with problems”).

¹³⁰ See *id.* at <http://www.austinst.org/services.htm>.

¹³¹ *Id.* The Pathway House is designed like a dormitory, providing residents with individual as well as communal space. Lori Stahl, *Dignitaries Dedicate Housing for Homeless; New Facility Offers Transition Into Workforce*, DALLAS MORNING NEWS, Aug. 31, 2000, at p.30A.

¹³² See Acton Institute, Charities Database: Austin Street Center, available at <http://www.acton.org/ppolicy/compassion/charities/search.php?id=5>.

¹³³ See Kristen Holland, *Fast Food Fund-Raiser Fits the Bill*, DALLAS MORNING NEWS, Nov. 19, 2003, at p.1.

¹³⁴ See Acton Institute Charities Database, *supra* note 132.

¹³⁵ *Id.*

recognition of the services it provides to the Dallas homeless population,¹³⁶ including twice being awarded one of President Bush's 1000 Points of Light.¹³⁷

Mississippi's Faith and Families program was established in 1994 with the goal of linking each of Mississippi's 5000 churches with welfare families. The program matches welfare recipients with local churches and synagogues who provide them with various forms of assistance ranging from tutoring for those studying for the high school equivalency exam, helping individuals improve their job-interview skills and providing job training and other assistance in connection with finding jobs and providing child care.¹³⁸ In addition to such practical assistance, the church members provide financial and emotional support.¹³⁹ The program is based on the notion that "[c]hurches create an environment where lives can be changed."¹⁴⁰

Although early on the program suffered from bureaucratic problems,¹⁴¹ a large number of families have been matched with church members, resulting in many families successfully moving off of cash welfare, and the program has been copied in other states.¹⁴² One reason for the success is that the liaison between the churches and the business community makes for more effective job training. Don Taylor, executive director of the Mississippi Department of Human Services observed in discussing the

¹³⁶ See *id.* (listing awards presented to ASC).

¹³⁷ *A Call to Comfort*, DALLAS MORNING NEWS, Dec. 16, 2001, at p.3F.

¹³⁸ See Ann Arundel County, *Faith-Community Based Supportive Services Programs*, available at <http://peerta.acf.hhs.gov/policies/faithcom.htm>.

¹³⁹ Amy L. Sherman, *Little Miracles*, THE AMERICAN ENTERPRISE, Jan/Feb 1998, available at http://hudsonfaithincommunities.org/fic/articles/little_miracles.htm.

¹⁴⁰ County, *supra* note 138 (quoting coordinator of program, Rev. Ronald K. Moore).

¹⁴¹ See Amy L. Sherman, *A New Path Out of Poverty*, THE AMERICAN ENTERPRISE, July/Aug. 1996, available at http://www.hudsonfaithincommunities.org/fic/articles/new_path_poverty.htm.

¹⁴² Sherman, *supra* note 139.

Faith and Families approach, “The business community will now be able to determine and provide the type of training necessary to move welfare recipients into the work force. In lieu of the ineffective training provided by a variety of government programs for jobs that often do not exist, local businesses can provide real skills for real jobs.”¹⁴³

The Austin Street center and the Mississippi Faith and Families program represent only two of hundreds of faith-based organizations utilizing a holistic approach to provide financial, practical and emotional support to those in need. They are examples of religious organizations doing what they do best, “engaging in transformational relationships.”¹⁴⁴ They are joined by entities such as CityTeam,¹⁴⁵ the St. Martin de

¹⁴³ *Welfare Reform: Can the States Fly Solo*, POLICY REV., Nov./Dec. 1996, available at <http://www.policyreview.org/nov96/backup/symp.html>.

¹⁴⁴ *Id.* (quoting Bill Raymond, executive director of Good Samaritan).

¹⁴⁵ CityTeam serves the poor and homeless in cities such as Philadelphia, Seattle, Oakland and Portland, providing food, shelter, clothing, recovery programs, youth outreach and other services. See CityTeam webpage, available at <http://www.cityteam.org>; *LoanCity & CityTeam Launch New Learning and Career Centers*, MORTGAGE MAGAZINE, Aug. 2, 2004, available at http://www.mortgagemag.com/n/408_024.htm; Betty Barnacle, *Cityteam Clients Get a Chance to Give Help*, SAN JOSE MERCURY NEWS, May 18, 1999 (Ex-homeless clients build homes for displaced Hondurans); The Rugged Elegance Inspirational Network of San Francisco, *CityTeam Ministries Reaches Out to The Homeless of San Francisco* (April 19, 2004), http://www.ruggedelegantliving.com/sf/a/cat_cityteam_ministries_tmp.html (citing examples of the lives saved by CITYTEAM).

Porres House of Hope in Chicago,¹⁴⁶ the Harambee Christian Family Center, Pasadena, California,¹⁴⁷ and countless others.

3. Addressing Crime and Substance Abuse

There is ample support for the proposition that poverty influences crime.¹⁴⁸

However, the relation is not one-way. It is also the case that crime contributes to poverty.

Not only does crime affect the quality of life of the criminal and his family, but it

victimizes the poor and inhibits neighborhood development.¹⁴⁹ Given evidence

¹⁴⁶ St. Martin de Porres House of Hope is a private, non-profit, Christian shelter for homeless women and recovering substance abuse women and their children in Chicago, providing food and shelter, individual, group, and family counseling, health care, alcohol and drug abuse recovery, educational and life skills training for adults and pre-school children, personal development, individual case management assistance, parenting and family life instruction, computer training, housing placement, and outreach services for residents after they leave the shelter. The shelter's recidivism rate (approx.6%) is less than 1/16th that of the Chicago shelter average. See website of St. Martin de Porres House of Hope, available at: <http://www.stmartindeporreshouseofhope.com>. Founder, Sister Connie Driscoll, a former lawyer, says that what sets her agency apart is that they "put a tremendous amount of stress on personal responsibility and accountability," and do not "coddle" their residents. Bryan Miller, *Room to Grow; Women who take refuge at St. Martin de Porres learn quickly that it's not shelter from responsibility*, CHICAGO TRIBUNE, June 20, 1993, at C1. See also Bruce Upbin, *Responsibility 101; A chat with Sister Connie Driscoll*, FORBES, May 19, 1997, at 46; George Rodrigue, *Women and Children First; Nun uses tough love' in helping break cycle of welfare, drug use*, THE DALLAS MORNING NEWS, Feb. 13, 1995, at 1A; John Carlson, *Repairing Broken Lives – One Person at a Time*, THE SEATTLE TIMES, Sept. 7, 1993, at B6.

¹⁴⁷ Founded by a Baptist minister in 1982, Harambee offers day care, a summer camp, an after school program, and a prep school for the underprivileged children of Northwest Pasadena. The center also offers Christian instruction, to instill "moral values, not a complete religious structure." Amy Louise Kazmin, *Reclaiming the Young; Harambee Center Carves Niche of Inspiration in a Tough Neighborhood*, LOS ANGELES TIMES, Aug. 6, 1992, at J1. See also: <http://www.harambee.org>. The associate director, Rudy Carrasco, believes that "private organizations operating on faith work more efficiently, and more tirelessly, than bureaucratic institutions operating on budgets and a bottom line." Ruben Navarrette, *Bush provides programs to believe in*, THE DALLAS MORNING NEWS, Feb. 2, 2001, at 23A.

¹⁴⁸ See Edward Glaeser, Bruce Sacerdote & Jose A. Scheinkman, *Crime and Social Interactions*, 111 J. OF ECONOMICS 507 (1996); Jeff Grogger, *Market Wages and Youth Crime*, 16 J. OF LABOR ECON. 756 (1998); Jens Ludwig, Greg J. Duncan & Paul Hirschfield, *Urban Poverty and Juvenile Crime: Evidence from a Randomized Housing-Mobility Experiment*, 115 QUARTERLY J. OF ECONOMICS 655 (2001); Halvor Mehlum, Karl Moene, & Ragnor Torvik, *Crime Induced Poverty Traps*, J. OF DEVELOPMENT ECONOMICS (forthcoming 2004). But see Judith R. Blau & Peter M. Blau, *The Cost of Inequality: Metropolitan Structure and Violent Crime*, 47 AMER. SOCIOLOGICAL REV. 114 (1982) (studying data from 125 largest American metropolitan areas and finding that, although economic inequality between blacks and whites is a source of frustration that leads to violent crime, once inequality is taken into account, there is no positive association between poverty and crime).

¹⁴⁹ See Ian Irvine & Kuan Xu, *Crime, Punishment and the Measurement of Poverty in the United States, 1979-1997* (June 2003), available at http://www.papers.ssrn.com/sol3/papers.cfm?abstract_id=423220 (finding that the increase in incarceration brings increased poverty). See also James K. Stewart, *The Urban*

suggesting that religion inhibits adult crime,¹⁵⁰ there is reason to believe that faith-based prison programs offer a mechanism for disrupting the cycle of crime and poverty.

Drug abuse, perhaps the nation's single greatest health problem,¹⁵¹ is similarly related to poverty both in cause and effect¹⁵² and studies have shown that religion aids in the avoidance of drug and alcohol abuse.¹⁵³ In his introductory remarks during a House Hearing on Effective Faith-Based Treatment Programs, Representative Mark Souder observed, "we cannot tackle the problems of drug abuse and the concurrent social

Strangler: How Crime Causes Poverty in the Inner City, POLICY REVIEW, Summer 1986, at 8 (observing that crime is the "ultimate tax on enterprise" and must be addressed to enable the poor can "fully share in the American dream."); Charles Murray, *Crime in America*, NATIONAL REVIEW, June 10, 1988, at 35 (the key to reducing crime is to create an atmosphere of lawfulness); WESLEY G. SKOGAN, DISORDER AND DECLINE: CRIME AND THE SPIRAL OF DECAY IN AMERICAN NEIGHBORHOODS 65-84 (1990) (providing evidence that crime hurts property values); R. P. TAUB, PATHS OF NEIGHBORHOOD CHANGE: RACE AND CRIME IN URBAN AMERICA (1984).

¹⁵⁰ See T. David Evans, Francis T. Cullen, R. Gregory Dunaway, & Velmer S. Burton, Jr., *Religion and Crime Reexamined: The Impact of Religion, Secular Controls, and Social Ecology on Adult Criminology*, 33 CRIMINOLOGY 195 (1996); B.R. Johnson, *Religiosity and Institutional Deviance: The Impact of Religious Variables*, 12 CRIMINAL JUSTICE REV. 21 (1987).

¹⁵¹ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Substance Abuse: The Nation's Number One Health Problem*, OJJDP FACT SHEET, MAY 2001.

¹⁵² Regarding drug abuse's contribution to poverty, see Robert Kaestner, *Drug use and AFDC Participation: Is There a Connection?*, 17 J. POL'Y ANALYSIS & MANAGEMENT 495 (1998) (finding that past year drug abuse is related to future welfare participation); Robert Kaestner, *Does Drug Use Cause Poverty?*, in THE ECONOMIC ANALYSIS OF SUBSTANCE USE AND ABUSE (FRANK J. CHALOUKKA, ED.) 327, 353 (U. Chicago Press 1999) (finding the drug users were more likely to participate in public assistance programs than nonusers and concluding that "public policies focusing on reducing drug use would have some positive economic effect on people's lives).

The effect of poverty on drug abuse is similarly documented. See Peggy Riccio, *Research Shows Impact of Poverty on Substance Abuse Among Youth*, NATIONAL CLEARINGHOUSE FOR ALCOHOL AND DRUG INFORMATION, August 1, 1997, available at <http://www.health.org/newsroom/rep/30.aspx> ("After interviewing more than 500 families in rural Iowa, mostly of German Lutheran descent, he has concluded that economic hardships tend to increase the probability that children will grow up with substance abuse problems."); PATTERNS OF SUBSTANCE USE AND SUBSTANCE-RELATED IMPAIRMENT AMONG PARTICIPANTS IN THE AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM (AFDC), U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, Dec. 1994, available at <http://www.aspe.hhs.gov/hsp/cyp/afdcdrug.htm> ("Persons living in poverty are known to have higher rates of drug and heavy alcohol use than do those with higher incomes").

¹⁵³ See Dave B. Larson, Kimberly A. Sherrill, & John S. Lyons, *Neglect and Misuse of the 'R Word': Systematic Reviews of Religious Measures in Health, Mental Health and Aging Research*, in RELIGION IN AGING AND HEALTH: THEORETICAL FOUNDATIONS AND METHODOLOGICAL FRONTIERS (ed. J.S. Levin) 178 (Sage 1994); John Gartner, Dave B. Larson, & George D. Allen, *Religious Commitment and Mental Health: A Review of the Empirical Literature*, 19 J. OF PSYCHOLOGY AND THEOLOGY 6 (1991).

problems crime costs our country without an approach that simultaneously addresses prevention, education, treatment, enforcement, interdiction, and eradication... One area which has shown promise is faith-based treatment programs.”¹⁵⁴

Two programs illustrate the potential of faith-based programs to address crime and substance abuse. The first is Prison Fellowship Ministries (“PFM”), founded in 1976 by Chuck Colson¹⁵⁵ and now the largest prison outreach organization in the world, operating in 50 states and 94 countries. Based on the belief that crime requires a moral and spiritual solution,¹⁵⁶ the core of PFM’s “multifaceted ministry [includes]: Deepening our relationship with Christ, taking the Gospel to prisoners, and ministering to prisoners’ children.”¹⁵⁷ PFM’s programs include In-Prison seminars, Bible Studies, a Pen Pal program, an Angel Tree (providing gifts to children of prisoners), and the InnerChange Freedom Initiative program, a “round-the-clock biblically based program for

¹⁵⁴ *Effective Faith-Based Treatment Programs*, Hearing before the Subcommittee on Criminal Justice, Drug Policy and Human Resources of the House Committee on Government Reform, 107th Cong., First Session, May 23, 2001 (statement of Rep. Mark E. Souder) [hereinafter Hearing: Faith-Based Treatment Programs]. See also U.S. Department of Justice, Office of Juvenile Justice and Delinquency Problems, *Public/Private Ventures’ Evaluation of Faith-Based Programs*, OJJDP FACT SHEET, Nov. 2001 (discussing effectiveness of faith-based ventures addressing needs of high-risk juveniles; despite some administrative difficulties, programs effectively build relationship with juveniles and draw them into available programs and services resulting in decreased involvement with crime and drugs as well as improvements in educational achievement).

¹⁵⁵ After serving time in prison for his Watergate involvement, Colson converted to Christianity and came to believe in the need for prison ministry. See *About Chuck Colson*, available at http://www.pfm.org/AM/Template.cfm?Section=About_Chuck_Colson&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=16&ContentID=13514.

¹⁵⁶ See Joe Loconte, *Jailhouse Rock of Ages*, 84 POLICY REVIEW (July-Aug. 1997), available at <http://www.policyreview.org/jul97/thfaith.html> (quoting a PFM program director’s observation that “[i]nmates tend to blame everybody for their problems. Our focus is getting them to understand that they are responsible to God, their families, and their victims.”); Richard Williamson, *Faith-Based Changes Come From Inside a Texas prison*, THE NON-PROFIT TIMES, Feb. 1, 2002, at p.1 (quoting national director of operations for InnerChange, that “[f]rom the state’s point of view, the mission is to reduce recidivism. ... From a ministry point of view, our mission is to save souls for Christ.”); Acton Institute, Charities Database: Prison Fellowship Ministries, available at <http://www.acton.org/ppolicy/compassion/charities/search.php?id=56>.

¹⁵⁷ This core is laid out on the home page of PFM’s website, available at http://www.pfm.org/AM/Template.cfm?Section=PFM_Site.

prisoners.”¹⁵⁸ PFM has an annual budget of about \$45,000,000. Although it does not solicit or receive any government funds in connection with most aspects of its ministry, PFM does receive some state funding for the nonsectarian expenses associated with the InnerChange Freedom Initiative, given its unique full-time nature.¹⁵⁹ In recognition of his work with PFM, Colson has received a number of awards, including the Templeton Prize for Progress in Religion.¹⁶⁰

A study of participants in four New York State prisons suggest that PFM’s programs have had positive results. Although the study found no reduction in crime among prisoners who participated only in PFM’s In Prison seminars and Life plan seminars, inmates who actively participated in the Bible Studies component were less likely to be rearrested after their release from prison.¹⁶¹ Additionally, studies of the InnerChange Freedom Initiative in a Texas prison found that offenders who completed the program had significantly lower recidivism rates than other offenders.¹⁶² Although further empirical research is necessary regarding the effectiveness of such programs,¹⁶³ these results, when added to what other studies have shown about the effect of religiosity

¹⁵⁸ *About Prison Fellowship*, available at http://www.pfm.org/AM/Template.cfm?Section=About_Prison_Fellowship1&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=19&ContentID=10231.

¹⁵⁹ See Acton Institute, Charities Database: Prison Fellowship Ministries, available at <http://www.acton.org/ppolicy/compassion/charities/search.php?id=56>.

¹⁶⁰ See *id.* (also observing that Colson donated the \$1 million Templeton prize to PFM).

¹⁶¹ Johnson, *supra* note 108, at 11.

¹⁶² Tony Fabelo, *Initial Process and Outcome Evaluation of the InnerChange Freedom Initiative: The Faith-Based Prison Program in TDCJ*, Criminal Justice Policy Council Report, p.i (2003), available at <http://www.pficjr.org/programs/apac/studies>; Byron R. Johnson & David B. Larson, *The InnerChange Freedom Initiative: A Preliminary Evaluation of a Faith-Based Prison Program*, Center for Research on Religion and Urban Civil Society, p.4-5 (2003), available at <http://www.pficjr.org/programs/apac/studies>. See also OF LITTLE FAITH, *supra* note 38, at 23-24 (discussing philosophy and success of InnerChange initiative).

¹⁶³ See Johnson, *supra* note 108, at 15, 16 (discussing need for larger study group and longer follow-up period).

on crime generally,¹⁶⁴ suggest the value of promoting such efforts.¹⁶⁵ Similar programs exist to help address the needs of juveniles in prison and on probation.¹⁶⁶

An example of a faith-based organization, albeit a small one, focusing on recovery from substance abuse¹⁶⁷ is Freedom House Ministries, Inc. Freedom House Ministries describes its mission as “to provide safe, affordable, clean and child-friendly living for women who are recovering addicts” by offering physical, emotional and spiritual support services.¹⁶⁸ The focus of the organization is less to “help women get clean and sober,...[than to] provide an environment to help maintain recovery.”¹⁶⁹

Freedom House Ministries provide recovering women addicts with a recovery program, Bible study, nutrition and exercise classes and individual and group counseling. Its participants work, save money, contribute to the upkeep of the house and provide community service, with the aim of promoting personal responsibility.¹⁷⁰

The discussion in this section is not an attempt to blame the poor for their poverty. It is not a statement that crime or drug abuse alone or in tandem are the sole causes of

¹⁶⁴ See *supra* note 150.

¹⁶⁵ See also Lynn S. Branham, “Go and Sin No More”: *The Constitutionality of Governmentally Funded Faith-Based Prison Units*, 37 U. MICH. J. L. REFORM 291, 307-310 (2004) (discussing success of faith-based prison programs in reducing recidivism, comparing it with the “abysmal” track record of traditional prison in reducing recidivism); Loconte, *supra* note 156 (discussing success of similar program in Brazil).

¹⁶⁶ One such example is City Impact, which had had success dealing with troubled youths. See *A Network of Small Groups Attacks Poverty in Oxnard, CA*, PHILANTHROPY, Sept./Oct. 2003, available at http://www.hudsonfaithcommunities.org/fic/articles/network_small_groups_attack_poverty.htm.

¹⁶⁷ An example of a faith-based organization providing a drug treatment program is the House of Hope, which operates in central Florida, a program that reportedly has a 70-80% success rate. See Hearing: Role of Community and FBOs, *supra* note 94 at 13 (Statement of Rep. Mica).

¹⁶⁸ See Freedom House Ministries webpage, available at <http://www.freedomhouseministry.org/about/htm>.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*, see also Acton Institute Charities Database: Freedom House Ministries, available at <http://www.acton.org/ppolicy/compassion/charities/search.php?id=128>; *As Freedom House moves, neighbors welcoming, open*, GREEN BAY PRESS-GAZETTE, August 12, 2004, at 8A; Jose de Jesus and Lee Reinsch, *Freedom House finds new home on east side*, GREEN BAY PRESS-GAZETTE, August 11, 2004, at 1A.

poverty and obviously faith-based approaches that address crime and substance abuse are not a total answer. However, while poverty is often the result of economic forces, in some circumstances poverty is merely a symptom of another problem. Unless one addresses the problems that contribute to the continuation of the poverty of not only those directly involved in those activities, but also their families and their communities, addressing the symptom will fail.¹⁷¹ The reality is that a multi-faceted approach to reduce poverty must include measures designed to reduce both crime and substance abuse, and faith-based programs clearly have something to contribute to that effort.

4. Microlending

Obtaining credit from banks and other conventional financial institutions is difficult, if not impossible, for those who are poor and therefore lacking in collateral.¹⁷² Yet it is often the case that very small loans give poor persons the ability to identify and engage in income generating activities. The promotion of loans to those interested in investing in low-income communities also offers the potential for improving those communities. Thus, the birth of microlending, which offers lower-income individuals who could not qualify for traditional small business loans¹⁷³ the ability to use their talent and skills to engage in income-producing activities and which offers non-profit organizations desirous of engaging in community development projects the funds with

¹⁷¹ See OLASKY, RENEWING AMERICAN COMPASSION, *supra* note 13, at xi-xii.

¹⁷² Many also have bad credit ratings, often attributable to “bad car and payday loans made by predatory lenders.” *Payday, Car Loans and...*, AEO EXCHANGE, Oct.-Dec. 2002, at 10.

¹⁷³ Banks “routinely” reject business loan requests for amounts under \$35,000 “because the costs involved are too high and the returns too low.” Sara Terry, *Loans for the Little Guys*, CHRISTIAN SCIENCE MONITOR, Mar. 10, 2003, at p.15.

which to do so. Long used in the third world,¹⁷⁴ microlending “is not embraced at state and federal levels as one answer to the challenges of welfare reform – a way of helping people off welfare and into jobs.”¹⁷⁵

Although microlending is an activity carried on by both faith-based and nonfaith-based organizations,¹⁷⁶ “it is undeniable that the impetus for a significant level of microenterprise development in the United States comes from religion.”¹⁷⁷ In addition to the religious source of the impetus for the activity,¹⁷⁸ faith-based microlending offers the ability to structure and adapt traditional programs to meet the religious needs of particular groups, such as the ability to structure programs to comply with Islamic religious prohibitions against interest.¹⁷⁹

One example that demonstrates the possibilities offered by faith-based microlending is Partners for the Common Good (“PCG”), created by Christian Brothers

¹⁷⁴ See *infra* text accompanying notes 186-189. “[T]iny loans...help pull the most destitute people on earth pull themselves and their families out of poverty.” Alan Jolis, *Microcredit: A Weapon in Fighting Extremism*, HERALD INTERNATIONAL TRIBUNE, Feb. 19, 1997, available at <http://www.grameen-info.org/mcredit/weapon.html>.

¹⁷⁵ Nicole Gaouette, *Mini Loans Help Welfare Mothers to Create Their Own Jobs*, CHRISTIAN SCIENCE MONITOR, Jan. 31, 1997, at p.4 (also suggesting that microlending is not a complete answer in that not everyone is entrepreneurial).

¹⁷⁶ The largest microlending network in the United States is Accion USA, a secular nonprofit entity. See Sara Terry, *Loans for the Little Guys*, CHRISTIAN SCIENCE MONITOR, Mar. 10, 2003, at p.15. An example of a smaller secular microlender is the Community Entrepreneurs Program of the Center for Women and Enterprise. See Jordana Hart, *Offering a Way Out*, BOSTON GLOBE, June 2, 1999, at B1. See also Ana Arias Terry, *Beyond the Balance Sheet: Microlending Yields Life-Changing Results*, CONSCIOUS CHOICE, Nov. 2000, available at <http://www.consciouschoice.com/culture/microlending1311.html>. (mentioning several U.S. nonfaith-based microlenders).

¹⁷⁷ See *Part II of a Series: How is Faith-Based Microenterprise Different?*, AEO EXCHANGE, Jan.-Mar. 2003, at p.1; Sara Terry, *Loans for the Little Guys*, CHRISTIAN SCIENCE MONITOR, Mar. 10, 2003, at p.15 (observing that churches have been running small microlending programs for 20 to 30 years).

¹⁷⁸ Microlending is attractive from the perspective of not only Christians, but, for example, those of the Jewish Faith. The Jewish principles of “Tikkyn Olam” and “Lirdof Tzedec” involves an obligation to help heal the world and do justice. According to Maimonides, the greatest tzedekah “is to strengthen the hand of the poor by means of gift or loan or by going into partnership with him, so that he can become self-sufficient.” See *How is Faith-Based Microenterprise Different?*, *supra* note 177, at p.1.

¹⁷⁹ See *Part III of a Series: Faith-Based Microenterprise – Serving Specialty Markets*, AEO EXCHANGE, Apr.-June 2003, at p.2.

Investment Services in 1989 “as a collaborative vehicle for religious institutions to help the poor and empower the marginalized.”¹⁸⁰ PCG’s mission is to “promote economic justices and social change by providing access to debt-capital to community-based ventures that advance the ‘common good,’” in an attempt to “create economic opportunities for low-income people, women, people of color, at-risk populations, and others who are often left out of the economic mainstream.”¹⁸¹ PCG pursues this mission by providing loans to community-based nonprofit organizations and to nonprofit organizations engaged in social enterprise or operating social purpose businesses.¹⁸² In making its loans, it assesses the “potential of the applicant and its proposed activities to promote economic justice and social change.”¹⁸³ It is one of the few organizations that provide business lending to nonprofit entities operating social enterprises.

Loans from PCG enable the development of worker-owned cooperatives, affordable housing and various small business ventures.¹⁸⁴ PCG also aids international development organizations that provide access to capital to women and other at-risk

¹⁸⁰ See Partners for the Common Good website, available at <http://www.pcg21.org/main/cfm?page=20>, at “Our History.”

A second example is Leviticus 25:23 Alternative Fund, Inc. See <http://www.leviticusfund.org/welcome/htm>.

¹⁸¹ *Id.* at “Who we Are.”

¹⁸² *Id.*

¹⁸³ Partners for the Common Good, *Evaluation Criteria and Key Underwriting Questions*, available at www.ventures.yale.edu/docs/Jacokes_Handout_underwriting_questions.pdf. “PCG uses social screens to select organizations to receive investments. These screens include benefiting women and minorities, creating jobs and increasing the wages of low-income people, and leveraging private investment.” Federal Interagency Workgroup on Microenterprise Development, *Presidential Awards for Excellence in Microenterprise Development: Excellence in Program Innovation*, UNITED STATES SMALL BUSINESS ADMINISTRATION, Jan, 17, 2001, available at <http://www.sba.gov/microenter/awards/common.pdf>.

¹⁸⁴ See, e.g., Press Release, *New Funding of \$1.4 Million Made Available for Community Development Activities in the State of Alabama*, Nov. 17, 2003, available at www.seedco.org/pressreleases/press_release.php?id=1304. (discussing affordable housing and small business projects funded with loan from PCG and others); *New Funding of \$1.4 Million Made Available For Community Development Activities*, BIRMINGHAM TIMES, November 13, 2003, at A5.

persons in low-income countries. In 2001, PCG received a Presidential Award for Excellence in Microenterprise Development.¹⁸⁵

The success of Grameen Bank,¹⁸⁶ founded by Dr. Mohammed Yunus, who invented the concept of microlending, demonstrates the enormity of the potential good coming from small of loans to individuals. Grameen works through the voluntary formation of small groups that provide mutual, moral guarantees of loan repayment. At the outset, only two members of a group receive a loan. Ultimately, depending on performance, all members receive loans. The groups provide both support and peer pressure, with members monitoring each other's activities. In addition to providing loans, Grameen also offers training in areas such as maternal health, nutrition and childcare, and offers guidelines to members for codes of conduct to improve their social and financial conditions. It also encourages savings by members, which also contributes to its low default rate.¹⁸⁷

The program has been remarkably successful.¹⁸⁸ The key finding of a study jointly conducted by the World Bank and the Bangladesh Institute of Development

¹⁸⁵ Federal Interagency Workgroup on Microenterprise Development, *Presidential Award for Excellence in Microenterprise Development*, available at <http://www.sba.gov/microenter/awards/common.html>. See also Glen Elsasser, *Today's Nuns Pursue their Traditional Works, But in Ways that May Surprise You*, CHICAGO TRIBUNE, June 28, 1995, at C1; *New Funding of \$1.4 Million Made Available For Community Development Activities*, BIRMINGHAM TIMES, November 13, 2003, at A5; Federal Interagency Workgroup on Microenterprise Development, *Presidential Awards for Excellence in Microenterprise Development*, UNITED STATES SMALL BUSINESS ADMINISTRATION, Jan, 17, 2001, available at <http://www.sba.gov/microenter/awards/common.html>.

¹⁸⁶ Grameen is not a faith-based organization, but its success abroad is illustrative.

¹⁸⁷ *Breaking the Vicious Cycle of Poverty Through Microcredit*, <http://www.grameen-info.org/bank/bcycle.html>; Ana Arias Terry, *Beyond the Balance Sheet: Microlending Yields Life-Changing Results*, CONSCIOUS CHOICE, Nov. 2000, available at <http://www.consciouschoice.com/culture/microlending1311.html>.

¹⁸⁸ See, e.g. Saud Choudry, *The Grameen Bank: Poverty Profile in Bangladesh*, 30 J. OF DEVELOPMENT STUDIES 747 (1994) (calling success achieved by Grameen "simply astounding"); Mohammed Zahirul Haque, *Grameen Bank Endeavor to Help Poor in Bangladesh*, 29 ECON. REV. 39 (1998); Jameel Jaffer, *Microfinance and the Mechanics of Solidarity Lending: Improving Access to Credit Through Innovations in*

Studies, looking at data for the period spanning 1985-1993, found that participation in Grameen lending programs allowed borrowers to increase their assets and net worth; program participants have 56% more resources and 51% more net worth than non-participants, greater caloric intake, a lower incidence of poverty, and a higher school participation rate.¹⁸⁹ Grameen is not faith-based but it is easy to imagine that the community-based operation of faith-based organizations creates the potential to provide peer support that can make programs even more successful.

Nor is Grameen's success atypical.¹⁹⁰ A five-year study by an Aspen Institute project found that during the period studied 72% of poor microentrepreneurs increased their household income and 53% moved above the poverty line.¹⁹¹ Thus, while not a complete solution, it is clear that microlending offers a useful weapon in the fight against poverty.

The success of microlending and that of the other faith-based organizations discussed in this section provide actual demonstration of the soundness the principle of subsidiarity. These organizations provide help from within, utilizing their access to and

Contract Structures, 9 J. TRANSNAT'L L & POL'Y 183 (1999) (discussing reasons for success of Grameen); Carol Power, *Banker To Poor Makes Big Impact With Small Loans*, THE IRISH TIMES, June 25, 1999, at p.54.

¹⁸⁹ *Poverty Reduction Strategy: The Grameen Bank Experience*, HRO Dissemination Notes, Human Resources Development and Operations Policy, No. 23, Feb. 1994, available at <http://www.gdrc.org/icm/grameenbank.html>.

¹⁹⁰ For example, a single-mother of five children in Western Kenya received a loan of US\$4 from AFRICA NOW, allowing her to start trading in chapattis and tea at a roadside stand. Three years later, she was the owner of a lucrative business, employing three other people, and she now makes a profit sufficient to pay rent and school fees for her school age children and provide them with adequate food. Mary Akoth, *Kenya*, <http://www.gdrc.org/icm/human/human-1.html>. See also Rachel Errett Figura, *An End to Poverty Through Microlending: An Examination of the Need for Credit by Poor, Rural Women and the Success of Microlending Programs*, 8 NEW ENG. INT'L & COMP. L. ANN. 157 (2002) (discussing potential of microlending to address problems of poverty among women).

¹⁹¹ Sara Terry, *Loans for the Little Guys*, CHRISTIAN SCIENCE MONITOR, Mar. 10, 2003, at p.15. See also, *Trickle-Up Economics*, J. OF COMMERCE, Feb. 6, 1997, at p.6A (noting that experiments in microlending in American inner cities provide reason to be optimistic).

greater knowledge of the needs of those they serve to better facilitate human development and achievement. Their success suggests that faith-based organizations can play a vital role in the effort to alleviate the plight of the poor.

IV. Facilitating the Work of Faith-Based Organizations

Having seen the positive role that can be played by faith-based organizations, there remains the questions how their work can best be advanced and what role remains for the government. This section offers some preliminary thoughts about how the work of such organizations can be facilitated (and the challenges involved in that facilitation) and emphasizes the need for the government to play its important role both in providing support (financial and otherwise) to faith-based organizations and in accomplishing that which cannot be accomplished by faith-based organizations.

A. Direct Government Funding of Faith-Based Organizations

Many faith-based organizations have small budgets and can obviously benefit from access to government money.¹⁹² Both the PRWORA and President Bush's 2002 Executive Orders took major steps to increase that access. However, neither provided any additional funds for nongovernmental providers, meaning that the effect of both reforms is merely to reallocate existing funds among a larger number of potential providers. If the government is serious about its desires to obtain the benefits of the provision of services by faith-based organizations, it must provide increased funding to support their activities. It is not enough to simply grant such organizations access to the

¹⁹² John C. Green & Amy L. Sherman, *Fruitful Collaborations: A Survey of Government-Funded Faith-Based Programs in 15 States*, Report Sponsored by Hudson Faith in Communities, 2002, at p.4, 25-27 available at www.hudsonfaithincommunities.org/charitable.html (discussing the impact of government funding on the ability of faith-based organizations contracting to provide social services to serve more clients, underwrite new programs and expand existing programs and services).

same pool of funds that was already available to support the work of nongovernmental organizations.

It is also important that there be some accountability about the government's funding decisions. Thus there must be transparency about what criteria are being applied by the government in determining which faith-based organizations receive federal funds and which do not. If there is a sense that decisions are politically driven, or that funds are being given to ineffective organizations, support for the faith-based initiative will weaken.

Even with increased funding and with reliable assurance that government funds are being allocated well, governmental funding of the activities of faith-based organizations is not without potential problems.

1. Fear of Threat to Religious Character

No small amount of the success of faith-based organizations derives from their ability to provide spiritual as well as material assistance to the beneficiaries of their services. Many faith-based groups have not taken advantage of federal money because of fear that government money threatens their religious purpose and character.¹⁹³ There exists a fear that there is a “fundamental incompatibility between the government's duty

¹⁹³ See *Of Little Faith*, *supra* note 38, at 71 (discussing religious freedom concerns). The Acton Institute maintains a database of religious organizations providing various services. Among the information it collects is whether such organizations accept federal funds. A number of organizations answer the question whether they accept federal funds in the negative, citing the concern that doing so would compromise their religious values. See Acton Institute, Charities Database, *available at* <http://www.acton.org/cec/charities> (giving examples of entities that reject government funding and their reasons for not doing to); *see also* *Regulatory Red-Tape: First-Hand Accounts of Roadblocks to Charity*, GUIDE TO EFFECTIVE COMPASSION, *available at* <http://www.acton.org/policy/compassion/charities/redtape.htm> (listing comments of entities that refuse to take government money because of fears of threatening their religious character).

to taxpayers for accountability in the use of federal funds and the need for religious organizations to maintain their independence and religious character.”¹⁹⁴

The fear is not just that government funding threatens the religious character of the organization. Rather, some organizations are concerned about the possibility of government control of religion as a consequence of funding. That is, fear exists that organizations receiving federal money become subject to government objectives, thus interfering with their mission.¹⁹⁵ Practices such as federal restrictions on legal services entities receiving federal money¹⁹⁶ fuel this fear.¹⁹⁷

A lot of this fear has been based on “opinion, conjecture and anecdote rather than hard data.”¹⁹⁸ The charitable choice provisions in the law are drafted in a manner that protects the ability of a religious organization to control its own structure and expression of its religious beliefs, including the controversial provision that allows religious organizations to hire and fire based on religious criteria.¹⁹⁹

¹⁹⁴Hearing: Role of Community and FBOs, *supra* note 94 at 11 (Statement of Rep. Cummings); see Sean T. McLaughlin, *More Than Meets the Eye: President Bush’s Faith-Based Initiative*, 33 U. MEM. L. REV. 41, 76 (2002) (citing fears of some religious groups that “mixing religion and government will weaken religion’s prophetic mission” and “marginalize their overall spiritual mission”).

¹⁹⁵ See Diller, *supra* note 95, at 1748 (discussing danger that those who contract with the government to provide social services “become subject to the objectives and standards set by the government...displacing the objectives of the private organizations,” a danger particularly threatening to nonprofit entities, who are “defined by their missions, rather than by profits”).

¹⁹⁶ See David S. Udell, *The Legal Services Restrictions: Lawyers in Florida, New York, Virginia, and Oregon Describe the Costs*, 17 YALE L. & POL’Y REV. 337 (1998).

¹⁹⁷ See Diller, *supra* note 95, at 1749 (discussing retaliation by New York City against nonprofit service providers that expressed criticism of the Mayor).

¹⁹⁸ Green & Sherman, *supra* note 192, at p.3

¹⁹⁹ Allowing religious organizations to discriminate in employment based on religion is a stumbling block to many. See Joshua Smeltzer, *Should Faith-Based Initiatives Be Implemented by Executive Order?*, 56 ADMIN. L. REV. 181, 182 n.6 (2004) (citing opposition of Sen. Kennedy and Rep. Conyers to provisions allowing religious organizations to discriminate in hiring on the basis of religion). The issue is not an easy one. A desire to hire employees who share the mission of a faith-based organization seems reasonable and important to the success of the organizations program, lending support to allowing religious organizations the ability to hire and fire based on religion. However, it is easy to see that the desire to promote mission can easily become a justification to not just refuse to hire persons of a different religion, but, for example,

More importantly, the experience of those faith-based organizations that have received federal funds, suggests that the concern may be exaggerated. The Hudson Institute conducted an examination of faith-based organizations contracting for social services in 15 states in 2001-2002. One of the key findings of the examination was that “[l]ess than six percent of the contractors agreed with commonly expressed fears, including that public money will compromise FBO’s religious mission, displace private funds, or limit FBO’s ability to criticize the government.”²⁰⁰ The contractors were overwhelmingly satisfied with their experience, reported few problems with government intrusiveness and expected to take further advantage of the ability to obtain federal funds.²⁰¹ Although parties did complain of problems such as burdensome reporting requirements, the Hudson Institute findings “dispel many of the critics’ fears about charitable choice.”²⁰²

The Hudson Institute findings, and dissemination to others of the experiences of those who have secured federal funds, may do a lot to help dispel the fear that governmental funding poses a threat to the religious character of faith-based

to discriminate against homosexuals. At least one district court has upheld the ability of a faith-based organization to discharge a lesbian on the grounds that her lifestyle was contrary to the “core values” of the organization. *See Pedreira v. Kentucky Baptist Homes for Children*, 186 F. Supp. 2d 757 (W.D. Ky. 2001) (upholding the ability of an organization to seek to employ only persons who adhere to a behavioral code consistent with its religious mission). While *Pedreira* was treated by the court as discrimination on the basis of lifestyle rather than religion, a lawsuit was brought in Georgia in 2002 against the United Methodist Children’s Home that directly raised the issue of firing on the basis of religion. One of the plaintiffs in that case was a top candidate for a position as psychological therapist until it was discovered that he was Jewish, at which point his application was terminated. The case was settled out of court. *See OF LITTLE FAITH*, *supra* note 38, at 258 (discussing allegations in *Bellmore v. United Methodist Children’s Home*).

²⁰⁰ *Id.* at p.4-5.

²⁰¹ *See id.* at 4.

²⁰² *Id.* at 5.

organizations. Even so, some will continue to refuse money so as not to be limited in their ability to “restore people through Christ.”²⁰³

2. Fear of Government Abdication of Responsibility

Many religious organizations have been suspicious of government support of the activities of faith-based organizations, fearing that such support is a sign of the government trying to abdicate responsibility, of a search for “budgetary savings at the expense of poor women and children.”²⁰⁴ Thus, the U.S. Catholic Conference of American Catholic Bishops has been a strong proponent of governmental welfare, as has Catholic Charities.²⁰⁵ Protestant groups have been similarly concerned.²⁰⁶

This suspicion has also been part of the political opposition to welfare reform. Some on Capitol Hill fear that “charitable choice distracts from the real issue of providing much needed Federal funds and resources to address the problems of poverty, crime and drug addiction.”²⁰⁷

²⁰³ See Acton Institute, Charities Database, *available at* <http://www.acton.org/cec/charities/search.php?id=156> (quoting response of Evansville Christian Life Center as to why they will not take federal money).

²⁰⁴ Carlson-Thies, *supra* note 23, at 678 (citing concern of Presbyterian Church).

²⁰⁵ Richard John Neuhaus called Catholic Charities “a chief apologist for a catastrophically destructive welfare system, [which] stands in the way of developing alternatives to help people break out of dependency and take charge of their lives.” See Brian C. Anderson, *How Catholic Charities Lost Its Soul*, CITY JOURNAL, Winter 2000 (quoting Richard John Neuhaus).

²⁰⁶ For example, in 1996, when Maryland overhauled its welfare program with the aim of expanding the role of religious organizations, the lobbyist for Presbyterian Church (USA) expressed concerns that the legislation would weaken the state safety net and the Maryland Catholic Conference argued against elimination of entitlements to cash assistance. See Carlson-Thies, *supra* note 23, at 677.

²⁰⁷ See Hearing: Role of Community and Faith-Based Organizations, *supra* note 94 at 11 (statement of Rep. Cummings).

On the other side, some are critical of the emphasis of some faith-based organizations on governmental solutions, calling them lobbying arms for big government and feeling that they should concentrate more on providing services than on lobbying activities. See, e.g., Brian C. Anderson, *How Catholic Charities Lost its Soul*, CITY JOURNAL, Winter 2000, *available at* http://www.city-journal.org/html/10_1_how_catholic_charities.html.

The perception issue is not an unimportant one. While the rhetoric of compassionate conservatism suggests a government that will retain its obligations to secure the social welfare of its citizens,²⁰⁸ if the government's behavior is inconsistent with that rhetoric, religious organizations may not be so quick to take advantage of the government support offered.²⁰⁹ The provision of increased funding to support private social service efforts would do much to alleviate the fears that lead to suspicion of governmental funding and to increase people's belief that compassionate conservatism is a viable approach.

3. Church/State Concerns

The passage of President Bush's executive orders putting faith-based organizations on the same level with other organizations seeking federal funds for the provision of social services was viewed by some as creating Establishment Clause problems. However, the Supreme Court's decision in *Zelman v. Simmons-Harris*,²¹⁰ holding that Ohio's school voucher program did not violate the Establishment Clause, suggests that a greater degree of governmental support for charitable activities of religious organizations may be constitutionally permissible than might previously have been thought.²¹¹ Under the reasoning of *Zelman*, governmental financial support of faith-based organizations should not be problematic so long as the conditions of neutrality and

²⁰⁸ See *infra* text accompanying notes 238.

²⁰⁹ See McLaughlin, *supra* note 194, at 76 (quoting argument of one minister that religious organizations "need to do guerilla work not cooperate with the dismantlers of our safety net").

²¹⁰ 536 U.S. 639 (2002).

²¹¹ See Ira Lupu and Robert Tuttle, *Zelman's Future: Vouchers, Sectarian Providers, and the Next Round of Constitutional Battles*, 78 NOTRE DAME L. REV. 4 (2003) (suggesting that *Zelman* "opened the door for a wide range of relationships, once thought impermissible, between government and religious institutions").

private choice are met.²¹² Although others have discussed the development of the Court's Establishment Clause jurisprudence at great length, including its impact on the funding of faith-based organizations,²¹³ a brief discussion of how neutrality and private choice play out in the context of faith-based organizations is not out of place here.

In the context of the provision of government funding of faith-based organizations, neutrality means not only that government funding must have a secular purpose²¹⁴ but that funds are neutrally allocated between religious and non-religious organizations²¹⁵ and that religious organizations using government money must provide benefits without regard to religion.²¹⁶ Neutrality also requires that individuals are not given a financial incentive to select services provided by a religious organization rather than by a non-religious organization.²¹⁷

Some of these requirements are more easily satisfied than others. There is obviously a secular purpose to government funding of faith-based organizations –

²¹² 536 U.S. at 625 (citing *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 10-11 (1993)); 536 U.S. at 622.

²¹³ See, e.g., Lupu & Tuttle, *supra* note 211; Aaron Cain, *Faith-Based Initiative Proponents Beware: The Key in Zelman is Not Just Neutrality, but Private Choice*, 31 PEPPERDINE L. REV. 979 (2004); Steven Fitzgerald, *The Expansion of Charitable Choice, The Faith Based Initiative, and the Supreme Court's Establishment Clause Jurisprudence*, 42 CATHOLIC LAWYER 211 (2002); Elbert Lin, et al., *Faith in the Courts? The Legal and Political Future of Federally Funded Faith-Based Initiatives*, 2002 YALE L. & POL'Y REV. 183 (2002); OF LITTLE FAITH, *supra* note 38, at 241-244. See also Branham, *supra* note 165 (discussing the constitutionality of governmentally funded faith-based prison units); Mark Edward DeForrest, *An Overview and Evaluation of State Blaine Amendments: Origins, Scope, and First Amendment Concerns*, 26 HARV. J. L. & PUB. POL'Y 551 (2003); Steven H. Shiffrin, *Liberalism and the Establishment Clause*, 78 CHI.-KENT L. REV. 717 (2003); Keith Werhan, *Navigating the New Neutrality: School Vouchers, the Pledge, and the Limits of a Purposive Establishment Clause*, 41 BRANDEIS L.J. 603 (2003).

²¹⁴ See *Lemon v. Kurtzman*, 403 U.S. 602, 649 (1971).

²¹⁵ *Zelman*, 536 U.S. at 650.

²¹⁶ *Id.* at 653.

²¹⁷ *Id.* at 653-54.

improving the well-being of the poor²¹⁸ and since the charitable choice provisions treat religious and secular organizations equally, they satisfy the requirement that funds be neutrally allocated between religious and non-religious organizations. Additionally, faith-based organizations provide benefits without regard to religion.

The real fear of many is that charitable choice means that taxpayer money will be used to proselytize,²¹⁹ with the result that federal funding is, in fact, promoting certain religious denominations. It is legitimate to question how government funding meshes with the religious aspect of faith-based services. If a significant reason faith-based organizations are effective is precisely their faith, to what extent can one separate the religious aspect from other aspects of services and still obtain the same effectiveness?

The experience of faith-based organizations that have taken advantage of government funding suggest this fear may be overstated. The organizations appear to be complying with the charitable choice rules and taking numerous steps to safeguard the civil liberties of their clients. The vast majority segregate governmental funds from nongovernmental money, provide specialized training for their staff and hold inherently religious activities at times separate from government-funded programs.²²⁰ At least one federal district court opinion addressing the constitutionality of the provision of government funds to a faith-based provider suggests that it is important that there be an

²¹⁸ The fact that those supporting funding of faith-based organizations may believe that religious organizations may be more effective in addressing poverty because of their religious nature does not change the fact that the purpose of the funding is secular.

²¹⁹ See Hearing: Role of Community and FBOs, *supra* note 94 at 11 (Statement of Rep. Cummings).

²²⁰ Green and Sherman, *supra* note 192, at 4, 35-39; See Hearing: Role of Community and FBOs, *supra* note 94 at 101 (statement of Donna Jones, pastor of Cooke United Methodist Church) (discussing holding faith curriculum at beginning or end of day, separate from other, nonreligious activities).

adequate system in place to ensure that government money is not being used for religious activities.²²¹

Notwithstanding the separation, there is still something distinctive about the nonreligious services provided by faith-based organizations. In one case where FBO received public money and separate its activities so that it was not using public money for religious education and ensuring that publicly funded programs are not religious, the report was that “our clients continue to tell us that it feels different.”²²²

Additionally, some have expressed fears that recipients of services from faith-based organizations will be coerced into participating in religious activities. Although the law prevents direct coercion, the law does not require that recipients be informed of their right to not participate in any religious programs offered by their faith-based provider. It appears that faith-based organizations believe that notifying clients that they need not participate in religious activities is important and routinely assure clients that they will receive all services even if they don’t participate in such activities.²²³

Nonetheless, a change in the law to require that they do would be desirable in order to dispel any concerns about entities not voluntarily providing such notification.

The private choice prong of *Zelman* means that beneficiaries must have the option to choose a nonreligious provider of services, that there be independent and private choice of providers. This choice is an important part of reconciling the competing objectives of protecting the religious freedom of recipients without infringing of the religious aims of faith-based organizations. Absent meaningful choice among providers,

²²¹ See *Freedom from Religious Foundation, Inc. v. McCallum*, 179 F. Supp. 2d 950 (W.D. Wisc. 2002).

²²² See Hearing: Role of Community and FBOs, *supra* note 94 at 76 (statement of Donna Jones, pastor of Cooke United Methodist Church).

²²³ Green and Sherman, *supra* note 192, at 41, 43, 45.

there is a concern that recipients of services will be a captive audience for proselytization. From the standpoint of subsidiarity, *Zelman*'s concern with choice is consistent with the desire to empower individuals to participate in the ordering and improvement of their lives.

It appears that faith-based organizations are diligent about informing beneficiaries of their services of their right to select an alternative nonreligious provider of services,²²⁴ meaning that the private choice prong of the test is not a problem where, in fact, alternative providers are available. However, there may be locales where the religious provider is the only one available. In such a circumstance government funding of religious organizations would not be permissible because of the absence of choice.

B. Government Role Apart from Funding

Given the magnitude of the problem of poverty, it is clear that the role of the federal government cannot be limited to making block grants to the states and to providing funding to faith-based organizations. This is especially the case since, as discussed in the previous section, there will be many faith-based organizations unwilling to take government money and there will be some circumstances where government funding will run afoul of the *Zelman* test.

1. Government Facilitation the Work of Faith-Based Organizations

Clearly the government can do more to promote the aims of faith-based organizations than merely making government money available to them. Indeed, a government committed to allowing faith-based organizations to play the vital role they are capable of playing will actively search for ways to support such entities in addition to

²²⁴ Green and Sherman, *supra* note 192, at 43-44.

those that involve direct governmental financial outlays. One obvious way is to make it easier for individuals and more attractive for businesses to increase their giving to faith-based organizations.

The proposed 2003 Charity Aid, Recovery and Empowerment Act, which passed the Senate in April 2003, would have included a charitable tax incentive,²²⁵ allowing people who do not itemize deductions on their tax forms to nonetheless itemize charitable contributions. The House passed a similar bill, the Charitable Giving Act, in the fall of 2003.²²⁶ Despite what appears to be significant support for the measure in both houses, the competing bills²²⁷ have not been brought to conference and the proposal remains “important unfinished business.”²²⁸ Surprisingly, a discussion draft prepared by the Senate Finance Committee that aims to break the logjam and assist in efforts to enact legislation regarding non-profit organizations does not address the deduction issue.²²⁹

Estimates are that allowing deductibility of charitable contributions by those who don’t itemize their tax returns would increase contributions by \$14 or 15 billion a year.²³⁰

²²⁵ S.476.

²²⁶ H.R. 7.

²²⁷ The Senate version included a proposal to provide \$1.4 billion in funding for social service block grants over two years and would offset the charitable tax breaks with tax increases on business. The House version contains neither the increased social service spending nor the offsetting tax increases. *See* 2003 *Legislative Summary: Charitable Gifts/Faith-Based Initiatives*, CQ WEEKLY, Dec. 13, 2003, at p.3134. The White House supports the charitable deduction, but not the increased funding for social services. *See Catholic Officials Pleased with Senate Faith-Based Bill*, AMERICA, Apr. 28-May 5, 2003, at p. 4, 5.

²²⁸ *Sens. Santorum, Lieberman Offer Faith-Based Charity Bill as Amendment*, STATE NEWS SERVICE, Mar. 4, 2004 (quoting Sen. Santorum).

²²⁹ The Staff Discussion Draft, which was released after a June Senate Finance Committee hearing is available at <http://finance.senate.gov/hearings/testimony/2004test/062204stfdis.pdf>. *See* Leonard Jacobs, *Not-For-Profits in Wait-and-See Mode as Senate Considers Oversight Haul*, 45 BACKSTAGE 4 (Sept. 3, 2004), available at 2004 WL 89521310 (highlighting the tax deduction provision as one of the “well-praised items” missing from the draft).

²³⁰ *See* Hearing: Role of Community and FBOs, *supra* note 94 at 38 (Statement of John J. DiIulio, Director White House Office of Faith-Based and Community Initiatives); Carrasco, *supra* note 92 (citing comments of Cortes) (permitting deductions for charitable contributions by those who do not currently itemize would

Obviously not all of those funds would go to faith-based organizations providing services to the poor. Still, given that religious organizations receive a significant share of all private contributions,²³¹ the additional contributions would add tremendous resources to many, improving their ability to do their work.

It would also be desirable if the government could develop an approach that would encourage corporate giving. Many corporations presently have absolute bans on contributing to faith-based organizations.²³² Philip J. Murnion of the National Pastoral Life Center described an experience he had when soliciting funds for community projects in the South Bronx from the community-funding director of a major national bank headquartered in New York. “When the officer realized the purpose of my visit, he erupted with what seemed like disdain: ‘You’re looking for funds for the church? We don’t fund the church?’ ‘Even when it is the only effective network of institutions in the community?’ I asked. ‘That’s right!’ he insisted.”²³³

Additional private contributions are likely to be forthcoming if people have security that their contributions will be used well. That suggests that there may be a role for the government in engaging in some oversight of the spending of faith-based organizations (indeed, of all charities that benefit from private funds) to ensure that funds are being used correctly.

“mean an additional \$15 billion for Latino faith-based groups operating in low-income barrios, all of it from the pockets of private individuals”); *Sens. Santorum, Lieberman Offer Faith-Based Charity Bill as Amendment*, STATE NEWS SERVICE, Mar. 4, 2004 (discussing significant increase in services that could be provided as a result of passage of the bill).

²³¹ See LESTER M. SALAMON, PARTNERS IN PUBLIC SERVICE: GOVERNMENT-NONPROFIT RELATIONS IN THE MODERN WELFARE STATE 57 (John Hopkins U. Press 1995) (showing that religious organizations receive almost half of all contributions and grants by individuals, foundations and corporations).

²³² See Hearing: Role of Community and FBOs, *supra* note 94 at 37 (Statement of John J. DiIulio, Director White House Office of Faith-Based and Community Initiatives).

²³³ Murnion, *supra* note 110 (also suggesting this blanket opposition might be changing as faith-based organizations begin to be looked at more favorably).

Apart from aiding in private funding, there are non-financial things the government can do to facilitate the work of faith-based organizations. Keeping in mind that part of the teaching of subsidiarity is the notion that higher order communities should not only not interfere with the communities of lower orders, but should support them in case of need and help their activities to succeed,²³⁴ there is a role for the government in examining and attempting to change regulations that hamper the ability of faith-based organizations to operate effectively. Just to give one example, it has been suggested that the ability of faith-based organizations who work with prisoners and want to continue to work with them during the transition period following their release from prison is hampered in New York by a policy favoring released inmates to return to the county of their convictions.²³⁵

2. Government Doing what Cannot Be Done (and is not Done) by Private Groups

However much is done by faith-based organizations, such organizations cannot be viewed as the sole solution to poverty. There remain important roles for the federal government beyond directly providing funding for, or otherwise facilitating the work of, faith-based organizations.

It is clear that there are some things only the government can do effectively.²³⁶ A coordinated approach to addressing poverty will need to include elements like minimum

²³⁴ See Catechism of the Catholic Church ¶ 1883 (1994) (“A community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with the view to the common good”) (quoting *Centesimus Annus*).

²³⁵ See *Regulatory Red-Tape: First-Hand Accounts of Roadblocks to Charity*, GUIDE TO EFFECTIVE COMPASSION, available at <http://www.acton.org/policy/compassion/charities/redtape.html> (quoting Cephass-Attica, Inc., Rochester, N.Y.) (the NYS Division of Parole policy has a “negative impact on [the] ability to serve releasees during the transition period”).

²³⁶ See Murnion, *supra* note 110 (observing that government is often not only the best “but the only actor able to address certain issues or achieve certain outcomes).

wage legislation that provides for a meaningful wage and adequate support for public education, which only the government can provide. Pope John Paul II addressed the point about meaningful wages in *Centimus Annus*, suggesting that the government must be involved in limiting employer's autonomy to determine working conditions and ensuring some level of support for those who are unemployed.

Moreover, the government must remain the backstop when private efforts fail or are not forthcoming. “[I]f all other groups and organizations fail, then the state must provide some sort of safety net for those who are not assisted by anyone else. In times of crisis, it may be necessary for the government to play a more active role.”²³⁷

Government as backstop is completely consistent with the principle of subsidiarity, which emphasizes doing things at lowest *effective* level. Consistent with subsidiarity (and solidarity) and its obligation to provide for the social welfare of its citizens, the government must not only do what it can to enable lower organizations to operate effectively, but it must be both a backstop when private efforts fail and must implement policies that are necessary to ensure that companies and individuals behave justly.

The rhetoric of “compassionate conservatism” recognizes this ultimate government obligation. As Senator Rick Santorum defined it:

Compassionate conservatism acknowledges that the answer is not the withdrawal of government, leaving communities to fight the battle against poverty and social decay. This “compassionate conservatism” approach recognizes that government must work as a “silent partner”, enabling communities, organizations and individuals to be innovative in rescuing those for whom American prosperity is so elusive... Congress has a great deal to offer those who have been left out of the

²³⁷ Rev. Gerald Zandstra, *Think Locally, Act Locally*, ACTON COMMENTARY, Sept. 26, 2001, available at <http://www.acton.org/ppolicy/comment/article.php?id=53>.

Not everyone would agree. Some who favor a nongovernmental approach would argue that as long as a government safety net is in place, it will be difficult to succeed. See OLASKY, *RENEWING AMERICAN COMPASSION*, *supra* note 13, at 99-100.

enormous opportunity of this country, but we must not supplant successful community efforts to combat poverty. We must embrace legislative initiatives that lift greater number of the disenfranchised out of poverty while strengthening families and communities by increasing their social support structure and opportunities. This is compassionate conservatism.²³⁸

The rhetoric is admirable, but only so long as the words reflect an underlying reality. Experience of the last several years suggest that at least in some parts, the words lack substance, meaning there is more that needs to be done.

Conclusion

The problem of poverty is too large and multifaceted to be alleviated by the efforts of any one entity or level of organization. “Poverty has structural causes that necessitate more than a charitable response. Furthermore, the charge to rescue the oppressed is issued to all of society, and as the action agency for the nation, the government is obligated to respond to ensure that the needy receive what they lack.”²³⁹

Thus, the solution must be a concerted effort among different institutions working to complement each other.²⁴⁰ That means that there are important roles for both the government and for nongovernmental actors, particularly faith-based organizations.

Once we recognize that the solution is not monolithic and that there are many tools in the fight against poverty that need to complement each other, we need to determine what can best be done by private groups and what can best be done by

²³⁸ The Honorable Rick Santorum, *Compassionate Conservative Agenda: Addressing Poverty for the Next Millennium*, 26 J. LEGIS. 93, 94 (2000).

²³⁹ Carlson-Thies, *supra* note 23, at 680. See Wineburg, *supra* note 15, at 7 (suggesting that “the system of [social] services is far too huge and complicated for any one policy to work” and the need for “a well-orchestrated planning and coordination effort”).

²⁴⁰ See United States Conference of Catholic Bishops, *A Place at the Table*, *supra* note 3, at §VI (suggesting that debate about how to address poverty is stalled by the failure to see the need for different elements to work together, noting that the “Catholic way is to recognize the essential role and the complementary responsibilities of families, communities, the market, and the government to work together to overcome poverty and advance human dignity”).

government. I suggest here that, consistent with subsidiarity, the first role of the government be to facilitate mediating institutions such as faith-based organizations, providing important non-financial as well as financial support for their work. However, the government must also be willing to step in to accomplish those things that are beyond the ability of faith-based organizations.

In its best sense, compassionate conservatism represents an approach to sharing and trying to alleviate the suffering of others (compassion) while promoting human dignity by promoting, where possible, nongovernmental solutions rather than federal government ones (conservative). Adequately supported faith-based organizations, combined with the government playing its appropriate role, offer something to be optimistic about. The government must take steps to ensure that the reality matches the rhetoric.