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Reverse Yardstick Competition: A New Deal for the Nineties

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REVERSE YARDSTICK COMPETITION: A NEW DEAL FOR THE NINETIES

*Paul R. Verkuil**

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I. INTRODUCTION

Any address dealing with the New Deal, yet alone yardstick competition, needs an introduction and explanation, since not many law students were born in the years when Franklin Delano Roosevelt served as President. But FDR's ghost surely stalks our political halls today, either as a potential role model for our new Democratic President, Bill Clinton, or as negative inspiration for our recently departed Republican President, Ronald Reagan. (George Bush lacked role models, although he did at the end refer to Harry Truman for one nonpartisan virtue—the capacity for impossible comebacks.¹) In reviving references to the New Deal now, I am

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1. Richard Benedetto, *Touting a Truman Connection*, USA TODAY, Sept. 4, 1992, at 8A, available in LEXIS, Nexis Library, Majpap file; Robert L. Turner, *Perot's Message Won't Just Go*

interested in describing current possible applications of principles therein delineated, or perhaps in their polar opposites.

But, in either case, and even after more than fifty years,² the New Deal continues to define parameters for the economic and regulatory performance of government. Its assumptions are starting points to be absorbed or rebutted, but rarely to be ignored. The significance of the New Deal upon current government thinking emanates from its status as the first truly positive government; it produced an activist administration which sought to intervene in and cure perceived failures of the private sector during a period of sustained economic crisis.³ Can there be any doubt that we face similar challenges today?

Indeed, recently, President Clinton went to FDR's hometown, Hyde Park, expressly to draw the connection between the nation's current economic difficulties and the problems the New Deal addressed during the Depression.⁴ The Clinton victory was premised upon perceived failures of the market-oriented, limited government policies of the Bush administration that got translated into neglect of the public's needs. Neither the public nor the new administration is yet confident about specific policy directions, but the idea of change has been embraced, and new directions in areas like taxation and health care have been charted.

As an administrative lawyer turned corporate CEO, I am concerned that we do not automatically turn to public solutions before acknowledging the proper role and limits of government at all levels. I plan in this lecture to explore the relationship between the public and private sectors and to suggest how we might best organize ourself to achieve positive changes. In this attempt I am at one with an even earlier Democratic President Woodrow Wilson, who, as a scholar of administration himself, defined for us the purpose of the study of administration.⁵ Wilson stated "[i]t is the object of administrative study to discover, first, what government can properly and successfully do, and secondly, how it can do these proper things with the utmost . . . efficiency and at the least possible cost

Away, BOSTON GLOBE, Nov. 8, 1992, at A25, available in LEXIS, Nexis Library, Majpap file.

2. Robert L. Rabin, *Legitimacy, Discretion, and the Concept of Rights*, 92 YALE L.J. 1174 (1983); Ronald F. Wright, *Letters from Beyond the Regulatory State*, 100 YALE L.J. 825 (1990) (book review).

3. See ARTHUR M. SCHLESINGER, JR., *THE CRISIS OF THE OLD ORDER: 1919-1933*, at 452-54 (1957).

4. See Thomas L. Friedman, *Clinton, In Hyde Park Visit, Urges a Renewal of Roosevelt's Legacy*, N.Y. TIMES, Feb. 20, 1993, at 1. The article stated that Clinton "was clearly trying to make the nation believe that its current economic difficulties are a crisis of nearly similar magnitude to the Depression, and require the same spirit of national unity that fueled the New Deal." *Id.* The speech was also notable for Clinton's casual reference to a national sales or value added tax. *Id.*

5. See WOODROW WILSON, *THE STUDY OF PUBLIC ADMINISTRATION* (1955).

either of money or . . . energy.”⁶ There has never been a better statement of our responsibility as public lawyers or indeed as citizens generally.

Now, what is yardstick competition all about? Yardstick competition creates government entities whose job is to measure the performance of private enterprise.⁷ It proceeds on the assumption that the private sector either can’t or won’t provide the necessary goods or services at the same quality or price level as government entities.⁸ Today this idea of government superiority as a producer seems odd, if not ludicrous. But in the 1930s, in the throes of a depression attributed in many quarters to a failure of private enterprise, the notion gained many supporters.⁹ Indeed, FDR rode it to victory in 1932. One of his campaign promises was to create “a national yardstick to prevent extortion against the public and to encourage the [wide] use of that servant of the people—electric power.”¹⁰

The reference to electric power led almost immediately after FDR’s inauguration to the creation of the Tennessee Valley Authority (the TVA), which brought electricity to an enormously depressed region.¹¹ One clear purpose of the TVA was to show that it could perform in fact more efficiently than private power companies.¹² And for many years it did provide low cost electric power to its customers and helped develop an entire region of the United States.¹³

Over the last sixty years, the TVA has grown into one of the largest utilities in the United States.¹⁴ It serves over seven million customers¹⁵

6. *Id.* at 3.

7. See Stephen Breyer, *Economists and Economic Regulation*, 47 U. PITT. L. REV. 205, 210 (1985).

8. See *id.* (stating that a government-run utility could be used to evaluate a privately run utility’s costs, but recognizing that differences between these types of utilities might preclude a useful comparison).

9. Of course, government ownership and operation of traditionally private sector enterprises has a long history, going back to the Populist era at the turn of the century. See ROBERT J. PARKS, *DEMOCRACY’S RAILROADS: PUBLIC ENTERPRISE IN JACKSONIAN MICHIGAN* (1972); JAMES WEINSTEIN, *THE CORPORATE IDEAL IN THE LIBERAL STATE: 1900-1918* (1968).

10. 1 FRANKLIN D. ROOSEVELT, *Campaign Address on Public Utilities and Development of Hydro-Electric Power in Portland, Oregon* (Sept. 21, 1932), in *THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT* 727, 740 (1938).

11. See 2 GEORGE B. TINDALL, *AMERICA: A NARRATIVE HISTORY 1075-77* (1984).

12. David Lilienthal, first director of the TVA, declared in 1933 that the TVA’s accounts should “show details of costs, and permit a comparison of operations with privately owned plants, to supply a yardstick as an incentive to both private and public managers.” Jeffrey L. Harrison, *Yardstick Competition: A Prematurely Discarded Form of Regulatory Relief*, 53 TUL. L. REV. 465, 481 (1979) (quoting TENNESSEE VALLEY AUTHORITY, *ANNUAL REPORT OF THE TENNESSEE VALLEY AUTHORITY* 24 (1935)) (emphasis added). See generally *id.* at 480-85 (discussing the TVA’s role as a yardstick competitor to privately run utilities).

13. See *The TVA Controversy*, PUB. UTIL. FORT., Feb. 15, 1991, at 18.

14. *Id.*

and is one of the most significant proponents of nuclear power.¹⁶ Yet questions about its role as a government entity remain.¹⁷ With certain tax and capital raising advantages, the TVA is said to compete unfairly with investor owned utilities.¹⁸ The fact that its rates are now equal to those of private entities¹⁹ raises questions about its efficiency, which is being seriously debated.²⁰ In an era where yardstick competition is no longer in favor, the TVA, a monolithic entity much like the Post Office, must justify itself as a government organization. In effect, the yardstick presumption has been reversed, hence the title of this lecture.

The New Deal allegedly ended when Ronald Reagan triumphed with the notion that private enterprise should replace government to the maximum extent possible.²¹ Where the New Deal focused on the problems of "market failure," Reaganomics fixed on reverse problems of "government failure" advocated by public choice theory.²² Under this kind of analysis it is no wonder that the TVA and even that great government monopoly, the Postal Service,²³ should come under scrutiny as inefficient and unnecessary government enterprises. Certainly, reports on the productivity of the Postal Service are far from reassuring.²⁴ A recent study states that "[p]ostal productivity peaked in 1978, showing a cumulative 8 percent increase, and generally has declined with some fluctuations since that time."²⁵

It is mind-numbing to discover a government institution so impervious to the forces of productivity at a time when U.S. industry has become the most productive in the world. Such an entity could not survive in the

15. *Id.*

16. *Id.* at 20-21.

17. See generally Douglas A. Huston, *Let's Privatize the TVA*, PUB. UTIL. FORT., Feb. 15, 1991, at 22 (arguing that the TVA should be privatized to make it more responsive to free market forces and less constrained by pork-barrel politics).

18. *Id.* at 23.

19. See *id.* at 22-23.

20. See Huston, *supra* note 17, at 22; William Malec, *TVA Does Not Need to Be Privatized*, PUB. UTIL. FORT., Feb. 15, 1991, at 26; *The TVA Controversy*, *supra* note 13, at 18.

21. See TINDALL, *supra* note 11, at 1339.

22. *Id.* Public choice theory applies concepts of individual self-interest to government policy-makers. See JAMES M. BUCHANAN & GORDON TULLOCK, *THE CALCULUS OF CONSENT* 3-9 (1962). See generally Ronald A. Cass, *Privatization: Politics, Law and Theory*, 71 MARQ. L. REV. 449, 473-77 (1988) (discussing public choice theory).

23. See *The Mail Monopoly*, N.Y. TIMES, Mar. 12, 1990, at A16 ("There's nothing wrong with privatization that, say, splits off mail delivery in a given city or area and subcontracts it to the highest bidder.").

24. See POSTAL RATE COMMISSION STAFF, *STUDY OF U.S. POSTAL SERVICE PRODUCTIVITY AND ITS MEASUREMENT* (1990).

25. *Id.* at iii.

private sector.²⁶ This is why the word for the last decade has been “privatization.”²⁷ It is a worldwide movement extending from Margaret Thatcher’s England, to Carlos Salinas’s Mexico, and to the Velvet Revolution in Eastern Europe. It was inspired by the Reagan presidency, but we can’t ignore its continuing influence upon the future activities of government.

We stand therefore at a fascinating political juncture in United States history. The Reagan era of privatization is arguably over, and the period of Bill Clinton’s “New Covenant”²⁸ has commenced. There are those in his administration who advocate New Deal pump priming through public investment²⁹ if not public ownership, and there are those who favor a continuation of privatization through a process of reinventing government.³⁰ This latter theme has been adopted by the Vice President’s National Performance Review of the federal government. But it is not yet clear which way the new administration will lean or, indeed, whether it will lean in both directions at once.

Candidate Clinton said that his New Covenant stands for “a government that expands [opportunities], not bureaucracy.”³¹ In his inaugural address, President Clinton asked us to bring “forth the vision and courage to reinvent America.”³² And recently, in a public address to the people, the President called for a searching re-examination of the mission of government.³³ Admittedly, campaign slogans and political addresses are studies in ambiguity. But behind these statements is a direction that inspires the Clinton administration to live up to, not only to FDR’s, but to Woodrow Wilson’s demands: To explore the limits of government and thereby involve the private sector in the solution of public problems.

By respecting continuity as well as change, the Clinton administra-

26. The study indicates that productivity in the private sector has grown over 65% more than in the Postal Service. *Id.* at ix.

27. See *supra* notes 21-23 and accompanying text.

28. Clinton: “*It’s Time to Change America*,” USA TODAY, July 17, 1992, at 13A, available in LEXIS, Nexis Library, Majpap file (“[W]e need a new approach to government . . . a New Covenant, a solemn agreement between the people and their government.”).

29. See ROBERT B. REICH, THE WORK OF NATIONS 252-67 (1991).

30. See DAVID OSBORNE & TED GAEBLER, REINVENTING GOVERNMENT: HOW THE ENTREPRENEURIAL SPIRIT IS TRANSFORMING THE PUBLIC SECTOR xviii-xix, 45-48 (1992).

31. Clinton: “*We Need a New Approach*,” S.F. CHRON., July 17, 1992, at A8, available in LEXIS, Nexis Library, Majpap file.

32. Bill Clinton, Inaugural Speech (Jan. 20, 1993), in USA TODAY, Jan. 21, 1993, at 1A, available in LEXIS, Nexis Library, Majpap file. Clinton also invoked the words of FDR, saying “[l]et us resolve to make our government a place for what Franklin Roosevelt called ‘bold, persistent experimentation.’” *Id.*

33. See Bill Clinton, Economic Address to Congress (Feb. 17, 1993) (transcript available through C-SPAN).

tion can move us in productive, new directions. Admittedly Reaganomics brought us unprecedented deficit problems and a disdain for public solutions, but we need not throw out the baby with the bath water by rejecting all that was accomplished under the banner of privatization over the last twelve years. Privatization is a concept worth pursuing in our new political environment. It means less government management and more government leadership. It accepts the fact that the best yardsticks come from the private sector, but it retains the power to monitor and inspire economic change.

II. THE CONTROVERSY OVER PRIVATIZATION AND THE CONCEPT OF REDUCED GOVERNMENT

There are some who argue that privatization is an abdication of government's responsibility to the people³⁴ and, as such, an undemocratic, if not unconstitutional, exercise. It is alleged that turning government functions over to private enterprise is a way to avoid the state action doctrine and thereby immunize the government from constitutional constraints.³⁵ While this challenge to privatization cannot be ignored, the fact is that we have come a long way since the Supreme Court was required to impose First Amendment protections on a company town which denied such rights in *Marsh v. Alabama*.³⁶ Today, the state action doctrine is only one way to ensure protection of the public interest in the private enterprise context.³⁷ Indeed, legislation enacted in recent years has imposed public responsibilities upon the private sector even without observing strict state action requirements.³⁸ The Age Discrimination in Employment Act,³⁹ the Americans with Disabilities Act of 1990,⁴⁰ and Title VII of the Civil Rights Act⁴¹ apply to private employers and thereby confirm that private enterprise can have public responsibilities imposed upon it. Surely, one of the oddities of our time is that our most public of public institutions—Congress—has exempted itself from certain civil rights and employment laws that private enterprise is bound by, thereby turning the

34. See Ronald C. Moe, *Exploring the Limits of Privatization*, 47 PUB. ADMIN. REV. 453, 457 (1987).

35. See Harold J. Sullivan, *Privatization of Public Services: A Growing Threat to Constitutional Rights*, 47 PUB. ADMIN. REV. 461, 461-62 (1987).

36. 326 U.S. 501 (1946); see also *Burton v. Wilmington Parking Auth.*, 365 U.S. 715 (1961) (holding that a state's failure to prevent discrimination in privately owned coffee shops leased on public property violated the Fourteenth Amendment).

37. See Sullivan, *supra* note 35, at 464-65.

38. See *id.* at 465.

39. 29 U.S.C. §§ 621-634 (1988 & Supp. III 1991).

40. 42 U.S.C. §§ 12, 101-213 (Supp. III 1991).

41. 42 U.S.C. § 2000e (1988 & Supp. III 1991).

theory of public responsibility on its head.⁴²

Moreover, there is no reason why a government entity that bids out functions to the private sector could not require compliance with public sector responsibilities as a part of the contractual process. In effect, the law of contract can ensure that relevant statutory and constitutional protections are honored, whether or not the Constitution applies directly via the state action doctrine. Thus, today there are few reasons why privatization of government functions could not be achieved at minimal cost to established public rights and obligations.

But this does not, of course, answer the larger question of when privatization initiatives might be appropriate. To understand the role of private initiatives, the role of government must be better understood. In a changing world where resource allocation problems became more acute due to limited revenues and deficit reduction obligations, the down-sizing (or right-sizing) of government has become a necessity at all levels. A starting point in assessing private action is to review Reagan-era initiatives and existing legislative formulas that permit or encourage such activity.⁴³

In the Reagan years, privatization was a prominent part of the administration's deregulatory program.⁴⁴ Efforts were made to shift the production of goods and services to the private sector in order to reduce government expenditures and take advantage of efficiencies that normally result from competition.⁴⁵ Reagan privatization proposals also included the outright sale of government assets, such as Amtrak and Conrail, and the sale of loan portfolios.⁴⁶

Sale of government assets is politically contentious, but it is at the heart of the Thatcher and Salinas revolutions in Great Britain and Mexico.⁴⁷ Indeed, the only international airline to show a profit last year was British Airways, which only a few years ago was a moribund national liability,⁴⁸ and the hottest stock on the market today may be Telemex, the

42. See Michael Wines, *Bush Campaigning Against Congress*, N.Y. TIMES, Apr. 4, 1992, § 1, at 7.

43. OFFICE OF MANAGEMENT AND BUDGET, BUDGET OF THE UNITED STATES GOVERNMENT: FISCAL YEAR 1988, at 2-44 to 2-45 (1987) [hereinafter 1988 BUDGET].

44. See *id.*

45. See *id.* at 2-44.

46. *Id.* at 2-45 to 2-51.

47. See Larry Rohter, *Mexico's Recovery: Is It in Peril?*, N.Y. TIMES, Feb. 3, 1990, § 1, at 37.

48. See John M. Simpson, *New British Air Chairman Stakes Claim*, USA TODAY, Feb. 17, 1993, at 8B, available in LEXIS, Nexis Library, Majpap file. State owned airlines like Air France and Lufthansa continue to be monumental drains on their national treasures. See Steven Prokesch, *Europe Has Its Share of Airline Problems*, N.Y. TIMES, Feb. 5, 1991, at D1. Of course, save for Southwest, our private airlines have not done well either. See *Company News: Southwest Orders \$1.2*

former Mexican national telephone system.⁴⁹

In addition, the Reagan administration sought aggressively to contract out commercial activities to the private sector,⁵⁰ a program which has been on the books (and under-utilized) for over thirty years.⁵¹ The Office of Management and Budget's (OMB) A-76 Policy, as it is called, admonishes government not to compete with the private sector.⁵² But limitations upon its use are significant—no “inherently government” function may be contracted out.⁵³ Despite this limitation, the Reagan administration estimated in 1988 that it could save over one billion dollars by contracting out commercial activities under the A-76 process.⁵⁴ This is not a large amount, but if one were to think boldly—by legislatively amending the government function requirement—the possibilities for a dramatic increase in contracting out could be postulated for the Clinton years. After all, the definition of a government function is changing along with notions of reinventing government that have already taken hold.⁵⁵

Thus, while obstacles exist, combining and even expanding some of the Reagan initiatives in the Clinton administration seems an inevitable outcome of the New Covenant. As a practical matter, few significant legal or constitutional limits are imposed upon the privatization effort.⁵⁶ Some states have constitutional prohibitions upon contracting out government functions that can be enforced judicially.⁵⁷ Others, however, routinely re-

Billion in Boeing Jets, N.Y. TIMES, Aug. 7, 1992, at D3. But at least we know the magnitude of private airlines' losses because they must report them, whereas nationally owned airlines often obscure their subsidies from public scrutiny.

49. See Chris Wloszczyna, *Interest in Savings Bonds*, USA TODAY, Aug. 23, 1993, at B3, available in LEXIS, Nexis Library, Majpap file.

50. See Issuance of OMB Circular No. A-76 (Revised): “Performance of Commercial Activities,” 48 FED. REG. 37110, para. 4a, at 37114 (1987) [hereinafter OMB Circular No. A-76]. The policy of contracting out was first announced by the Bureau of the Budget in 1955. See *Diebold v. United States*, 947 F.2d 787, 789 (6th Cir. 1991) (stating that a “wrongful privatization” decision under Circular No. A-76 is reviewable under the Administrative Procedure Act); Michal L. Tingle, *Privatization and the Reagan Administration: Ideology and Application*, 6 YALE L. & POL'Y REV. 229, 233 n.10 (1988).

51. Tingle, *supra* note 50, at 233.

52. OMB Circular No. A-76, *supra* note 50, para. 4a, at 37114.

53. *Id.* para. 5b, at 37114.

54. See 1988 BUDGET, *supra* note 43, at 2-45 (stating that the sale of Amtrak could generate receipts of \$1 billion in 1988).

55. See *infra* notes 72-83 and accompanying text. Resistance by public employee unions is one problem with contracting out government functions. *The Bureaucracy Strikes Back*, WALL ST. J., Feb. 25, 1993, at A14. Indeed, the initial congressional reaction to President Clinton's proposal to trim the federal budget was to eliminate consulting contracts and bring all such activities in-house. See *id.* This would add to the federal bureaucracy.

56. See Moe, *supra* note 34, at 453, 456.

57. See *Colorado Ass'n of Pub. Employees v. Department of Highways*, 809 P.2d 988, 990

ject such challenges.⁵⁸

Government opportunities to use private enterprise to solve public problems should be driven by pragmatic, not dogmatic, considerations.⁵⁹ In effect all organizations are public⁶⁰ (or, as was said by the Supreme Court many years ago, "affected with a public interest"⁶¹), and the goal ought to be to find the most efficient solution.⁶² For example, a current debate is emerging over whether and how a national electronic highway should be built.⁶³ AT&T wants it done through private investment and Al Gore, speaking as Vice President-elect, favors public investment.⁶⁴ The direction that is chosen should be based on efficiency considerations (i.e., which solution works best), not some fixed view of government or private roles.

III. DOES PRIVATE ENTERPRISE HAVE SOMETHING TO TEACH GOVERNMENT?

In an era where many leading American businesses are struggling to survive, it is not obvious that they have something to teach government. What has happened to General Motors, IBM, and Sears provides sobering lessons for the competitiveness of our major companies.⁶⁵ Large corporate

(Colo. 1991) (holding that the civil service provisions of the state constitution forbid substitution of private sector providers for state personnel absent legislative or regulatory criteria defining the limits of privatization).

58. *Bartlett v. Bi-State Dev. Agency*, 827 S.W.2d 267, 269-70 (Mo. Ct. App. 1992) (holding that an agency was free to contract with a private bus company that could provide more economical services).

59. *See Moe*, *supra* note 34, at 455, 457-58 (discussing factors that should be used in assigning tasks to the private sector).

60. *See BARRY BOZEMAN, ALL ORGANIZATIONS ARE PUBLIC* (1987).

61. *Munn v. Illinois*, 94 U.S. 113, 126 (1876).

62. *See Moe*, *supra* note 34, at 455.

63. *See John Markoff, Building the Electronic Superhighway*, N.Y. TIMES, Jan. 24, 1993, § 3, at 1. The issues are whether private enterprise can build the electronic network as quickly as the public sector can and whether it will provide equal access to nonprofit groups, such as libraries (a subsidy issue). *Id.* Computer manufacturers such as IBM, Apple, and Digital favor public investment, since it would accelerate opening new markets for their products. *Id.* Obviously the recently proposed Bell Atlantic/TCI merger emphasizes the private alternative.

64. *Id.* Al Gore's desire for public investment is compared to his senatorial father's support for the interstate highway system in the 1950s. *Id.* The concept of an open public-data network is seen as crucial to our competitive well being today, just as the highway system was to economic growth in the 1950s.

65. *See Steve Lohr, Lessons for a High-Tech President*, N.Y. TIMES, Jan. 24, 1993, § 4, at 2. The uncertain future of companies such as General Motors, IBM, and Sears has been attributed to their "inability to adjust to the technological pace set by other American companies." *Id.* The problem has been exacerbated, not only by foreign competition (the Japanese have inefficient companies as well), but the pace of innovation. *Id.*

entities have fared little better than government itself. Yet there are many signs of revitalization and redirection. For every GM there is a Ford, for every IBM, a Microsoft, Motorola or Intel, and for every Sears, a Wal-Mart or Gap. In truth, American business is changing, adapting, and succeeding. Two factors stand out in this renewal process: a down-sizing of businesses to create more lean, responsive, and productive units;⁶⁶ and a commitment to Total Quality Management.⁶⁷ Both of these developments hold lessons for the government sector.

A. "Sizing" Government Along Private Lines: Federalism Redux

With regard to right-sizing, government must face up to the private sector challenge. Government is still too bloated at all levels, precisely because it does not face the competitive pressures that forced GM, IBM, and Sears to release almost 200,000 workers.⁶⁸ In America, where productivity per worker leads the world,⁶⁹ public sector employment has held steady at about seventeen to eighteen percent of the workforce from 1970 to 1991.⁷⁰ A dubious moment in U.S. employment history occurred in 1992 when the Bureau of Labor Statistics reported that the number of people working for government surpassed those working in manufacturing jobs.⁷¹ What is needed is a government that refocuses, retrains, redeploys, and, where necessary, releases employees and managers. Government cannot long avoid this responsibility, as Peter Drucker has recently observed: "[I]t is not only businesses that will have to learn to turn themselves around. Almost any large organization will find itself stagnating, frustrated, ailing—none more than government. Almost every large organization will have to rethink its business theory."⁷²

66. See *infra* notes 68-90 and accompanying text.

67. See *infra* notes 91-117 and accompanying text.

68. Steve Lohr, *Blue-Collar Work Force Hit Hardest by Unemployment*, HOUS. CHRON., Dec. 29, 1991, Business Section, at 2, available in LEXIS, Nexis Library, Majpap file.

69. Harry Bernstein, *Pay of U.S. Workers Doesn't Match Output: Despite Highest Productivity, Americans Fail to Gain Full Competitive Edge with Major Countries*, L.A. TIMES, Apr. 27, 1993, at A5.

70. See generally Martin Schram, *How About a Musical Chairs Cabinet?*, NEWSDAY, Oct. 1, 1992, at 94 (noting that the "number of civilians employed by the U.S. government is 2.76 percent of the nation's entire workforce . . . twice the ratio in Japan and Germany").

71. See BUREAU OF LABOR STATISTICS, U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND EARNINGS 59 (Aug. 1992); see also Paul C. Roberts, *Forsaken Pledges in a Shell Game: Public on the Menu*, WASH. TIMES, Feb. 11, 1993, at G1 (reporting that U.S. government jobs outnumbered manufacturing jobs by 18.7 million to 18.1 million).

72. Peter F. Drucker, *A Turnaround Primer*, WALL ST. J., Feb. 2, 1993, at A14. President Clinton has made a small dent in the federal civilian employment of 2.1 million by ordering his cabinet to eliminate 100,000 jobs by the end of 1995. *Clinton Moves to Cut 100,000 Federal Government Jobs by '95*, CHI. TRIB., Feb. 11, 1993, at 22. These cuts will result in an estimated savings of at

Signs that this kind of rethinking is taking hold can be found in works like Osborne and Gaebler's *Reinventing Government*,⁷³ which documents efforts to right-size state and local governments. Many states and municipalities are moving forward with privatization efforts.⁷⁴ Here in Florida, Governor Lawton Chiles established a Commission for Government by the People,⁷⁵ which has brought these concepts home by dramatically declaring in the opening sentence of its report that "[g]overnment in America is failing."⁷⁶ The difficulty with putting these words into action comes in convincing the bureaucracies affected by such changes and the legislatures that fund them. Both are dominated by short-term thinking and self-interested actions that often preclude a sustained commitment to down-sizing or redirection of programs. Yet, efforts to privatize certain historic government functions, from highway to prison construction and operation, are at the core of a redirected and reduced public sector. Indeed, one of the growth job categories in the United States is private guard services, just as prison guards are a growth category in the public sector.⁷⁷ As the Chiles Commission has stated, government should steer more than it rows and empower more than it serves.⁷⁸

Driving government decisions from the customers' viewpoint rather than the bureaucracy's is no easy task, but it must begin if we are to meet the needs of our people for services. The key ingredient is listening to public needs and then devising sensible and cost effective solutions to meet them. In this customer-focused effort, government and private business have much in common.

Applying the empowerment principle to the bureaucracy has also led to rethinking the allocation of government responsibilities between the federal and state levels. The New Deal proceeded on the premise that the states—indeed federalism itself—were a failed experiment; it concentrated power and resources at the national level. For its time, this centralization solution provided the control necessary to shock our country out of the Depression.

least \$9 billion over four years. *Id.*

73. OSBORNE & GAEBLER, *supra* note 30. David Osborne is serving as an advisor to Vice President Gore's task force on reinventing government. Robert L. Turner, *Clinton's Rethinking of Government*, BOSTON GLOBE, Sept. 7, 1993, at 15.

74. See Joseph Deitz, *A Rush to Privatize Government Services*, N.Y. TIMES, May 31, 1992, § 13, at 1 (documenting New Jersey's efforts to contract out services such as trash collection, ambulance service, and road maintenance).

75. See 1 GOVERNOR'S COMMISSION FOR GOVERNMENT BY THE PEOPLE, GOVERNMENT BY THE PEOPLE (1991) [hereinafter CHILES REPORT].

76. *Id.* at 3.

77. See REICH, *supra* note 29, at 176.

78. See CHILES REPORT, *supra* note 75, at 10.

But Alice Rivlin, Clinton's new Deputy Director of OMB, has written convincingly that the New Deal presumption of federal funding and control should now be reversed. In *Reviving the American Dream*,⁷⁹ she calls for federal government to reduce its expenditures (and produce a surplus) by limiting its focus to social insurance (including health care) and foreign affairs and for states to assume many current federal responsibilities in areas like education, training, infrastructure, and economic development.⁸⁰ This would shift back to the states tax revenues that have been federal since the New Deal.⁸¹ This new federalism makes states stronger partners for the future and recognizes that decentralization produces competitive advantages.⁸² It also implicitly acknowledges that down-sizing applies to the federal system and that states can often react more effectively than the federal government.⁸³

As a verification of this revived commitment to federalism in government, business is also finding its precepts attractive. Businesses are decentralizing in order to empower. John Akers, the CEO of IBM (before he departed), even labelled IBM's restructuring a move to federalism.⁸⁴ In a fascinating article in the *Harvard Business Review* entitled *Balancing Corporate Power: A New Federalist Paper*, Charles Handy asserts that it makes good sense to apply political principles to management and sets out some dramatic examples of where that has occurred.⁸⁵ He argues that business must be big and small at the same time.⁸⁶ People want to deal with institutions of human scale, therefore corporate headquarters, or what he calls "federalist centers," are small to the point of minimalist.⁸⁷ They exist to coordinate, not to control.⁸⁸ This "subsidiarity" principle characterizes businesses that place power at the lowest effective decision point.⁸⁹ Handy even takes the political analogy further by arguing that businesses should establish the equivalent of a doctrine of separation of powers—keeping management, monitoring, and governance in segregated

79. ALICE M. RIVLIN, *REVIVING THE AMERICAN DREAM* (1992).

80. *Id.* at 179-80.

81. *Id.* Rivlin advocates creating new revenues for the states through a federally collected and allocated value-added tax and other forms of shared taxes. *Id.* at 118-19.

82. *Id.* at 117-19.

83. *See id.*

84. *See* Charles Handy, *Balancing Corporate Power: A New Federalist Paper*, *HARV BUS. REV.*, Nov.-Dec. 1992, at 59, 60.

85. *Id.* at 60.

86. *Id.* at 61.

87. *Id.* at 60-61.

88. *Id.* at 61-62.

89. *Id.* at 64.

units.⁹⁰

The prospect of successful business enterprises borrowing a political concept—federalism—that many have thought since the New Deal debilitated rather than invigorated our form of government remains an intriguing one. What it suggests is that we are much closer today to some common measures of successful performances across all large organizations, public or private. If the line between the two sectors is blurring, there may be room for a new degree of creative interaction.

B. *The Possible Transferability of TQM to Government*

A related development that is reviving and restructuring American business is Total Quality Management, or TQM, an approach that also has relevance to the public sector. Once it is decided through renewed privatization efforts what functions are properly government's to perform, the next step is to make those functions perform more effectively—here is where TQM comes in.

Numerous corporations have reinvented themselves by application of TQM principles.⁹¹ Perhaps the most notable is Xerox, a company the Japanese targeted for oblivion.⁹² Ten years ago Xerox was in trouble because of lower cost Japanese competition.⁹³ Yet by a sustained management commitment to quality and customer needs, it revived itself.⁹⁴ By the late 1980s, Xerox was producing twice the amount of product at half the cost.⁹⁵ TQM at Xerox meant a commitment to objectives, standards, communications, training, and results that transformed the company.⁹⁶

The TQM concept derives from the work of W. Edwards Deming, a former U.S. government statistician who helped bring a commitment to quality to post-war Japan.⁹⁷ He emphasized that it was the management

90. *Id.* at 67. Handy analogizes management to the executive branch, monitoring to the judicial branch, and governance to the legislative branch. *Id.* In some respects this acceptance of separation of powers principles seems naive. It ignores thoughtful criticism that emphasizes the inefficiency caused by divided government in the political sector. *See, e.g.,* Lloyd N. Cutler, *Political Parties and a Workable Government*, in *A WORKABLE GOVERNMENT?* 49 (Burke Marshall ed., 1987) (discussing faults inherent in the separation of powers); Lloyd N. Cutler, *To Form a Government?*, in *SEPARATION OF POWERS—DOES IT STILL WORK?* 1 (Robert A. Goldwin & Art Kaufman eds., 1986) (discussing governmental limitations inherent in the structure of the U.S. Constitution).

91. *See* DAVID T. KEARNS & DAVID A. NADLER, *PROPHETS IN THE DARK: HOW XEROX REINVENTED ITSELF AND BEAT BACK THE JAPANESE* 281 (1992).

92. *Id.* at 67-68.

93. *Id.* at ix, xiii-xiv.

94. *See id.* at 234-37.

95. *Id.* at 240.

96. *See id.* at 184.

97. *Id.* at 163-64.

system, not the employees, that are the problem and that quality must be built into the production process, not inspected for afterwards.⁹⁸ For many years his work was ignored in this country.⁹⁹ Deming's work and that of latter day disciples is revitalizing the way American business behaves.¹⁰⁰ Today the Department of Commerce's Malcolm Baldrige National Quality Award stands as testimony to those American corporations that have internalized the principles of quality management.¹⁰¹

The fascinating prospect is to see whether government can rise to Peter Drucker's challenge and rethink its business theory. Government can clearly benefit from the application of TQM principles. Leaders in the academic community are recognizing the potential TQM has for reforming government. After he left EPA as general counsel, Yale Law Professor Don Elliott creatively proposed the application of TQM principles to government management at the federal level.¹⁰² Elliott has focused on the OMB, which is responsible for improving the performance of federal agencies.¹⁰³

The key insight Elliott transfers from TQM to the OMB process is to build quality into the regulatory review process, rather than inspect for it afterward.¹⁰⁴ To achieve this, OMB's regulatory review efforts should be directed to the beginning, not the end, of the agency rule-making process.¹⁰⁵ The goal is to create knowledgeable agency bureaucrats who can internalize the values OMB asserts.¹⁰⁶ It suggests a simple psychological tool: co-opt the bureaucracy by involving them in the process as players, not outsiders whose work is subject to review by more knowledgeable or "insightful" superiors.¹⁰⁷

The concept of doing it right the first time is one that should have special meaning for law students. After all, you spend much of your time reading appellate cases that correct lower court errors. Wouldn't it be wonderful if you had fewer cases to read! Indeed wouldn't the judicial

98. *See id.*

99. *See* RAFAEL AGUAYO, DR. DEMING: THE AMERICAN WHO TAUGHT THE JAPANESE ABOUT QUALITY xi-xii (1990).

100. *See generally id.* (describing Deming's theories of management); MARY WALTON, DEMING MANAGEMENT AT WORK (1990) (describing Deming's theories of management).

101. *See* David A. Garvin, *How the Baldrige Award Really Works*, HARV. BUS. REV., Nov.-Dec. 1991, at 80.

102. *See* E. Donald Elliott, *TQMing OMB: Or Why Regulatory Review Under Executive Order 12291 Works So Poorly and What President Clinton Can Do About It*, 57 LAW & CONTEMP. PROBS. (forthcoming Jan. 1994) (manuscript on file with author).

103. *Id.* (manuscript at 1-2).

104. *Id.* (manuscript at 13-16).

105. *Id.*

106. *Id.* (manuscript at 15).

107. *Id.* (manuscript at 27).

system be more effective if we could improve the performance of our judges and the judicial system at all levels.¹⁰⁸ Could TQM ever be transferred to the judiciary? The possibilities are endless.¹⁰⁹

The most difficult problem with transferring quality management principles to government remains the bureaucracy itself. Preserved as they are from market forces and bottom line evaluation systems, bureaucrats are largely insulated from the competitive world of failed efforts. Moreover, the problem is even more complicated by the fact that government, while impervious to competition in general, is also factionalized from within so that one agency or department need not take responsibility for the failures of another. Single or limited agency functions isolate bureaucrats even further from competitive forces. The challenge is to make all bureaucrats take responsibility for the actions of government, not just their part of it.

Recently, Judge Stephen Breyer sought to address this problem of the responsibility of bureaucrats in his influential Holmes Lecture at Harvard Law School.¹¹⁰ Breyer uses the problem of risk regulation by federal health and safety agencies to document a form of regulatory gridlock that expands regulation beyond its cost effective limits and in the process reduces the public trust in government itself.¹¹¹ Breyer offers a solution to bureaucratic balkanization that fits elegantly within the idea of quality management for government. He suggests that some group of bureaucrats (at the federal level, those associated with OMB) be trained to oversee not just specific functions, but the whole government.¹¹² This would be accomplished by creating a special civil service path for career bureaucrats that intentionally takes them through a variety of executive branch agencies and congressional committees.¹¹³ The result would be a central unit within OMB that would have a "rationalizing mission"; it would be challenged to make government programs work.¹¹⁴

There are many obvious objections to this idea,¹¹⁵ but it contains a

108. Cf. E. Donald Elliott, Address Before the Practicing Law Institute (Mar. 3-4, 1993) (discussing TQM in litigation management). Elliott also advocates the use of TQM principles in litigation management. *Id.*

109. *See id.*

110. STEPHEN BREYER, *BREAKING THE VICIOUS CIRCLE—TOWARD EFFECTIVE RISK REGULATION* (1993).

111. *Id.* at 50-51. Breyer focuses on the problem of the last 10%—the degree of risk government seeks to eliminate, but that is too costly politically and environmentally to achieve. *See id.* at 11-19.

112. *Id.* at 59-61.

113. *Id.* at 59-60, 71-72.

114. *Id.* at 60, 61-62.

115. *Id.* at 72-79. Judge Breyer reviews and rebuts several major objections, among which are

crucial core insight. Government can't work towards quality service until those who run it can make it susceptible to effective management. The notion of a set of bureaucrats who possess special skills and perspectives is reminiscent of the old New Deal fascination with agency expertise, which has been largely repudiated.¹¹⁶ It also ignores lessons from the public choice school which suggest that bureaucrats' main preoccupation, like that of legislators, is to keep their job.¹¹⁷ On the other hand, it is an idea that brings government closer to the private sector by fixing responsibility in managers who can then be held accountable for performance. Certainly no President or Governor would want to allow the bureaucracy to usurp his or her leadership role in government, but every executive desires a staff that is committed to the success of the mission. Thus, Breyer's New Deal elite managers may be a vision for the future, not just a reflection of the past. Like yardstick competition itself, there is no reason why New Deal concepts cannot be refurbished to do the work demanded of them today.

IV. SUGGESTIONS AND CONCLUSIONS

Let me deliver on my promise at the onset of this lecture and offer some prescriptions for government reform in the austere and privatized economy of the future. I do so in the spirit of "bold . . . experimentation," the words that President Clinton borrowed from FDR for his inaugural address.¹¹⁸

Let me propose the four "E's" of effective government for the 90s: Evaluate, Emulate, Energize, and Economize.

1. *Evaluate*—We must determine what activities government can and should perform and what the private sector can do as well. Then we must measure how well government does what it should do. This requirement has two steps—a public/private sector dialogue over a division of labor and a quality assurance program for government operations.¹¹⁹ This does

that it is undemocratic, elitist, ineffective, and politically unacceptable. *Id.*

116. See *supra* notes 21-27 and accompanying text.

117. See ARTHUR E. BONFIELD & MICHAEL ASIMOW, STATE AND FEDERAL ADMINISTRATIVE LAW 15 (1989).

118. Bill Clinton, "This Is Our Time Let Us Embrace It"—*New Season of American Renewal*, USA TODAY, Jan. 21, 1993, at A1, available in LEXIS, Nexis Library, Majpap file.

119. See Micheline Maynard, *GAO Study: High Quality Pays Off*, USA TODAY, June 4, 1991, at B2, available in LEXIS, Nexis Library, Majpap file. The verdict appears to still be out among American corporations on the payoffs of large-scale investment in quality assurance. *Id.* The GAO reported the 20 top-scoring companies in the Malcolm Baldrige National Quality Award competition experienced market share increases of an average 13.7% after the quality programs were put in place. *Id.* However, Baldrige Award winners such as Xerox and Federal Express often experience decreases in the value of their stock in the year following their recognition. See David Craig, *Some*

not require outside consultants from McKinsey or Price Waterhouse, although the private sector might advance such resources if they see a payoff. The goal should be to develop “core competencies”¹²⁰ and outsource less significant functions to private providers.¹²¹ The General Accounting Office (GAO) does such studies at the federal level,¹²² and if such entities don’t exist in states, they should be created. What is sought are honest evaluations of the need for, and value of, government programs. To ensure political buy-in, these studies must emanate from a joint executive/legislative bipartisan commitment to long-term reform. It can start with President Clinton openly agreeing to preserve some aspects of his predecessors’ programs, such as privatization, and it should continue with implementation of the Vice President’s reinventing government program.

In addition, government possesses the ability to measure quality of performance from within. There is no reason why the Department of Commerce can’t use its Malcolm Baldrige National Quality Award teams to evaluate government as well as private entities. Private corporations who have participated in that process testify that there is no more demanding or rewarding experience.¹²³ Why shouldn’t government units have the same obligation and challenge? The new Secretary of Commerce, Ron Brown, has indicated some interest in this idea.¹²⁴ I’m sure we all have our favorite candidates among federal agencies. I would start with the Department of Agriculture.

2. *Emulate*—Role models of good performance exist inside and

Baldrige Winners Are Losers, USA TODAY, Oct. 10, 1991, at B3, available in LEXIS, Nexis Library, Majpap file. While the short-term benefits of TQM often do not surface immediately, companies that emphasize service and quality assurance tend to prosper in the long run. *Id.*

120. See JAMES B. QUINN, INTELLIGENT ENTERPRISE: A KNOWLEDGE AND SERVICE BASED PARADIGM FOR INDUSTRY 32 (1992). The idea of “core competencies” emphasizes that a company “should focus its strategic investments and management attention on those . . . [capabilities]—usually intellectual or service activities—where it can achieve and maintain ‘best in world’ status, i.e., a significant long-term competitive advantage.” *Id.*

121. See *id.* at 33-37. The idea of “outsourcing” is closely related to “core competencies.” *Id.* Outsourcing should be used if another company can provide “best in world” capabilities for a component part or can provide an alliance that will help the company in question achieve “best in world” capabilities for its “core competencies.” *Id.* at 37.

122. See Maynard, *supra* note 119, at B2.

123. See generally Kevin Maney, *Texas Instruments: 10-Year Quality Quest*, USA TODAY, Oct. 15, 1992, at B6, available in LEXIS, Nexis Library, Majpap file (describing the team process used by Texas Instruments and the resulting benefits of higher morale, greater productivity, and increased customer satisfaction).

124. See John Hillkirk, *Backing Baldrige: Brown Supports Award*, USA TODAY, Feb. 16, 1993, at B2, available in LEXIS, Nexis Library, Majpap file. Secretary Brown recently stated: “I want to make at least the Commerce Department, and I hope the entire federal government, user friendly. . . . [To make TQM work,] [e]verybody has to feel they’re part of the same team. We’ve got to do that in government.” *Id.*

outside government. They should be studied and imitated. Management techniques that work for programs that we need are what is sought. Government offers these models. It is no accident that the most admired governmental institution is the military. Public opinion of the military has long been ahead of all other institutions, public and private.¹²⁵ The Gulf War did nothing to tarnish this image.¹²⁶ There is much to be learned from the leadership training and teamwork building that the military offers. We need to understand how much of this skillset is transferrable to other government functions.

Teamwork is the hallmark of today's successful corporations. Motorola, an early Malcolm Baldrige winner, forces success out of its employees by building organizational responsibility into the development of new products.¹²⁷ Employee teams challenge management to become more productive and thereby create a culture that is interactive and exciting.¹²⁸ Government employees could use a good dose of this corporate energy.

3. *Energize*—Government employees (outside the military) have spent much of the last twelve years being ridiculed and rejected by the executive branch.¹²⁹ This is bound to have a costly effect on morale and productivity.¹³⁰ Once the proper role of government is established, the obligation of our President is to inspire loyalty and participation.¹³¹ In one sense, Bill Clinton is the manager of the largest corporation in the world

125. Richard Benedetto, *Confidence in Government at Low*, USA TODAY, Mar. 26, 1993, at A7, available in LEXIS, Nexis Library, Majpap file. The poll found that 68% of those surveyed had confidence in the military, compared to 53% for organized religion, 26% for organized labor, and just 22% for private big business. *Id.* Only 23% indicated confidence in the government to do the right thing all the time. *Id.*

126. See Steve Marshall & Roqua Montez IV, *Pride, Confidence in U.S. Military at a Peak*, USA TODAY, Mar. 1, 1991, at A2, available in LEXIS, Nexis Library, Majpap file.

127. See John Hillkirk, *Motorola Jumps Ahead—Top Quality Is Behind Comeback*, USA TODAY, Mar. 28, 1989, at B1.

128. *Id.* The result of this commitment to quality was a rise in sales from \$2.3 billion in 1978 to \$8.3 billion in 1988, and a rise in profits from \$137 million in 1978 to \$445 million in 1988. *Id.*

129. PAUL VOLCKER, NATIONAL COMM'N ON THE PUB. SERV., LEADERSHIP FOR AMERICA: REBUILDING THE PUBLIC SERVICE xvii (1990) [hereinafter VOLCKER COMMISSION REPORT]. The report stated that "[t]his attitude was exploited by some politicians who were willing to reap short-term electoral benefits by capitalizing on anti-government sentiment among voters." *Id.*

130. See *id.* The GAO found that nearly 60% of federal personnel officers believed the poor public image of federal employees hindered their ability to recruit. *Id.* at 13. In addition, a recent survey of government employees found that 70% would take an early retirement if offered, even if it would mean a smaller pension, 73% said agencies were fair to poor in responding to their concerns, and only 20% would work past the time they were first eligible to retire. Mike Causey, *The Federal Diary—A Restless Rank and File*, WASH. POST, Mar. 30, 1989, at D2.

131. See VOLCKER COMMISSION REPORT, *supra* note 129, at 13. The Volcker Commission noted that this presidential obligation to inspire loyalty should be directed not only at government employees, but the public itself. *Id.*

and many governors have comparable responsibilities. It is a waste of public resources and human capital not to maximize the effort of public sector employees at all levels of government.

TQM teaches that it is the management system, not the employees, that are responsible for success or failure.¹³² We must actualize that message if government is to function effectively. This is a cultural issue. People who enter government often do so for altruistic as well as self-interested motives.¹³³ Human energy is a hidden resource of government waiting to be tapped.

4. *Economize*—No surprise here. We live in an era of “diminished expectations.”¹³⁴ We must accept that government can’t do as much in the future as it did in the past. Down-sizing is a permanent condition of business and government.

The military’s changes in mission means a smaller force; this should apply to other government agencies as well. With the deficit looming and the recession still with us, public resources will continue to be limited. The private sector must provide growth for the economy. There are no alternatives. This means that many cherished programs may never return. And the government must examine closely and publicize the extent to which certain private programs receive subsidies to operate. This has been suggested as a first step for the Clinton administration,¹³⁵ and it should be taken immediately.¹³⁶ I’m fascinated by the fact that as a first step President Clinton ordered a six-month national performance review of the fed-

132. For a discussion on TQM and government, see *id.* (discussing proposals for wide-ranging changes in the federal government); DAVID OSBORNE, *REINVENTING GOVERNMENT: HOW THE ENTREPRENEURIAL SPIRIT IS TRANSFORMING THE PUBLIC SECTOR* (1992) (discussing a reinvention of government based on successful models in the public sector); THOMAS PETERS, *IN SEARCH OF EXCELLENCE* (1982) (discussing management principles of America’s best run companies); QUINN, *supra* note 120 (discussing a knowledge and service based paradigm for industry).

133. VOLCKER COMMISSION REPORT, *supra* note 129, at 26.

134. PAUL KRUGMAN, *THE AGE OF DIMINISHED EXPECTATIONS: U.S. ECONOMIC POLICY IN THE 1990s*, at 4 (1990). Krugman notes that this “revolution of falling expectations” has resulted in contentment “with an economy that gives us living standards that creep up slowly if at all—so long as most people who want jobs can get them and inflation does not erode our paychecks too quickly.” *Id.*

135. See Richard Benedetto, *Group Hopes Clinton Will Go By the Book*, USA TODAY, Dec. 8, 1992, at A4, available in LEXIS, Nexis Library, Majpap file. On March 3, 1993, President Clinton announced a six-month “national performance review” of the federal government by some 100 federal managers. The group’s task is to examine “the basic assumptions of every program” and to ask: “Does it work? Does it provide quality service?” Ann Devroy & Stephen Barr, *Gore Heads Latest Government Evaluation*, WASH. POST, Mar. 3, 1993, at A23. These are obviously TQM questions. We should view the answers with much skepticism as well as enthusiasm.

136. See Richard Wolf, *Spending-Cut Fever Sweeps Through Congress*, USA TODAY, Mar. 10, 1993, at A8, available in LEXIS, Nexis Library, Majpap file. Recent waves of spending cuts indicate the federal government is moving in the direction of modifying its approach to private subsidies. *Id.*

eral government as a way of exposing inefficiencies.¹³⁷ Once out in the open, subsidies will have to compete with each other and with new needs to determine their survival. By taking such a step, resources for new initiatives can still be made available, even as the size of government is held in check or reduced.

These suggestions are just steps along a new path of government/private involvement. No pride of authorship or ownership should impede our efforts—only a desire to work together to solve common problems in a world of shrinking resources.

Where does all of this leave you who are about to enter an increasingly complex and confused public or private sector? Let me say first that I'm optimistic about our future and yours in this world we face together. I urge you to join in the process of formulating solutions, whether you work for a law firm, the government, or the non-profit sector. The exciting opportunity you face is that you can help define your professional future by participating in the way government is organized and works. You can insist as citizens that your tax resources be spent wisely, and you can demand as employees a role in the process of change. What is sought more than ever today are creative and pragmatic contributors to our national enterprise.

I'm confident that the University of Florida College of Law produces just that kind of person, and I welcome you to join in the challenges that lie ahead.

137. Since the date of this speech, Vice President Al Gore has released his report on streamlining government. Gwen Ifil, *Billions in Savings Are Seen with Cut in U.S. Government*, N.Y. TIMES, Sept. 8, 1993, at A1, A14.