Should Foundations Live Forever?

The Question of Perpetuity

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INTRODUCTION

This book presents the case for and against perpetuity in foundations. A sequel to my earlier book *The Great Philanthropists and the Problem of "Donor Intent,"* published by the Capital Research Center in 1994, it is intended to aid donors who are considering whether to create a philanthropic foundation. Both books complement each other. They discuss, from different angles, the debate over the Rockefeller Foundation charter in the years before World War I and the ensuing activities of the U.S. Commission on Industrial Relations, since these episodes affected the history of donor intent and foundation perpetuity. Other than this, overlap between the books is very slight.

The reader ought to know my views at the outset. I believe foundations should not exist for more than 25 years after the deaths of their donors. However, I oppose any government mandate that would limit the lives of foundations. The decision to create a perpetual foundation or a time-limited foundation should be made by donors, not the state.

My purpose in writing this study is to enable donors to make better informed decisions. I have tried to present the views of the people and institutions who debated perpetuity as fairly and as accurately as possible, whether or not I agree with the views I've summarized.

Some of the chapters of this book appeared in shorter form in CRC's monthly newsletter *Alternatives in Philanthropy*. These include: "George Eastman: America's Unknown Giant of Philanthropy" (April 1997), "Julius Rosenwald: The Case Against Foundation Perpetuity" (August 1997), and "No Better Time than the Present: The Markey, Whitaker, and Jacobs Family Foundations" (November 1997). Material on these philanthropists and foundations has been updated and expanded for this book.

Martin Morse Wooster
April 1998

CHAPTER I

A Brief History of Perpetuities

To understand the debate over perpetuity in foundations, one must know something about its history. This history centers around three major federal investigations of foundations: the United States Commission on Industrial Relations (1910-1915); the congressional committees chaired by Eugene Cox and B. Carroll Reece (1952-1954); and the investigations of Rep. Wright Patman and the Tax Reform Act of 1969 (1961-1969).

It is commonly believed that the heroic entrepreneurs who created America's great foundations wanted their institutions to have perpetual existence so as to keep their names immortal. Yet there is very little evidence for this. None of the great philanthropists argued that foundations should have unlimited lives. Moreover, several argued that foundations should have limited lives.

In his important essay "The Gospel of Wealth," (1889), Andrew Carnegie warned donors about the dangers of giving money without imposing conditions or limits. "Knowledge of the results of legacies bequeathed is not calculated to inspire the brightest hopes of much posthumous good being accomplished by them. The cases are not few in which the real object sought by the testator is not attained, more are they few in which his real wishes are thwarted. In many cases the bequests are so used as to become only monuments of his folly."[1]

Carnegie's advice was considered common sense by most of the great philanthropists of his time. The first modern philanthropist, industrialist George Peabody, created a foundation in 1867 with a fifty-year limit. Also in favor of limits was Russell Sage, a well-known investment banker of the 1890s.[2] Evidence is scantier that John D. Rockefeller (1839-1937) believed in limiting a foundation's life since he rarely committed his views to print. But in Congressional testimony in 1952, Rockefeller's grandson, John D. Rockefeller III (1902-1980), testified that both his father, John D. Rockefeller (1874-1960) and John D. Rockefeller Sr. opposed perpetual foundations. When John D. Rockefeller Sr. and his staff created the Rockefeller Foundation, John D. Rockefeller III remarked, "they said that the grants should foster in the beneficiary a spirit of self-help, not dependence. They said grants should, in general, be given on terms which would stimulate gifts by others. They said that grants should avoid the dangers of perpetuity. By that I know they meant also perpetuity in terms of foundations themselves. As my grandfather once said, 'Perpetuity is a very long time.'" He added that his father held similar views. He "feels very keenly, as my grandfather did, that the foundation should not be a matter of perpetuity; that future generations should provide for their own needs, and that this institution, as and when it has opportunity to spend its funds, should do so."[3]

Additional evidence as to John D. Rockefeller, Jr.'s views on perpetuity comes from a 1936 profile in *Fortune.* According to the article, he advised his father "to release the principal as well as the income of all his foundations, thus for all time making impossible the influence of the 'dead hand,' which he regards as pernicious."[4]

But however much the great philanthropists believed in limiting foundations' lives, they nonetheless created philanthropies that exist today. Russell Sage left his $64 million estate to his widow, Olivia Sage, who in 1907 created the Russell Sage Foundation. Andrew Carnegie ran out of ideas for philanthropy before he ran out of money, and thus imposed no restrictions on his last great philanthropy, the Carnegie Corporation of New York (est. 1911). When John D. Rockefeller created the Rockefeller Foundation in 1913, he endowed a massive institution that eventually had no time limit.

Creation of the Rockefeller Foundation

As shown in *The Great Philanthropists and the Problem of "Donor Intent,"* there were several reasons why Rockefeller's aides sought a federal charter. One reason was vanity, since most important nonprofit organizations of the time, such as the American Academy in Rome and the American Historical Association, had congressional charters. But another was that Rockefeller's staff realized that a federal charter would place the Rockefeller Foundation under the control of a "nonpartisan" board, separating it from Rockefeller's influence. "It is eminently desirable," Rockefeller's attorney Starr Murphy told a Senate committee in 1911, "that the dead hand be removed from charitable bequests and the power to determine what specific objects that should be applied should be left in the hands of living men who can judge of the necessities and the needs in the light of the knowledge which they have as contemporaries, and not that they shall find their hands tied by the will of the man who is long years dead. The wisdom of living men will always exceed the wisdom of the man, however wise, who has been long since dead."[5]

When the Rockefeller Foundation was being created in 1910, most observers were skeptical. It "will be a good thing for those who handle the funds—that much is certain," the *Washington Post* editorialized. "There will be life positions, easy work, and big pay. The imagination runs forward and sees a swarm of faddists, innovators, reformers, grafters, and visionaries, buzzing about this pile of money, eager to aid in disbursing it to humanity, including themselves. It will be a miracle if some of these uplifters do not get in their work, thereby dissipating the funds in pursuing impracticable schemes. Surely the country is not in need of a hotbed for the propagation of more harebrained reformers than are already at large."[6]

Perhaps the most trenchant critic of the Rockefeller Foundation was Edward T. Devine, editor of *The Survey,* an influential weekly covering the nonprofit world. According to Devine, "the brutal power of concentrated wealth, even when embodied in a philanthropic foundation, may not always work . . . on the side of the real public welfare."[7] Devine proposed that Congress require at least some of the Rockefeller Foundation trustees to be appointed by government. Moreover, he argued, the foundation should be barred from adding to its endowment, be forced to begin spending its principal fifty years after its creation, and be required to end its existence after 100 years. Devine was forceful in insisting on the latter point: "Humanity, it is said, will always need assistance of some kind, and as this Foundation can give any kind of assistance, it will always be a public blessing. But does this follow? Is it so certain that humanity will always need assistance of the precise kind that is believed to be good for it by a particular group of between five to twenty-five men, chosen, under the self-perpetuating plan, because they are congenial to each other and to their predecessors? Is there not danger . . . that a great perennial fountain of benevolence may dry up the springs of spontaneous individual beneficence?"[8]

When the first version of the Rockefeller Foundation charter bill was introduced by Sen. Nelson Aldrich of Rhode Island (who was John D. Rockefeller, Jr.'s father-in-law), it failed to leave the committee. The Rockefeller staff created a second version of the bill, incorporating most of Devine's suggestions, including the requirement to spend principal after 50 years and disband after 100 years. Instead of having government-appointed trustees, however, the second bill called for a majority of the board to consist of the Speaker of the House, the President of the Senate, and the presidents of Harvard, Yale, Columbia, Johns Hopkins and the University of Chicago. They could veto the selection of any new Rockefeller Foundation trustee.

"The adoption of these amendments," a Rockefeller Foundation press release of 1912 noted, "seems to have removed all reasonable opposition to the creation of the Rockefeller Foundation."[9] Edward T. Devine agreed. "It is the principle of endowment in perpetuity which we challenged," he wrote in a 1911 editorial. "It is this principle which is now definitely abandoned in favor of the alternative which we suggested." Devine added that allowing a veto over appointments to the Rockefeller Foundation board "implies greater trust in republican institutions and greater distrust of closed corporations."[10]

But the amended Rockefeller Foundation charter also failed to win Congressional approval. In 1913, after a third failed attempt, the

Rockefeller Foundation withdrew the congressional bill altogether and obtained a state charter from New York. But this charter did not impose restrictions that a federal charter would have. It required no time limit and allowed anyone to be appointed to the board.[11]

The United States Commission on Industrial Relations

Congress, however, was not through with the Rockefeller Foundation. In 1914, Sen. William Kenyon (R-Iowa) introduced a bill that would have repealed a federal charter granted in 1903 to the Rockefeller-created General Education Board. According to an article in the *New York Times*, Kenyon alleged that the Rockefeller Foundation was somehow conspiring to work with the Carnegie Endowment for International Peace "to restore the United States to its colonial status under Great Britain." Moreover, the General Education Board, by holding Japanese government bonds as part of its investment portfolio, might work to ensure that the United States avoid "Japan's enmity" because the Japanese government might repudiate the bonds.[12]

Then the Rockefellers' problems got worse. In October 1913, the United Mine Workers began a strike against Colorado Fuel and Iron, a Rockefeller-controlled firm. On April 20, 1914, members of the Colorado National Guard, augmented by private guards, stormed the miners' camp and began firing. A tent caught fire, and two women and 11 children trapped in a cellar below died of suffocation.

The "Ludlow Massacre," as it came to be called, ensured that the Rockefellers would become lightning rods for the political Left. At one point in 1914, John D. Rockefeller and John D. Rockefeller, Jr. were picketed by radical members of the Industrial Workers of the World, led by muckraking novelist Upton Sinclair, who announced to the press that he would give nightly talks on the subject "Why I Want to Kill John D. Rockefeller."[13] The Rockefellers compounded the damage when the Rockefeller Foundation hired Mackenzie King, a Canadian industrial relations specialist, to investigate the Ludlow incident. By hiring King, the Foundation aroused the ire of the first federal effort to investigate foundations—the United States Commission on Industrial Relations.

The commission, founded in 1912, was a federally sponsored enterprise charged with investigating all aspects of labor relations, including immigration. But its chairman, Frank Walsh, used the Ludlow incident to expand the commission's purpose to investigating foundations.

Walsh's views are best expressed in a 1915 article in *The Independent*. He believed, quite simply, that "the huge philanthropic trusts, known as foundations, are a menace to society." John D. Rockefeller, he argued, created the Rockefeller Foundation "to exact a tribute of loyalty and subserviency to him and his interests from the whole profession of scientists, social workers and economists." By appointing powerful men as trustees of the foundation, Rockefeller ensured that they would be subject to "the subtle and persuasive and irresistible power that is wielded autocratically by men who control the disbursement of large sums of money."[14]

Walsh never called for the abolition of foundations. But his staff had radical suggestions. A working paper prepared for the commission by William H. Allen of the New York Bureau of Municipal Research argued that all foundations should acquire national charters from government. Moreover, government staff should approve all foundation grants, trustees should serve on only one foundation board, and government should ban foundations "where a majority of incorporators are of the personal staff of the donor or are responsible to the same men or institution."[15]

Aftermath of the Commission on Industrial Relations

Eventually the Rockefeller Foundation crisis subsided. Mackenzie King completed his report without further controversy. John D. Rockefeller, Jr. testified before members of the Industrial Relations Commission, satisfying them that he was not a menace to society. "Mr. Walsh's tough investigators had their jaws set for a broil with the nation's no. 1 ogre," a 1936 profile of John D. Rockefeller, Jr. noted. "But instead of an ogre, a highminded young man sat down in the witness chair and proceeded to dispense what one commentator described as 'a maximum of abstract nobility and a minimum of concrete information.'"[16]

When the Commission on Industrial Relations issued its final report, the commissioners were divided on what to do about foundations. Staff director Basil Manly argued that "the domination by the men in whose hands the final control of a large part of American society rests . . . is being extended largely though the creation of enormous privately managed funds for indefinite purposes, hereinafter designated 'foundations' . . . The funds of the foundations represent largely the results either of the exploitation of American workers through the payment of low wages or of the exploitation of the American public through the exaction of high prices. The funds, therefore, by every right, belong to the American people."[17]

Manly did not recommend that foundations' lives be limited. But he called for all foundations to acquire charters from the federal government, for Congress to create a permanent committee to study foundations, and for new programs of foundations to be listed in the *Congressional Record* six months before their initiation. The other commissioners disagreed over what to do about foundations. Frank P. Walsh, John B. Lennon, and James O'Connell wanted the government to nationalize the Rockefeller Foundation and use its endowment "for the creation and maintenance of public works that will minimize the deplorable evil of unemployment."[18] Commissioners John R. Commons and Florence R.

Harriman proposed that the government "compete with or displace private foundations" by creating a "Federal Fund for Social Welfare." "Instead of subsidizing public charity" through tax exemptions, "the State should use its money to displace it by better and more universal charity. Instead of calling on private foundations for help, the Government should treat them as competitors."[19] The Federal Fund, supported by a federal estate tax, would pay for workmen's compensation, industrial education programs, government employment offices, "and subsidies to systems of sickness, unemployment, and other forms of social insurance as may be approved by Congress."[20]

Commons and Harriman's recommendations, though the most radical, were the most influential. Congress did impose an estate tax in 1916. But by exempting contributions to charity, the estate tax has encouraged, rather than discouraged, the creation of foundations.[21] Commons was to refine his ideas on federally funded social insurance and become one of the principal architects of Social Security.

All the other recommendations of the Commission on Industrial Relations were ignored. Congress made no attempt to abolish or limit the life of the Rockefeller Foundation or any other foundation. Historians offer several explanations as to why foundations survived the Commission on Industrial Relations. Historian John Lankford argues that the foes of foundations mistakenly thought that they were more threatening than they actually were. The Progressive attacks on foundations "seemed to fit into a larger pattern of irrationalism and emotionalism, which characterized much of the Populist-Progressive approach to social and economic issues and problem-solving."[22]

However, many wealthy donors had their own concerns about foundations established in perpetuity. Unlike the Progressives, who thought that foundations should be highly regulated or barred from existing in perpetuity, donors were concerned that perpetual philanthropies would ignore their wishes. Two arguments were used to reassure them.

One was made by Carnegie Corporation of New York president Frederick P. Keppel in his 1931 book *The Foundation* (in which Keppel coined the term "philanthropoid").[23] Keppel called on donors to distinguish between "foundations," which would be immortal, and "funds," which would have limited lives. "The fund is to be used for a designated purpose, broad or narrow as the case may be, the donor specifying whether the principal is to be kept intact or whether or not only interest but principal may be spent for the purpose named."[24]

Keppel's idea was not adopted. But a more popular, and more important, idea was used by donors in the 1920s and 1930s— "optional perpetuities." Two major philanthropies of the time—the John Simon Guggenheim Memorial Foundation, created in 1925, and the Twentieth Century Fund, created in 1919—are examples of this arrangement.

Simon Guggenheim, in creating the Guggenheim Foundation, freed his trustees from any limits on how the foundation's endowment should be used.[25] He also freed them to spend the foundation's principal if they chose. "The endowment which I am now making," Guggenheim wrote, "carries with it the expectation that in the ordinary course it will be kept invested and the income applied to the corporate purposes, so that the work and influence of the Foundation will be continuous and permanent; but no limitation is placed upon the lawful authority of the Trustees and their successors to apply the principal of the fund, or any part of it, in case an emergency shall arise which makes a change of policy advisable in the judgment of the Trustees. We are confident that you would not use the power to deplete the principal except in a distinct emergency, and it is our hope that the principal always may be maintained intact."[26]

Edward A. Filene, creator of the Twentieth Century Fund, was more forceful. In 1922, he donated $417,200 to the Fund, "the income of which shall be applied to the purposes enumerated in the Certificate of Incorporation or any amendments thereto." A year later, Filene wrote a letter to his trustees, stating that his previous instructions could be interpreted "to make the Fund perpetual, which is not my wish. It is my desire that after twenty-five (25) years from the date of transfer, that is, on or after March 30, 1947, the Trustees shall have full power at their discretion to use the principal as well as the income of the Fund for the purposes specified, and I modify my gift accordingly by authorizing the corporation to use principal as well as income after March 30, 1947."[27]

Foundation analyst M.M. Chambers notes that similar clauses exist in many other foundations of this era, including the Commonwealth Fund, the John and Mary R. Markle Foundation, the A.W. Mellon Educational and Charitable Trust, and the Alfred P. Sloan Foundation.[28] However, the trustees of these foundations have chosen not to deplete their endowments; all these foundations still exist.

Some donors of the 1930s and 1940s may have been persuaded by a 1929 *Atlantic Monthly* essay by Henry Pritchett, president of the Carnegie Foundation for the Advancement of Teaching, written in response to a forceful attack on perpetuity by Julius Rosenwald. Pritchett argued, somewhat counter-intuitively, that by allowing a foundation to continue indefinitely, trustees would have no need to administer projects lasting more than one generation. By contrast, trustees of a term-limited foundation would tend to give small grants during the first years of the foundation's life. "With the best intentions in the world [they] would find themselves approaching their limit of time with a large part of their endowment still in their hands. They would then be compelled to distribute this in huge grants. There is no wisdom in this process."[29]

Moreover, Pritchett wondered, if foundations had term limits, would other institutions with indefinite lives also be threatened? If foundations should die, why keep universities going, or governments? Would any organization live beyond one generation if foundations had to expire? "The *a priori* argument of the economists against the creation of endowments," Pritchett claimed, "is virtually an argument against all continuing organized agencies in the social order. Every such agency—governmental, educational, social—carries in itself not only the seeds of possible decay, but also the tendency to exalt the machinery of organization above the original purpose for which the organization was created."[30]

The Cox and Reece Committees

The issue of perpetuity was to remain dormant for 20 years. With the exception of some minor reforms passed in 1950, Congress showed little interest in foundations.

But in 1951, Rep. Eugene Cox (D-GA) reopened congressional interest through several fiery attacks on foundations. "Our boys are now suffering and dying in Korea, in part, because Rockefeller money encouraged trends in the Chinese colleges and schools which swung China's intelligentsia to communism," Cox claimed. In another speech, he called on Congress to investigate "whether foundations and organizations are using their resources for purposes other than the purposes for which they were established, and especially to determine which such foundations and organizations are using their resources for subversive activities or for purposes not in the interest and tradition of the United States."[31]

The Cox Committee hearings, held in 1952, produced much valuable information. By requiring witnesses to reply at length, they preserved the thoughts of many important donors and foundation presidents of the day. Moreover, they collected new data on the size and scope of American foundations.

The Cox Committee issued no recommendations concerning foundations, probably because Rep. Cox died late in 1952, before the committee could finish its report. But in 1952, Congress also changed hands, and Rep. B. Carroll Reece (R-TN), a minority member of the Cox Committee, decided to hold a second investigation of foundations in 1954.

The Reece Committee was more troubled. It did not, for the most part, directly question foundation heads, but simply gathered information about allegations tying foundation officials and grant recipients to communist causes.[32] While the committee uncovered some Communists in the philanthropic world (such as Alger Hiss, one-time president of the Carnegie Endowment for International Peace), it failed to show that foundations were dominated by Communists. Moreover, when not hunting Communists, the committee's majority and minority members were busy fighting each other. According to Rep. Reece, at one committee meeting of 185 minutes, Rep. Wayne Hays (D-OH) interrupted the proceedings 246 times.[33]

The Reece Committee did issue recommendations, probably at the suggestion of staff counsel René Wormser, who later became the most important conservative critic of foundations in the 1950s. Some of these were surprisingly radical, such as taxing the capital gains of foundation endowments at rates comparable to corporate income taxes and requiring that at least one government-appointed member sit on every foundation board. The committee also suggested studying a change in law to allow third parties to sue foundations to "protect the people against misuse of public funds which foundation money represents."[34]

One recommendation of the Reece Committee concerned perpetuities. It suggested limiting the lives of nearly all foundations to no more than 25 years. This, the committee said, "would minimize the use of the mechanism (of a foundation) to enable a family to continue control of enterprises *ad infinitum*; avoid the calcification which sometimes sets in on foundations; and, among other desirable objectives, minimize the seriousness of the danger that a foundation might, at some future period, pass into the control of persons whose objectives differed materially from those which the creator of the foundation intended."[35]

The Reece Committee, unlike its predecessor, was not taken seriously by either the foundation world or the intelligentsia. "Most of the press has shrugged off the Reece Investigation as too idiotic to be taken seriously," opined *Harper's Magazine* columnist Bernard De Voto. "The Report is preposterous but it is permanently on record as the findings of a House committee. From now on it will be useful to anyone who may be interested in growing paranoia from seed."[36]

Rep. Reece's proposals resulted in no legislative action. But another set of investigations, instituted by Rep. Wright Patman (D-TX) at various times between 1961 and 1969, was to have more lasting consequences.

The Patman Investigations

Patman, a fiery Texas populist, held views about foundations that were surprisingly similar to those of Frank P. Walsh. He believed they used their tax-exempt status for harmful purposes. "The foundations of America, which as a whole make up one of the most powerful economic and propaganda forces in modern times, are virtually unregulated," Patman wrote in a 1967 article. "U.S. Treasury officials have not done an effective job of refereeing their operations; much less have they disturbed the foundations with some hard inquiries into investments and expenditures."[37]

Interestingly, Patman grounded his attack on Julius Rosenwald's critique of perpetuity. He quoted both Rosenwald and a Rockefeller Foundation official named Max Mason, who said that "old man Rockefeller did not set up the foundation, or any of his philanthropic enterprises for that matter, with the idea of everlastingness. . . . It is clear that numerous foundations violate the spirit of their charters by hoarding rather than giving. They also violate the principle of the era upon which their founders established them."[38]

Patman did uncover some genuine abuses. Some corporations he examined were undergoing mergers and had set up allied corporate foundations that exchanged shares in tax-free transactions. This practice, which allowed companies to reduce their taxes, was later outlawed. Nelson A. Rockefeller, while governor of New York, created a foundation whose principal function seems to have been to award grants to his lieutenant governor.

More abuses were uncovered by Philip M. Stern in his 1964 best-seller *The Great Treasury Raid.* He found donors who took thousand-dollar deductions for unappraised paintings donated to thrift shops, which then sold them for $50 or $75. Other donors contributed jewels or dresses to their family foundations, took a tax deduction, then had the foundations "loan" the apparel to the donors indefinitely.

Rep. Patman galvanized the Treasury Department to collect and publicize foundation data. Before the 1960s, the Internal Revenue Service allowed public inspection of a foundation's IRS 990 form (which contains basic financial information) only at one office, usually in Philadelphia. After the Patman investigations, the IRS allowed other regional IRS offices to make and distribute copies of the form. (The Foundation Center, a nonprofit information clearinghouse, now makes these forms widely available through its regional libraries.)

In 1964, Rep. Patman, as chairman of the House Ways and Means Committee, asked the Treasury Department to comment on what reforms it would like to make to the laws governing foundations. Among the recommendations was one to curb of the influence of donors. "The ability of a donor to wield substantial influence over the management of a private foundation which he has established or endowed presents continuing opportunities for the diversion of the foundation to purposes which are not wholly charitable," the Treasury wrote.[39] The Treasury also recommended a prohibition on financial transactions between donors and their foundations (a practice known as "self-dealing") and called for tightening restrictions on foundations' dealings with businesses held in their investment portfolios. Allied with the problem of donor influence, the Treasury opined, was the issue of perpetuity. "The interposition of the foundation between the donor and active charitable pursuits entails undue delay in the transmission of the benefits which society should derive from charitable contributions."[40]

But the Treasury rejected any government-imposed limit on the lives of foundations. "Most private foundations act responsibly and contribute significantly to the improvement of our society." Instead, it proposed that after 25 years, a donor and his business associates could no longer constitute a majority of the trustees of a foundation. It also suggested that a designated party should have the power to deem certain foundations unworthy of continued existence. Such a power, however, "should not be wielded by government, since it would require a multitude of difficult and delicate value judgments." Therefore, the Treasury suggested that "independent third parties" have the power to examine a foundation, and "if their review leads them to conclude that the organization's record and capabilities do not justify its continuation, they should have the power to wind up its affairs, distribute its assets in accordance with its purposes, and dissolve it."[41]

The Tax Reform Act of 1969

The investigations of Rep. Patman, while certainly painful for foundations, did not result in legislative action. However, two events in late 1968 and early 1969 galvanized Congress to pass the most substantial reform of foundation law in American history.

In early 1969, the Ford Foundation awarded grants to several members of the staff of the late Sen. Robert Kennedy to "ensure their transition into private life." Yet several of the grantees, including Peter Edelman and Frank Mankiewicz, had resumed their law practices and were earning lucrative sums. Then in May of 1969, U.S. Supreme Court Justice Abe Fortas was forced to resign after *Life* revealed that in 1966 he had received (and eleven months later returned) a $20,000 grant from the Wolfson Family Foundation. This foundation had been created by financier Louis Wolfson, who was convicted of selling unregistered securities. The *Los Angeles Times* later revealed that the foundation had offered Fortas a lifetime annual retainer of $20,000 shortly before Wolfson's indictment for securities fraud.

These episodes acted as catalysts for the Tax Reform Act of 1969. One issue that separated the House and the Senate versions of the Act was that of perpetuity. The Senate, but not the House, passed a rule that would have imposed a 40-year time limit on foundations. Foundations then existing would have been allowed to continue until 2009. After a lobbying effort by foundations that historian Thomas C. Reeves calls the "most extensive publicity campaign in their history," the government-mandated term limit was dropped in conference committee.[42]

The Tax Reform Act of 1969 had several important provisions. Section 4940 imposed a four-percent excise tax on foundation investment income. (Had the House had its way, the tax would have been 7.5 percent.) Section 4941 prohibited self-dealing and prohibited foundations from holding more than 20 percent of the stock of one corporation.

While the final version of the Act imposed no time limit on foundations, it did addressed the problem of perpetuity indirectly in Section 4942. This imposed a minimum annual distribution of grant money—six percent, later reduced to five percent—and prohibited foundations from accumulating undisbursed assets indefinitely. Technical differences originally separated the mandated distribution for foundations created before and after the Act. But as of 1975, all foundations were required to distribute five percent of their assets each year.[43] Such a provision, at least in a bear market, indirectly encourages foundations to spend down their endowments.

The Tax Reform Act of 1969 was grudgingly accepted by foundation executives. A typical response was that of the Commission on Foundations and Private Philanthropy, sometimes called the "Peterson Commission" after its chairman, Bell and Howell chairman Peter Peterson (who later became Secretary of Commerce in the second Nixon Administration). This commission, created by John D. Rockefeller III, addressed all issues affecting foundations, including perpetuity. It argued that Congress's rejection of a 40-year term limit on foundations was wise. "The special privilege of perpetual life was once granted to entities only in exceptional circumstances," the commission wrote. "It is no longer a novelty. Each year, thousands of business corporations and other organizations are routinely granted perpetual existence."[44]

But the "high payout requirement" imposed by the Act, the commission argued, "provides a satisfactory answer to the concern that foundations become listless and inactive after the death of the original donor. Such a requirement means, in effect, that the right to perpetual life must be earned and will not be conferred as an automatic privilege. A foundation's ability to continue to make a high payout to charity—and not the fact that it has reached its twenty-fifth or fortieth birthday—provides one rational basis for distinguishing between those foundations which should be continued and those which should be phased out of existence."[45]

There were a few complaints about foundations immediately after passage of the Tax Reform Act, but most of them had become irrelevant. Congress had changed the law on foundations, and it has not substantially revised that law since 1969. The Tax Reform Act closed a chapter in the legal history of foundations and effectively ensured that it would be highly unlikely that a government mandate on the lives of foundations would ever be imposed.

But there is still a debate over whether or not donors should limit the lives of the foundations they create. Perhaps the best recent example of that debate is a 1996 study by the Philanthropy Roundtable entitled *Should Foundations Exist in Perpetuity?* It contains articles by Randolph Foundation president Heather R. Higgins and Lynde and Harry Bradley Foundation president Michael Joyce. Higgins argues that there are two dangers in a foundation that outlives the death of its founder. One is the erosion of donor intent as friends, associates, and relatives of the founder die and are replaced by professional officers with little interest in the donor. The second is that foundation executives are sometimes more determined to increase their organization's assets than ensure that grants are given wisely. For some, a foundation's status is measured by the size of its assets, not whether it improves lives. "Limiting the lives of foundations would remove the structural impediments to a healthy philanthropic community," Higgins concludes, "while improving the quality and variety of charity. For that, the ego gains of perpetuity are a small price to pay."[46]

Michael Joyce counters that it is not inevitable that foundations will become corrupted over time. Nor does he believe that the erosion of donor intent always begins after a donor's death; some donors have been ousted from their foundations while still living, while "other foundations have, before the Brie from their opening ceremonies was gone, begun programs that their founders would never have dreamt of supporting."[47] Wise donors, Joyce believes, should make their wishes as explicit as possible to best preserve their intent. Citing the examples of the Catholic Church and the U.S. Congress, Joyce argues that institutions are capable of adhering to traditions that respect their founders' intentions. Likewise, a foundation can benefit future generations without giving to causes its donor would have abhorred. Joyce further observes that government-mandated sunset provisions might well lead to further regulation of the nonprofit world. "We should limit as much as possible the growth and interference of the state—even to the point of opposing sunset laws for foundations," Joyce writes. "I believe that sunset laws for foundations may be the worst of mistakes, both faithless and perpetual."[48]

CHAPTER II

Giving During One's Lifetime
The Philanthropy of George Eastman

"If a man has wealth, he has to make a choice, because there is the money heaping up. He can keep it together in a bunch, and then leave it for others to administer after he is dead. Or he can get it into action and have fun, while he is still alive. I prefer getting it into action and adapting it to human needs, and making the plan work."[1] *— George Eastman (1923)*

George Eastman (1854-1932) is perhaps the most obscure great American philanthropist. Yet the founder of Eastman Kodak was one of the giants of philanthropy. His biographer, Elizabeth Brayer, estimates that Eastman gave away $125 million—less than John D. Rockefeller, Sr., John D. Rockefeller, Jr., or Andrew Carnegie—but more than anyone else of his era.

Eastman is an important figure in the history of philanthropy because of his decision to give away his fortune while he was alive. Eastman's reasons for not creating a foundation offer valuable lessons for donors worried about the problems of foundations that exist in perpetuity.

A Private Man

There are several reasons why Eastman is generally not considered an important philanthropist. Most importantly, he was a very private man. As the *Boston Post* noted in a 1920 series, Eastman was "America's most modest and least known millionaire."[2]

Eastman protected his privacy in several ways. He had few confidants and made most of his business decisions on his own. Historian Carl W. Ackerman, whose book about Eastman was edited by Eastman himself, refers to the great philanthropist's "Oriental capacity to conceal his thoughts."[3] Eastman was also reluctant to become a public figure. He concealed his first major gift, which was to the Massachusetts Institute of Technology, in part because he did not want national attention. Eastman and Eastman Kodak also suppressed at least eight biographies they had paid for but did not want published, including ones by renowned French biographer André Maurois and well-known business writers Isaac Marcosson and Samuel Crowther. Not until 1996 did Elizabeth Brayer write the first true Eastman biography.[4]

Eastman was notoriously reluctant to deal with the press. B.C.

Forbes, founder of *Forbes* magazine, recalled in a 1920 article that when he interviewed Eastman for a book he was writing on important business leaders of the day, Eastman allowed an hour for the interview. He spent the first half-hour chatting about current issues, then said that the remaining half-hour "would more than suffice for the telling of his whole life's story."[5]

The Eastman Kodak Company

Compared to his philanthropy, Eastman's business achievements are well-known. Eastman is largely responsible for making photography affordable to millions. In 1877, when Eastman created the company that later become Eastman Kodak, photography was a profession involving considerable time and investment. Eastman's first major invention, a pocket camera, enabled people to take snapshots. He later perfected the first film that remained stable long enough to allow photos to be taken without special equipment. Between 1890 and 1900, Eastman's engineers began producing film in mass quantities, an advance that made motion pictures possible.

By 1900, Eastman Kodak was a highly profitable multinational corporation. Most of the technical advances that ensured the company's success had been already made.[6] Yet Eastman still had to fight many complicated and expensive patent suits. And between 1915 and 1920, he battled government regulators who tried, without much success, to prove that Eastman Kodak was an illegal trust.

The University of Rochester

By age 45, Eastman had climbed to the pinnacle of economic success. What was he to do for the rest of his life?

Eastman's answer was to become a philanthropist. Many people have speculated on why Eastman chose to give away his fortune. Eastman never married and had no children. He also had no need to reward his business associates, whose shares of Eastman Kodak stock routinely increased in value and paid hefty dividends. Moreover, Eastman once said that he did not want his wealth to go directly to individuals. In his view, people who passed inherited wealth onto their children created "wastrels, race-track touts and whoremongers of their sons and gilded parasites of their daughters."[7]

Though we'll never know why Eastman decided to become a philanthropist, the evidence suggests that he put a great deal of thought into how his wealth should be used. "I could not draw from him one fact about his benefactions," B.C. Forbes wrote in 1917, but nonetheless concluded that "George Eastman has little love for money except as an instrument for accomplishing worthy aims."[8]

Eastman's first choice in philanthropy was to support causes in his hometown of Rochester, New York. As early as 1889, he had given equipment to the Mechanics' Institute (now the Rochester Institute of Technology). But it wasn't until 1902 that Eastman became a major donor by making a series of contributions to the University of Rochester.

In 1904, Rush Rhees, the newly appointed president of the university, asked Eastman to help fund a new biology and physics building. According to his wife, Rhees approached Eastman for $5,000 "with genuine trepidation, for this soliciting business was new and the hardest thing he had to do." Eastman agreed.

As Rhees began to leave, Eastman asked, "You're disappointed, aren't you? What do you want me to do?"

"I hoped you might feel like giving us the whole building," Rhees replied.

"Well, I'll think it over," Eastman said. A few days later, Eastman agreed to contribute $77,000. "But this is the last I will do for the university," he said. "I am not interested in education."[9]

Ironically, Eastman gave the University of Rochester $35.5 million during his lifetime, and an additional $19 million from his estate. Elizabeth Rhees observed that her husband delighted in repeating Eastman's remark that he had no interest in education, even "after the sums given to the University by George Eastman had rolled up into many millions."[10]

M.I.T's Mysterious Donor

The second greatest recipient of Eastman's philanthropy was the Massachusetts Institute of Technology. At the turn of the century, M.I.T. was headed by Richard Cockburn Maclaurin, an empire-builder who launched a major drive to build a new campus. Though his board of trustees included many wealthy men, such as T. Coleman du Pont and engineer Arthur D. Little, they could only come up with $500,000 of the $750,000 needed to buy land needed for a new campus. Maclaurin wrote to Frank Lovejoy, an M.I.T. alumnus who was general manager (and who would later become president) of Eastman Kodak. Lovejoy suggested that Eastman might be amenable to a donation. On February 29, 1912, he wrote Eastman suggesting that "you may be willing to lend a helping hand, and I am writing to say that I should welcome an opportunity of placing the plans before you."[11]

Eastman had long admired M.I.T. Two of his top assistants, Lovejoy and engineer Darragh de Lancey, were graduates of the school. Eastman had also been impressed by the quality of other M.I.T. graduates who worked for him. In addition, he had read several of Maclaurin's annual reports to M.I.T.'s trustees and was familiar with Maclaurin's plans.

Maclaurin and Eastman met on March 5 at the Hotel Belmont in New York City. According to Maclaurin's biographer, Frank Greenleaf Pearson, Maclaurin spent an evening with Eastman, excitedly telling him how the new campus would make M.I.T. a first-class institution. At the evening's end, Eastman asked, "What sum will be needed?"

"Two and a half millions," Maclaurin said.

"I shall send you a draft for that amount," Eastman replied, imposing one condition—that his gift remain anonymous.[12]

Upon returning to Boston, Maclaurin had to invent a name for the mysterious yet generous donor. According to Pearson, Maclaurin considered calling Eastman "anonymous giver," but that "was much too clumsy for everyday use"[13] So he decided on "Mr. Smith."

Maclaurin gave several clues about Mr. Smith's identity. He revealed that Smith was not an M.I.T. alumnus and did not live in Massachusetts. Many people spent a great deal of time trying—and failing—to discover who Mr. Smith was. M.I.T. students acknowledged the mystery in a song composed to the tune of "Marching Through Georgia":

> "Bring the good old bugle, boys, and we'll sing another song,
> Of 'Mr. Smith' and Dupy [Coleman du Pont] and the
> Corporation throng;
> Of loyal Tech alumni, almost ten thousand strong,
> Who give—what we want—when we want it.
>
> "Hurrah! Hurrah! for Tech and Boston beans,
> Hurrah! Hurrah! for 'Smith,' who'er that means;
> May he always have a hundred million in his jeans,
> So we'll get—what we want—when we want it."[14]

Mr. Smith's identity remained a secret for eight years. During this time, Eastman gave M.I.T. $20 million in cash and Kodak stock. Not only did no one suspect Eastman, but in 1916 he attended a banquet where M.I.T. alumni celebrated the completion of the new campus by loudly toasting Mr. Smith.[15]

In 1918, Eastman offered M.I.T. up to $4 million in Kodak shares, provided that other donors contribute an equal amount by December 31, 1919. Maclaurin frantically spent the next year soliciting donations from alumni and corporations. As a bonus, Eastman promised that at the annual alumni dinner on January 10, 1920, the identity of Mr. Smith would finally be revealed.

Maclaurin raised the $4 million, but it exhausted him. In December 1919, he came down with pneumonia, and his speech revealing Eastman's identity was read by others. A week later Maclaurin died at age 50.

Putting Principles into Practice

Elizabeth Brayer notes that Eastman's donations to M.I.T. clearly show his views about giving—views that he consistently held throughout his life.

First, Eastman thought carefully about his gifts. He had investigated M.I.T. for several years before deciding to donate large sums. He took time to personally examine each potential recipient, satisfying himself that his money would do good. In a 1918 speech, he said, "a rich man should be given credit for the judgment he uses in giving away his wealth, rather than in the amount he gives away."[16] William L. Chenery noted in a 1920 article in the *New York Times*, "Mr. Eastman employs no committee or commission to handle his bequests. He takes a strong personal interest in each one."[17]

In 1924, at age 70, Eastman decided to retire from Eastman Kodak and to dispose of the bulk of his fortune. On December 10, 1924, he held a press conference to announce that he would donate $30 million to four educational institutions—the University of Rochester, M.I.T, and two institutions of higher learning for African-Americans—Hampton Institute and Tuskegee Institute. (In the same week, James Buchanan Duke, founder of the American Tobacco Company, announced the creation of the Duke Endowment, now one of the largest foundations in America.)

Eastman spent the remaining eight years of his life giving smaller amounts to his favorite causes. Intensely interested in music, he created the University of Rochester's Eastman School of Music and helped form the Rochester Philharmonic Orchestra (now the Eastman Rochester Philharmonic). Another concern was health: he gave millions to the University of Rochester's medical school and its affiliated hospital, as well as to dental clinics in Rochester and in England.

In all these projects, Eastman closely scrutinized recipients, examining their plans in minute detail. For example, he frequently required that buildings he funded be constructed with little ornament so that money would not be wasted. Claude Bragdon, an architect who designed several buildings funded by Eastman, chafed at this refusal to spend on frills, calling Eastman's attitude "that of a Pharaoh."[18]

But Eastman was perfectly willing to spend money when he thought it necessary. For example, when he was expanding the hospital associated with the University of Rochester, he insisted that corners in stairwells be painted white. According to historian George W. Corner, this was because Eastman believed that "only a hardened sinner would spit in a white corner."[19]

The project closest to Eastman's heart was the Eastman Theatre, a cinema that was also the first home of the Rochester Philharmonic Orchestra. Eastman ultimately gave $17 million to the University of Rochester to build and operate the structure, and was passionate about how it was constructed. In a letter to architect Frank L. Babbott, he insisted that the theater "not be too barny in character" and that it be lit by a "white, or probably a yellowish-white light, which can be regulated to give the maximum amount of indirect light in the auditorium that will not interfere with the brilliancy of the [motion] pictures."[20]

After the theater opened in 1922, Eastman engaged in a quixotic attempt to make both it and the Rochester Philharmonic Orchestra profitable. But the picture palace bled money, and Eastman tried every economy he could conceive, including chastising subordinates for using unnecessary two-cent stamps. Finally in 1928, he allowed Paramount Publix (later Paramount Pictures) to take over the theater. In 1930, Paramount revoked its contract and the Eastman Theatre was closed. The theater, Elizabeth Brayer notes, was "a grand failure in its donor's opinion and, according to friends, his most bitter disappointment."[21]

A second aspect of Eastman's philanthropy was that it generally was limited to local concerns. Aside from the dental clinics and continuing M.I.T. donations, Eastman's only other national concern was the education of African-Americans, particularly at Tuskegee Institute and Hampton Institute. Though Eastman worked with other great philanthropists, notably John D. Rockefeller, Sr., he was not an empire builder.

So great were Eastman's benefactions to Rochester that the city's chief historian, Blake McKelvey, notes that by 1925, Rochester was primarily known as George Eastman's home. The city, McKelvey wrote, had been "made over in Eastman's image. His technological concerns, both technical and scientific, had become Rochester's interests; his predilections for constructive philanthropy, for systematic and cooperative group action, were fixed Rochester characteristics; his faith in good health and in sound teeth, his enjoyment of music, his respect for scientific knowledge—all became Rochester specialties."[22]

Eastman was relatively uninterested in national politics, but he had an abiding concern with city government. From 1905 onwards, Eastman worked with Progressives and members of the Good Government movement to replace what he saw as a corrupt local Republican Party machine. Eastman sought a nonpartisan city manager system and created the Rochester Bureau of Municipal Research to study ways local government could be improved. By 1925, he and his allies had largely succeeded in their efforts to reform Rochester politics.[23]

Third, Eastman consistently advocated giving money within one's lifetime. As early as 1917, when his donations to M.I.T. were still a secret, he told B.C. Forbes, "I don't believe in men waiting until they are ready to die before using any of their money for helpful purposes."[24]

Eastman expanded on these views in a 1923 interview with *Hearst's International*. He told journalist Arthur Gleason that he opposed posthumous giving because "if you leave [a fortune] by will, five years may pass, and the scheme you devised may be unfitted to the new circumstances. Things change while a will is waiting. Then the executors may be so hampered by the conditions of the will and the new situation that successful use of the funds is difficult. It is more fun to give away money than to will it. And that is why I give."[25]

Finally, there were causes that Eastman would not support. As a non-churchgoer who appears to have been an agnostic or deist, he would not give to religious causes. When Episcopalian Bishop William T. Manning asked Eastman to help with the completion of the Cathedral of St. John the Divine, Eastman refused, saying that "not being a religious man I prefer to spend my money in other directions."[26] He also declined Columbia University president Nicholas Murray Butler's efforts to promote world disarmament. And the list of colleges that Eastman refused to support is longer than those to which he gave. Elizabeth Brayer notes that Eastman is known to have turned down at least 19 institutions, including Columbia, Princeton, William and Mary, Swarthmore, the University of Virginia, and all women's colleges.[27]

Nor was Eastman generous to individuals he did not know. Like most great philanthropists, he was constantly hounded by requests. Some proposals were eccentric: in 1919, a woman apparently proposed marriage to Eastman and suggested that they adopt six children. By the 1920s, Eastman's secretary was present at all interviews, ending them whenever the subject came to money. According to Brayer, by 1930 Eastman "was complaining that everyone who came calling, came with a hand out."[28]

Lessons

By the early 1930s, Eastman's health had seriously declined. Believing he had accomplished all he could and not wanting to live in poor health, on March 14, 1932, he committed suicide at age 78.

Eastman left an estate valued at $25 million, all of which he gave to charity. The University of Rochester received $19 million and the Rochester Dental Dispensary $1 million; other charities received the rest. Elizabeth Brayer calculates that at its peak, Eastman's fortune was worth $125 million. "Had he not been a philanthropist but simply hoarded and invested his money," she writes, "it has been estimated that he would have been worth $300 million at his death."[29]

The story of Eastman's philanthropy is instructive because it shows that donors can give away their wealth without relying on a foundation or a professional staff. Even after Eastman became nationally known as a philanthropist, he had only one assistant. Eastman's story also suggests that donors should conscientiously limit the number of causes they support, working closely with recipients to ensure that funds are properly used.

Finally, Eastman's story shows that giving to local charities in which one takes a personal interest is not only satisfying; it can do just as much good as giving to national causes. As the *Boston Globe* editorialized after Eastman's major donations in 1924, "Few can endow great universities. But many can apply George Eastman's philosophy of giving; invest in your own community and do so while your money can be put to work while you still live."[30]

CHAPTER III

Setting a Termination Date

The Julius Rosenwald Fund

"The perpetuities, the rigidities, and the bureaucracies against which Rosenwald inveighed were in charities whose purposes were too specific and hence likely to become obsolete. But the foundations who dominate the scene nowadays are extremely general in their purpose. The public dangers which arise from them come precisely from the fact that there is no prospect that they will ever become obsolete. . . .

. . . Some of the dangers which come from the new large foundations spring from the very vagueness and generality of their purposes as well as from their sheer size. They have already become powerful, independent, self-perpetuating institutions. They are in the wholesale—some might say the 'mail-order'— philanthropy business. Instead of encouraging latent energies in the community, they are naturally tempted to initiate projects, and the more spectacular and the more novel are often most attractive from a public relations point of view. They show few signs of that self-liquidating tendency that Rosenwald rightly insisted to be a feature of a healthy foundation." [1] *—Daniel J. Boorstin (1962)*

Julius Rosenwald (1862-1932) is the most important philanthropist to warn against the dangers of perpetuity in foundations. His two essays in the *Atlantic Monthly,* published in 1929 and 1930, are important milestones in the history of philanthropy that still provide valuable advice to grantmakers. Rosenwald's own philanthropy shows that he was a strong-minded donor who encouraged his trustees to pursue his vision after his death. In fact, so closely did these trustees believe in Rosenwald's ideas that the Julius Rosenwald Fund spent itself out of existence fifteen years after Rosenwald's death—a full decade before it was required to do so.

Building the Sears Empire

Unlike most great philanthropists, Julius Rosenwald was not an entrepreneur. His wealth derived from his long-time position as president of Sears, Roebuck, founded in 1889 by Richard Sears and Alvah Roebuck. Six years after the partnership was created, Roebuck retired, exhausted by the long hours and fearing liability for debts should the company fail.[2]

Sears, realizing he could not run the firm alone, looked for another partner.

He found Aaron Nussbaum, an entrepreneur who had made a small fortune selling soda pop and ice cream to attendees of the 1893 Chicago World's Fair. Sears offered Nussbaum a partnership in Sears, Roebuck for $15,000. Nussbaum borrowed the sum from his brother-in-law, Julius Rosenwald.

Sears and Rosenwald were already acquainted. Rosenwald had started a company that made men's suits, and Sears was one of Rosenwald's best customers. Rosenwald was impressed by Sears's ability to sell large quantities of suits. According to historian Florence Kiper Frank, "in the early relationship between Julius Rosenwald and Richard Sears the familiar American pattern was reversed. It was the customer who sold himself and his ideas to the unaggressive salesman whose interest was captured."[3]

Sears decided to bring on both Nussbaum and Rosenwald. Although Nussbaum was forced out of the firm two years later, Rosenwald and Sears remained partners for the next decade.

Sears was one of history's great salesmen, whose advertisements prompted thousands of customers to seek Sears, Roebuck merchandise. But Sears customers often had a hard time getting what they wanted. Order slips were thrown into laundry baskets and left unfilled for weeks. Customers often received incorrect items, or were erroneously told the item they wanted was out of stock. The orders, Florence Kiper Frank notes, poured in "faster than the factories could supply the goods, faster than they could be cleared through warehouses and shipping rooms. Departments fell behind—thirty days, sixty days, sometimes three and four months. The panting executives were outstripped, and the order they sought to impose seemed like an unobtainable dream."[4]

Rosenwald solved the problem by devising a way for Sears, Roebuck to process orders more efficiently. Under his direction, Sears, Roebuck built a 40-acre warehouse on Chicago's West Side in 1906. Working with chief of operations Otto C. Doering, Rosenwald created a "schedule system" that allowed employees to handle up to 100,000 orders a day: it sent requests for merchandise to different parts of the warehouse where items were stored, then gathered them in one place for shipment to customers. This achievement seems mundane today, but no one at the time had produced such a system on such a giant scale. Historian Gordon L. Weil notes that Henry Ford modified the schedule system to create assembly lines in Ford Motor factories.

Rosenwald introduced other improvements. He issued money-back guarantees and insisted that all Sears, Roebuck advertising honestly describe the company's products. "Sell honest merchandise for less money and more people will buy," Rosenwald said. "Treat people fairly and honestly and generously and their response will be fair and honest and generous."[5]

Sears, Roebuck sales increased 500 percent between 1901 and 1905. But in 1907, the economy experienced a recession and Sears, Roebuck orders fell. Richard Sears, having moved to France in search of spas for his ailing wife, sent numerous letters to Chicago headquarters urging the company to spend more on coupons, advertisements, and other promotions. "In my humble opinion We Must Have Volume," Sears wrote in 1908, "whether it be Easy in the Boat or not. Our very life *Demands Volume*—and if one hot fire doesn't get it, I would build more fires. . . ."[6]

Rosenwald however, urged reorganization and, because he was in Chicago, his arguments won the day. In November 1908, Sears returned to America to find that he was no longer in command of the firm he had created. On November 21, Sears and Rosenwald had a two-hour meeting. According to Louis Asher, a manager whose office was down the hall from Rosenwald's, Sears "strolled out the door" and said that he and Rosenwald "had had an 'understanding.' Rosenwald emerged a little while later with face and ears still burning."[7] But one thing was clear: Sears had resigned from the company.

Philanthropic Interests:
Schools and YMCAs

Rosenwald was now chairman of the board of Sears, Roebuck, a position he held until his death. Having undisputed control of the company, he began a second career as a philanthropist. But before discussing his philanthropy, Rosenwald's political views are worth noting.

Like George Eastman, Rosenwald was a Progressive Republican. There is some evidence that he favored a significant role for government in providing welfare and old-age pensions. However, he was a bitter critic of the Republican machine that controlled Chicago politics, and occasionally fought other Republicans whom he thought corrupt.

Because Rosenwald by the standards of his time was liberal, some foundation historians believe he would be a liberal today. Waldemar Nielsen, for example, classes Rosenwald, along with John D. Rockefeller and Andrew Carnegie, as donors who "boldly and generously supported projects that addressed fundamental issues of equity, access, and opportunity."[8] But Rosenwald's philanthropy, particularly towards African-Americans, was intended to promote self-reliance and self-help. It's far from clear that Rosenwald, were he alive today, would be an enthusiastic supporter of the welfare state.

As a philanthropist, Rosenwald had many enthusiasms. He led the effort to create a science museum in Chicago. He was active in Jewish causes, including efforts to aid Jewish settlers in Palestine. A 1912 profile in the *American Magazine* reported that Rosenwald was a director or trustee of 16 organizations, including Hull House, Associated Jewish

Charities, and the Infant Welfare Society. But when asked what endeavor gave him the greatest satisfaction, Rosenwald replied, "The work with the colored people."[9]

According to biographer M.R. Werner, Rosenwald became interested in helping African-Americans in 1911, when he read Booker T. Washington's autobiography, *Up From Slavery*. He was struck by a particular passage: "My experience is that there is something in human nature which always makes an individual recognize and reward merit, no matter under what colour of skin merit is found. I have found, too, that it is the visible, the tangible, that goes a long ways in softening prejudices. The actual sight of a first-class house that a Negro has built is ten times more potent than pages of discussion about a house that he ought to build, or perhaps could build."[10]

Historian August Meier notes that Washington's stature among blacks was enhanced by the "enormous influence in appropriations" from Rosenwald, Carnegie, and the Rockefeller-created General Education Board.[11] George Eastman wrote to Washington in 1902, "I have just been re-reading your book 'Up From Slavery,' and have come to the conclusion that I cannot dispose of five thousand dollars to any better advantage than to send it to you for your [Tuskegee] Institute."[12]

In May 1911, Rosenwald and Washington met at Chicago's Blackstone Hotel to discuss projects. Rosenwald's first act was to agree to lead an effort to raise $50,000 for Tuskegee, allowing Washington to spend more time at the school and less time fundraising. A year later, Washington and Rosenwald began plans to build schools for blacks. Rosenwald agreed to let Washington select the schools that would participate in the program. If the schools raised enough money, Rosenwald said, "I will agree to pay a total of twenty-five thousand dollars (25,000) to such schools as soon as they furnish a list of bonafide subscriptions equal to the amount you have designated."[13]

Washington died before he could publicly comment on the school-building effort. But he had written an article in 1914 on an earlier Rosenwald effort to build African-American YMCAs. He described how Rosenwald agreed to donate $25,000 towards construction provided that other parties contribute $75,000.

Rosenwald's plan stimulated major philanthropic effort. In Washington, D.C., 4,500 African Americans—five percent of the black population—contributed $27,000 to the YMCA construction fund. In Chicago, 10,000 donors—a fourth of the black population—gave $67,000. Several of the donors were former slaves who parted with their life savings. Washington remarked that "the organizing of the colored people for the gathering and collection of subscriptions, the inspiration that comes from labor in common for the common good—all this is in itself a character-building process, and has had a far-reaching influence upon the churches and other religious organizations throughout the country."[14]

The school-building plan, like the YMCA plan, sought to help people who wanted to help themselves. A typical effort occurred in Boligee, Alabama, in 1916, where an anonymous observer wrote a first-hand account. The local cotton farm economy had just been ravaged by the boll weevil, and many contributors were field hands who walked four miles through the mud to get to the meeting site. "You would have been overawed with emotion if you could have seen these poor people walking up to the table, emptying their pockets for a school," the observer wrote. "One old man, who had seen slavery days, with all of his life's earnings in an old greasy sack, slowly drew it from his pocket, and emptied it on the table. I have never seen such a pile of nickels, pennies, dimes, and dollars, etc. in my life. He put thirty-eight dollars on the table, which was his entire savings."[15]

When Rosenwald died in 1932, he had contributed $4.4 million to build 5,357 schools in the South. This was matched by $18.1 million in government funds, $1.2 million from foundations, and $4.7 million from African-Americans. The latter funds were the most important, because no school was built unless blacks were willing to contribute funds.

Daniel Boorstin concludes that Rosenwald followed Andrew Carnegie's philosophy of using philanthropy to inspire self-sufficiency. "No one would be helped unless the person himself was willing to make an effort to help himself. The passive beneficiary had no place in this scheme."[16]

Critic of Perpetual Foundations

By the mid-1920s, Rosenwald's program of building schools and YMCAs was progressing steadily. But Rosenwald made a third contribution to philanthropy. He was the most important philanthropist of his generation to stress the importance of limiting the life of foundations. As M.R. Werner observes, "the greatest contribution which Rosenwald made to the history of philanthropy was his insistent practice and propagation against the abuse of perpetual endowments."[17]

Rosenwald first warned of the dangers of perpetuity in a 1909 presidential address to the Associated Jewish Charities of Chicago, in which he told listeners to beware of charities that might have "outlived their usefulness." Rosenwald expanded on his ideas in a 1913 address to the American Academy of Political and Social Science: "I am opposed to the permanent or what might be styled the never-ending endowment. Permanent endowment tends to lessen the amount available for immediate needs; and our immediate needs are too plain and too urgent to allow us to do the work of future generations."[18]

In a 1912 letter to Andrew Carnegie, Rosenwald objected to a $750,000 Carnegie grant to the Tuskegee Institute which stipulated that the school place the money in its endowment and spend only the interest.

Carnegie changed the terms to allow the money to be spent immediately. Rosenwald also gave $100,000 to Tuskegee's Booker T. Washington Memorial Fund on condition that the trustees spend a portion of the fund each year until it was exhausted.

Rosenwald influenced other grantmakers. Between 1919 and 1932, he served as a trustee of the Baron de Hirsch Fund, founded in 1891 to aid Russian and Romanian immigrants to America. In the sixth clause of the fund's deed of trust, founder Baron Maurice de Hirsch stated that "in the event of the cessation or substantial reduction of emigration from Russia or Roumania," the fund's trustees may divert the fund's endowment "for the benefit of children of emigrants and for the support of widows and orphans of emigrants and for the extension of the benefits contemplated by this Trust to other Hebrew emigrants besides Russians and Roumanians."[19] After the U.S. imposed substantial restrictions on immigration in 1924, Rosenwald suggested that the fund's endowment be diverted to aid Russian and Romanian settlers in Palestine. The trustees agreed, and the Baron de Hirsch Fund's endowment was steadily reduced.[20]

The Julius Rosenwald Fund

In 1917, Rosenwald created the Julius Rosenwald Fund. According to the fund's historians Edwin M. Embree and Julia Waxman, "it was difficult to know where Mr. Rosenwald's philanthropies ended and the Fund's began" during the first decade of its existence.[21] In 1927, Rosenwald decided that the Fund needed a professional staff. He hired Embree, a Rockefeller Foundation vice-president, as the fund's first and only president. He also increased the fund's endowment to $20 million by adding 20,000 shares of Sears, Roebuck stock to the 180,000 shares the fund already owned. But in giving this gift, Rosenwald imposed a condition—that the Julius Rosenwald Fund spend itself out of existence 25 years after his death.

Rosenwald wrote, "I am not in sympathy with this policy of perpetuating endowments, and believe that more good can be accomplished by expending funds as Trustees find opportunities for constructive work than by storing up large sums of money for long periods of time. By adopting a policy of using the Fund within this generation, we may avoid those tendencies toward bureaucracy and a formal or perfunctory attitude toward the work which almost inevitably develop in organizations which prolong their existence indefinitely. Coming generations can be relied upon to provide for their own needs as they arise."[22]

Rosenwald also took his case to the press. In a January 1929 interview with the *Saturday Evening Post,* he stated that "like the manna of the Bible, which melted at the close of each day, I believe that philanthropic enterprises should come to the end with the close of the philanthropist's life, or, at most, a single generation after his death. . . . The generation which has contributed to the making of a millionaire should also be the one to profit by his generosity. Contemporary needs are the only needs of which we can be certain, and it is those needs that we must seek to serve."[23]

"Principles of Public Giving"

Rosenwald's "Principles of Public Giving" is his most important statement on foundation perpetuity. Published in the May 1929 *Atlantic Monthly,* it is one of the most significant articles in the history of philanthropy—as important as Andrew Carnegie's "The Gospel of Wealth."

Rosenwald began by discussing charities that had outlived their usefulness, such as a fund designed to give students at one of Oxford University's colleges half a loaf of bread a day, and the bequest of late-eighteenth century American philanthropist Robert Richard Randall to turn his farm into a retirement home for sailors. The farm, known as the Sailors' Snug Harbor, happened to be located on prime Manhattan real estate that was worth over $30 million in 1929—an amount that Rosenwald noted "vastly exceeds any reasonable requirement for the care of retired seafarers."[24]

But as much a failing as foundations ruled by the dead hand, Rosenwald argued, were living institutions with large endowments whose trustees only spent the interest the endowments created. While serving as a trustee of the University of Chicago, Rosenwald found his fellow board members reluctant to touch the principal of the university's $43 million endowment, even for such useful purposes as buying books or aiding professors in research. "I think it is inevitable that as trustees and officers of perpetuities grow old they become more concerned to conserve the funds in their care than to wring from those funds the greatest possible usefulness," Rosenwald wrote. "That tendency is evident already in some of the foundations, and as time goes on it will not lessen but increase."[25] "The cure for this disease is a radical operation. If the funds must exhaust themselves within a generation, no bureaucracy is likely to develop around them."[26]

Even if foundations cease to be immortal, Rosenwald argued, each generation would still contribute to whatever causes it felt worthwhile. Limiting the life of foundations to one generation after the donor's death would mean "placing confidence in living trustees"and discouraging "the building up of bureaucratic groups of men, who tend to become over conservative and timid in the investment and disbursement of trust funds."[27]

"Principles of Public Giving" created a sensation in the philanthropic world. Rosenwald received hundreds of letters from colleagues who headed philanthropies and universities—and a surprising number agreed with him. Rockefeller Foundation president George Vincent, for example, wrote that the case against "specific permanent endowments" has "been proved over and over again."[28] Edward A. Filene, the department store magnate who founded the Twentieth Century Fund, declared Rosenwald one of America's ten most important business executives because his "business experience had led him to see through the shams of philanthropy and the pretenses of greatness which so often go with the accidental accumulation of great wealth."[29] Robert Brookings, founder of the Brookings Institution, told Rosenwald that the wealth he had given away "was insignificant" compared to "the value of this idea" of term limits for foundations.[30]

Rosenwald himself contributed to the liquidation of the philanthropic assets of one donor—Conrad Hubert, who invented the electric flashlight in 1898 and founded American Ever-ready (now Everready Battery) to market his many inventions. When he died in 1928, Hubert willed one-quarter of his estate to relatives and the remaining three-fourths to charity. He had his executor, Bankers Trust, appoint three prominent Americans to oversee the disposition, valued at $6 million. In 1929, Bankers Trust chose former President Calvin Coolidge, former New York Governor Al Smith, and Julius Rosenwald, who convinced his colleagues to disburse most of the funds as matching gifts.

Perhaps Rosenwald's most important disciple was Maurice Falk (1866-1946), a Pittsburgh industrialist who founded Duquesne Reduction, a firm that smelted copper and other metals. When Falk decided to turn his attentions to philanthropy in 1929, he was greatly influenced by "his admiration for Julius Rosenwald . . . and the philosophy upon which Mr. Rosenwald founded his philanthropies," i.e., term limits.[31]

In the fifth clause establishing the Maurice and Laura Falk Foundation, the trustees are encouraged to spend only income from the foundation's endowment for the first fifteen years of its existence. "But beginning at the end of said period of fifteen (15) years, they are directed to begin the distribution of said principal as well as the income of this Foundation, so that the same shall be fully distributed on or before thirty-five (35) years from the date of this agreement, it being the purpose and intent of this trust that the total income and whole estate shall be distributed to such beneficiaries as the Board of Managers shall determine, within or by the end of said period of thirty-five (35) years."[32]

The Maurice and Laura Falk Foundation spent most of its funds on Pittsburgh charities and good government programs. It was a major donor to the Brookings Institution, contributing steadily to its economic programs as well as the Brookings auditorium.

Maurice Falk asked that the Falk Foundation spend itself out of existence by December 1964, but the foundation convinced the Orphans' Court of Pittsburgh to extend its life by one year. The Falk Foundation ceased to exist in December 1965.[33]

Rosenwald's views also influenced his family. As Chapter V shows, both Rosenwald's daughter, Edith Rosenwald Stern and her son, Philip Stern, created foundations with time limits. But aside from the Hubert estate, Maurice Falk and Rosenwald's own heirs, Rosenwald's ideas had relatively little influence at the time. Rosenwald did persuade John D. Rockefeller to loosen some restrictions on grants he made to the University of Chicago so that it could remove the funds from its endowment and spend them immediately. And the Rockefeller Foundation spent some of its endowment for a few years during the Depression.

But however much Edward Filene, Robert Brookings, or George Vincent agreed with Rosenwald, they did nothing to end the lives of the Twentieth Century Fund, the Brookings Institution, or the Rockefeller Foundation. Nor did the New York City-based Commonwealth Fund, despite Rosenwald's influence on its officers, come to a close.

Rosenwald's Legacy

Rosenwald did, however, influence the trustees of his own foundation. The Julius Rosenwald Fund spent itself out of existence in 1948, a decade before it was legally required to do so. "At the close of the work," historians Embree and Waxman note, "the trustees and officers were more than ever convinced that Mr. Rosenwald had been wise to his stipulation that the foundation should complete its work in a generation. They felt that the Fund had been more effective with a short life than it could have been as a perpetual endowment. Its officers and trustees were not preoccupied with saving funds and conserving capital. They did not have time to grow stale nor to build themselves into a routinized bureaucracy."[34]

Julius Rosenwald died in 1932, having spent $63 million on good works. But though the Julius Rosenwald Fund has been dead for nearly fifty years, and many of the schools built with Rosenwald's assistance have long since been replaced by other structures, the thoughtful and provocative criticisms Rosenwald made against perpetual endowments are ones that each generation of donors must consider anew. "Real endowments are not money, but ideas," Rosenwald wrote in 1930. "Desirable and feasible ideas are of much more value than money, and when their usefulness has once been established they may be expected to receive ready support as long as they justify themselves."[35]

The Lucille P. Markey Charitable Trust

The Lucille P. Markey Charitable Trust is the largest foundation ever to expire due to a term limit. The trust was created in 1982 with a strict time limit of fifteen years. On June 30, 1997, the trust closed its doors, having spent itself out of existence through grants of $500 million to medical research.

Although Lucille P. Markey (1889-1982) made her fortune in oil, gas, and horses, the roots of her wealth came from baking powder. In the late 19th century, William Monroe Wright (1851-1931) created an improved baking powder that used egg whites. With a $3,500 investment, Wright founded Calumet Baking Powder. Thanks to aggressive marketing, Calumet became a national brand. As a sideline, and as a way to promote his product, Wright founded Calumet Farm, a racing stable.

Calumet's success attracted investors at Postum (now Kraft General Foods), a company that sought to become a national food conglomerate through its purchases of Jell-O, Baker's Premium Shred Coconut, and Cheek-Neal Coffee, owners of the Maxwell House brand.[36] In 1929, six months before the stock market crash, Postum purchased Calumet Baking Powder for $32 million.[37] However, Calumet Farm remained in the family.

In 1931, William Monroe Wright died, leaving an estate of $60 million to his son and heir, Warren Wright Sr. (1875-1950). Warren Wright Sr. spent most of his time at Calumet Farm. His leadership ensured that it produced several great horses, including two, Whirlaway and Citation, that won the Triple Crown, horse racing's highest achievement. Calumet Farm horses often placed first and second in major races.

In 1919, Warren Wright Sr. married Lucille Parker. One year later their son, Warren Wright Jr. (1920-1978), was born.[38] Biographer Ann Hagedorn Auerbach says that for much of her first marriage, Lucille Wright Markey stayed in the shadows, supporting her husband's involvement in horse racing. By the late 1940s, Warren Wright Sr.'s horse racing empire "overshadowed that of any other American breeder and ranked even better than the Baron de Rothschild's world-renowned stable in France or the Aga Khan's in England."[39]

When Warren Wright Sr. died in 1950, his $20 million estate was divided into several trusts. Half the estate was used to pay estate taxes. Warren Wright Jr. received his father's jewelry and two trusts, valued at $1 million. Lucille Wright received a trust valued at $4.7 million, consisting of 72 percent of Warren Wright Sr.'s investments in stocks, oil, and gas. The remaining 28 percent of the investments, along with Calumet Farm, was placed in the Warren Wright Residuary Trust. Lucille Wright would receive income from this trust while she lived, but if she were to sell Calumet Farm, the proceeds would be added to the trust and would become Warren Wright Jr.'s should he survive his mother. Should Warren Wright Jr. die first, half of the Warren Wright Residuary Trust would go to a beneficiary designated by Warren Wright Jr., 30 percent to

Warren Wright Jr.'s heirs, and the remaining 20 percent to charity.

According to Auerbach, Warren Wright Sr. created this complex scheme as a way to ensure that Calumet Farm remain in the Wright family. "No matter what his widow decided to do, whether or not she remarried, the farm, through his son, had a secure spot in the Wright lineage."[40]

In 1952, Lucille Wright married Gene Markey, who in his career wrote seven novels and produced 24 films, including movies starring Shirley Temple and Dick Powell. While it was her second marriage, it was his fourth; Markey's previous wives were actresses Joan Bennett, Hedy Lamarr, and Myrna Loy. During World War II, Markey served in the Navy as an intelligence officer. He eventually became a rear admiral, and insisted that everyone refer to him as "Admiral Markey."[41]

Lucille Markey honored her first husband's wishes and did not sell Calumet Farm. Though the farm no longer produced champions, it continued to be a major force in horse racing until Markey's death. In a 1971 interview with the *Louisville Courier Journal,* Markey said that the job of managing Calumet Farm was "thrust upon me. There was no one else to do it."[42]

But while Calumet Farm represented the public side of Lucille Markey's fortune, the oil and gas investments left to her by Warren Wright Sr. were thriving, particularly after oil prices skyrocketed during the energy crisis of 1973. In 1975, a 50-year oil and gas lease on the Waddell Ranch in Crane County, Texas, expired. Warren Wright Sr.'s estate owned 30 percent of the oil and gas on the ranch, and renegotiation of the lease ensured that Markey's income would rise from $300,000 to $3 million a month. What was she to do with the money?

Strangers Shouldn't Dole Out Millions

According to the official history of the Lucille P. Markey Charitable Trust, Markey's first concern was to provide for her husband. Markey's son, Warren Wright, was already provided for with the trust established by his father in 1950—a trust whose principal was substantially increased by its share of the Waddell Ranch lease. She had no other heirs.

The Markey Trust history states that Lucille Markey was planning to leave the bulk of her fortune to the Kentucky Blue Grass Boys' Ranch, an orphanage located in Lexington, Kentucky. But now she had to face the problem of disposing of a much larger estate. So she decided to leave her fortune to charity.

From its beginnings, the Lucille P. Markey Charitable Trust was meant to have a limited life. Ann Hagedorn Auerbach states that Markey wanted to ensure that the trust was spent in the lifetime of three trusted associates—Calumet Farm office manager Margaret Glass and family lawyers William Sutter and Louis J. Hector. Markey "limited the time period so that the money would be given out during the lifetime of the trustees she had chosen to do the job. . . . She didn't trust strangers to dole out the millions."[43] The Markey Trust history concurs, stating that Markey did not want her wealth to be managed by "people she never knew and devoted to causes of which she perhaps would not approve."[44]

After the Trust was created, Markey had to decide what it was to do. The official history states that Markey did not want to leave the trustees of her fortune with vague instructions. But at the time Lucille and Gene Markey, both in their 80s, were suffering from a variety of ailments, including cancer, arthritis, and glaucoma. "Health was much on her mind," the official history states.[45] After sending investigators to study the Robert Wood Johnson Foundation and Rockefeller University, Markey refined her wishes by stating that her trust should fund "basic medical research" rather than improve the delivery of medical services.

Warren Wright Jr. and Gene Markey died shortly after the trust was created. Warren Wright Jr. died in 1978, causing the terms of the Warren Wright Residuary Trust to take effect. Half of Wright's estate of $93 million went to a trust for his widow, Bertha, while an additional 30 percent went to Warren Wright Jr.'s four children. Since Calumet Farm was controlled by the Warren Wright Residuary Trust, it was not part of Lucille Markey's estate.

Two years later in 1980, Gene Markey died of colon cancer. Lucille Markey, impressed by the way the University of Kentucky Hospital had treated her husband, left the university $13 million to create the Lucille P. Markey Cancer Center. She then shifted the money that would have been left as a trust for her husband into the Lucille P. Markey Charitable Trust.

Sticking to What Mrs. Markey Wanted

On July 24, 1982, Lucille Markey died at age 92. The Lucille P. Markey Charitable Trust then began its operations, with the knowledge that it had to spend itself out of existence by July 24, 1997. At first the trust gave money to institutions Markey was known to favor, including the University of Kentucky and Rockefeller University. Then in 1984, it decided to create a program to award post-doctoral fellowships to promising recent medical school graduates. This program, known as the Markey Scholar Awards, continued until the trust's dissolution.

In 1985, funding for most Markey Trust programs was halted because of a complex regulatory dispute involving the price which could be charged for natural gas produced at the Waddell Ranch. This dispute, which involved simultaneous lawsuits in the Texas state courts, the Federal Energy Regulatory Commission, and the California Public Service Commission, meant that for two years funds could not be transferred from Lucille Markey's estate to the Markey Trust. In 1987, the dispute was settled and the Lucille Markey estate transferred $150 million to the Markey Trust. It added an additional $114 million in 1988.

The trust was now firmly in business.

Knowing that it was due to expire by 1997, the Markey Trust had certain advantages from the start. Because the Trust was spending its endowment, it could award larger grants than a foundation with no time limit. The trust's historians calculate that because of the time limit, the Markey Trust was able to award annual grants totaling $40 million. Had the Trust made grants from only its income, it would have awarded only $17 million annually.[46]

In a 1990 interview with the *Miami Herald,* Markey Trust chairman Louis Hector explained that large grants were also necessary, given the capital-intensive nature of medical research. If you gave "an historian $100,000, that will take him to England to spend a year at the British Library and hire a secretary, all the rest of it. You give a biological scientist $100,000, and that won't even buy the first piece of equipment."[47] Another advantage the Markey Trust had over longer-lived foundations was that a majority of the trust's five trustees knew Markey well and understood their task was to follow her wishes. "One of the things we have tried very hard to do was to stick to what Mrs. Markey wanted," Trust president William Sutter told the *Chronicle of Higher Education* in 1991. "One of the reasons she wanted the fund to have a short life is because she knew us, and she thought that we would do what she wanted. And I think we have—as best we could interpret it. I think we've stuck to her wishes."[48]

As the Markey Trust shut down in 1997, Sutter reinforced his commitment to honor Markey's intentions. "As you get further away from the founder's lifetime, then the executive director and trustees have their own pet ideas about what to support. And they might not be what the founder would have liked."[49]

In its 15-year life, the Markey Trust made grants totaling $501 million. It awarded 92 grants totaling $322.2 million to basic medical research, of which the largest grants were to Stanford University ($13.7 million), the California Institute of Technology ($13.1 million), Yale University ($12.1 million), and Washington University in St. Louis ($12.1 million). It also gave $62 million in general grants to recent M.D.'s, allowing them to spend more time on research, and $86 million in Markey Scholar Awards.

CHAPTER IV

Basing a Termination Date on Heirs' Lifetimes
The Jacobs Family Foundation

"I believe that, after the first generation, inherited wealth loses the spirit and the values of the people who earned that wealth. There comes a disconnection between the funds and the source of the funds (whether using it for personal comfort or giving it away to satisfy either guilt or a need to be loved). The culture of those in charge becomes not too dissimilar from the culture of the government bureaucracies who dispense funds confiscated from the taxpayers."[1] —Joseph J. Jacobs

The Jacobs Family Foundation, based in San Diego, is endowed from the wealth created by Joseph J. Jacobs (b. 1916), founder of the Jacobs Engineering Group, a giant construction firm headquartered in Pasadena, California. The story of the foundation shows how term limits are as effective for small as for large foundations.

Jacobs was born in Brooklyn, New York, the son of a Lebanese immigrant. In his autobiography, *The Anatomy of an Entrepreneur* (1991), he credits his family's heritage with inspiring him to create his own enterprise. "Vivid in my memory is the question asked by one Lebanese of another meeting for the first time. 'What business are you in?' Never, 'Who do you work for?' or 'What is your trade?' . . . The cultural thrust made 'being in business for yourself' the basis of immense drive among our people and me. It seems that my whole life was geared, and warped, and shaped so that I might produce a satisfactory answer to that perennial question, 'What business are you in?'"[2]

According to Jacobs, he first expressed his desire to be an engineer in high school, when a chemistry teacher inspired him to study chemical engineering.[3] Jacobs attended Brooklyn Polytechnic where he earned a bachelor's degree in 1937 and a doctorate in chemical engineering in 1942. Four days after he received his Ph.D., he married Violet Jabara, to whom he remains married.

Bad eyesight kept Jacobs out of the military during World War II. He worked instead for several large firms, most notably Merck, taking part efforts to develop penicillin and DDT.[4] But Jacobs didn't want to work for someone else. "I wasn't willing to wait 20 years or even 10 years to become a vice-president of Merck," he writes. "In my superficial, impatient view, the paths to the top were too rigid, too highly structured."[5]

In 1945, Jacobs moved to Berkeley, California to work as a vice-president of Chemurgic, an agricultural chemical firm. Two years later, he decided to create his own enterprise, acting as a manufacturers' representative for various engineering projects. He relocated to the Los Angeles area and started his own firm in 1947. But this business was no bid for immortality. "The immortality projected for a family company is mostly an unfulfilled dream, a chimera, an idealistic view rarely realized," he writes. Moreover, children brought up to work in the family trade have little chance to build their own careers. They are "trapped in a selfish bid for immortality by founders willing to sacrifice the individuality of their children in order to preserve their own self-esteem."[6]

Jacobs's business grew slowly, and he gradually hired more employees. In 1956, he received his first large contract—to build an alumina plant for Kaiser Aluminum. This allowed him to incorporate his business as Jacobs Engineering in 1957.[7] Today, the multi-billion-dollar enterprise builds factories around the globe. Jacobs has described his firm's corporate culture as "Pride without arrogance; professionalism without being hide bound; integrity without self-righteousness; and daring without foolhardiness."[8]

In his autobiography, Jacobs explains that he began to think about philanthropy in 1970. He summoned his three daughters, Margaret Jacobs, Linda Jacobs, and Valerie Jacobs Hapk and said that he would leave them enough money to cover any illnesses or prolonged disabilities they might suffer. But the remainder of his fortune would go to philanthropy during his lifetime. His explained that he did not want his children to become spoiled, or to be wooed by men solely in search of a large inheritance.

Jacobs's daughters replied "almost in unison and without hesitation" that they understood. Jacobs also explained that he and his wife had decided to devote their fortune to philanthropy because "we want to enjoy giving away that money while we are still alive."[9] He made this decision on the advice of a longtime friend, fellow entrepreneur Jerry Sudarsky, who also chose to dispose of his fortune during his lifetime.[10]

The Compassionate Conservative

Jacobs has spent considerable time thinking about how to give away his fortune and about the broader issue of the nature of compassion. His views about true and false compassion are discussed in a second book, *The Compassionate Conservative* (1996).[11]

Jacobs, who describes himself as a "Jeffersonian conservative," argues that conservatives must reclaim the term "compassion" from liberals. "It is this assumption that they have a special capacity for compassion that defines the liberal," he writes. "Having made that assumption, then by their definition, those they deem to have less compassion are classified as conservatives. Were we able to convince them that we have compassion equal to theirs, it would shake the very roots of the liberal ethic."[12]

Jacobs believes that many liberals are "arrogant elitists" who either ignore or despise free markets. Those who go into business forget that their duty is to satisfy their customers, and then wonder why their market share falls. Those who become bureaucrats strive to mold other people's lives through commands, decrees, and regulations.

Conservatives, Jacobs argues, can best show their compassion by explaining why they want to free people to become responsible and productive citizens. They understand that people are not perfectible and that the road to a freer society is long and hard. "The compassionate conservative will inflict less harm on mankind just because he is aware that the reduction to practice of his compassion will have harmful consequences. In short, he is simply less arrogant in his claim to compassion. His approach may be fairly indicted as too slow, or too cautious, but the rate at which social change should take place is a separate debate to be argued on its merits."[13]

Jacobs also examines how elitists try to use environmentalism, education, and economic regulation to mold society. He concludes by discussing what he calls the Conservative American Liberation movement. "The essential moral force impelling that liberation will be an elevated sense of compassion for humankind. It is a movement to free people, or liberate them, from too much order arising from too much management control in business and too much government in our political life."[14]

Jacobs outlines his vision of "The Compassionate Conservative's Credo." Several elements concern charity:

• "We insist that our compassion is at least as worthy as the liberal's, and decisively reject discrediting of our programs by questioning the purity of our motives."

• "Because we embrace the free market system, we believe that our-confidence in the common man is superior to that of the liberals. Our elite is less arrogant than that of the liberals, as we have been repeatedly humbled in the marketplace."

• "Because we have seen how well-motivated compassion can become corrosive, we are more cautious and tentative in our prescription, knowing there can be unforeseen secondary effects. We seek nothing less than 'empowerment' of the people."

• "As a consequence of our respect for our citizens, we will prescribe programs that give maximum control to individual choice."

• "While liberals pay lip service to 'self-esteem,' their programs often breed dependency, and we shall avoid that trap. We will devise programs which always encompass an element of risk, for only by succeeding when there is a risk of failure can self-respect be earned."

• "We reject the use of the term *entitlements* for human benefits given for those in need."

• "Most people in need of help have a mixture of feelings of dependency and the impulse to be independent and free. We believe that the number of totally dependent people is much smaller than the dependency of liberal compassion."

• "Our programs will provide maximum rewards, both psychological and material, to those who strive for independence. We will recruit a vast number of disadvantaged to learn the benefits of the free market system."

Other clauses of this credo call for devolving power from the federal government to states and localities, replacing the income tax with a flat tax, installing a sunset clause in most bureaucracies, and revering "the family and the great strengths it gives us."[15]

Jacobs's philanthropy began with substantial contributions to his alma mater, Brooklyn Polytechnic, and to Harvey Mudd College, another institution that emphasizes engineering education. He also made substantial contributions to the Institute for Contemporary Studies, a San Francisco-based think tank. In 1988, Jacobs formally organized his philanthropy by creating the Jacobs Family Foundation. Though no exact date of termination has been set, the foundation is supposed to expire sometime between 2013 and 2028, after the death of Jacobs's three daughters.

In a letter to the author, Jacobs explains his reasons for not setting a fixed date to end his foundation. Because it is a joint project of the Jacobs family, they decided the foundation's life should be "determined by the life expectancies of our three daughters. Because of the uncertainty of that life expectancy, it was difficult to give precise data for the expiration of the trust. Since we are investing in projects that would go on beyond our life expectancy and it is difficult to predict what the earnings of the corpus of the foundation would be, we could not predict the precise date at which we would run out of money. If we use a single date, there was the danger of being forced to make a substantial contribution to some cause, and that would not be desirable." He adds that his family "understands the spirit of the sunset provision and we felt that our daughters should decide when it makes sense to wind up the disposition of 'our' money."[16]

Reconciling Political Differences

The Jacobs Family Foundation is also notable for its political orientation. While Jacobs a conservative, his daughters are liberals. The foundation supports projects that both sides can agree on. In a recent interview, Margaret Jacobs explains that the foundation's first board meeting began "with Dad telling us that he was going to contribute to some conservative think tank. And then all hell broke loose."[17] In an article in *Philanthropy,* Ms. Jacobs adds that when she became the foundation's first executive director, "I approached the venture with some trepidation, knowing the vast political differences that separated my parents from the three of us. They seemed vast at the time, anyway."[18] Joseph Jacobs's son-in-law, Norman Hapke, says that the foundation's goal is to advance "liberal goals with conservative means. It's not just liberal goals, it's sensible goals that are an amalgam of what both sides want. We cross the boundary between political labels."[19]

In a preface to *The Compassionate Conservative,* Jacobs's daughters write that in the foundation's early years, they realized they could outvote their father, giving money to "the causes he found most odious. Yet the fact that he willingly gave up that power was a testament to his willingness to consider our point of view. We began to realize that the foundation was not a contest; that is, we were not pitting our liberal views against his conservative ones. In fact, it was clear that the compassion which we had to ascribe to our parents in the beginning just to get along, actually existed! We became cautious about what we brought to the table, and began to feel our way through the process of what would bring consensus and what wouldn't."[20]

Eventually, the two generations of the Jacobs family agreed on two principles to govern the Jacobs Family Foundation's grantmaking:

• "A belief in self-determination: Compassion—when misdirected—creates dependency. Respect for the worth of people must be a guiding principle of philanthropy."

• "A belief in the code of the entrepreneur—taking informed risk. The Foundation wants to discover the risk-takers who will provide the energy for innovation—the leaders who will shape the communities of tomorrow with a sense of passion, pride, professionalism, integrity, and daring."[21]

To accomplish these goals, the foundation in 1995 created the Jacobs Center for Nonprofit Innovation, designed to help nonprofits become more productive and innovative. It also created the "Jacobs Team," a group of nonprofit organizers who work with nonprofits that seek to improve themselves.

With assets of $20 million, the Jacobs Family Foundation largely funds organizations designed to help the poor improve themselves and become free from dependency. In 1995, it awarded $976,134 to such grantees as Skid Row Access, which hires homeless people in Los Angeles to build toys, and the Institute for Responsible Fatherhood, which teaches African-American men to become more involved in raising their children. It also gave to libertarian groups, including the Institute for Justice ($37,000) and the Pacific Research Institute ($25,000), and to liberal organizations such as the Ms. Foundation for Women ($50,000).

According to executive director Jennifer Vanica, the foundation's operations have been improved with the addition of a term limit. "The sunset clause gives us a sense of urgency we might not have if we were setting up in perpetuity."[22] Upon the deaths of Joseph and Violet Jacobs, the foundation's endowment is expected to rise to approximately $100 million.

CHAPTER V

Other Case Studies

The Whitaker Foundation, the Stern Fund, the Stern Family Fund, the Aaron Diamond Foundation, the Vincent Astor Foundation, and the Max C. Fleischmann Foundation are other grantmaking foundations that have closed or plan to do so.

The Whitaker Foundation

The Whitaker Foundation fulfills the wishes of Uncas Aeneas (who preferred to be called U.A.) Whitaker (1900-1975). It is scheduled to terminate its existence in 2006, 31 years after the death of the donor.

U.A. Whitaker was graduated from the Massachusetts Institute of Technology in 1923, and went to work as an engineer. After spending five years at Westinghouse Air Brake and shortly before the stock market crash of 1929, Whitaker went to work for Hoover, where he spent much of the 1930s creating improvements in vacuum cleaners. His inventions resulted in dozens of patents, including 22 while at Westinghouse Air Brake.

Whitaker's success as an engineer ensured steady work and a rising salary, even during the Great Depression. In 1938, he went to work for American Machine and Foundry, but he ultimately wanted to be his own boss. Three years later, he founded his own enterprise, known under various names, including Aero-Marine Products, Aircraft-Marine Products, and ultimately AMP. Whitaker was to run this company until he retired.

AMP, which still exists today, produces supply parts—switches, diodes, capacitors, connectors, clips, sockets—for electrical equipment. Because it sells directly to other manufacturers, it is not well-known, but its parts are in scores of products. As Americans have grown increasingly enamored with electronics, AMP has seen its markets steadily expand. AMP's engineers have also been innovative: by 1970, they had acquired 1,300 U.S. patents and 7,500 foreign ones.[1] By the time of U.A. Whitaker's death in 1975, AMP was ranked 343rd on the *Fortune* 500 industrial list. In May 1997, it ranked 261st.

"Most people who admit to having heard of AMP Incorporated get glazed eyes and start stammering when pressed on what it is that the corporation makes," writes Bern Sharfman, AMP's corporate historian. "The average consumer, however, certainly does know the products in which AMP's terminals, connectors, and assemblies are used: radios, TVs, VCRs, telephones, hair dryers, computers, electric and electronic typewriters, autos, trucks, buses, ships, aircraft, missiles, and space rockets and manned vehicles, such as the space shuttles."[2] Among AMP's clients, Sharfman notes, are Xerox, IBM, General Motors, Ford, Maytag, Whirlpool, and General Electric.

Medicine and Local Charities

By 1962, AMP Incorporated had become such a success that Whitaker retired as president (though he continued to be chairman of the board) and turned his mind to philanthropy. But he was an extremely secretive man. "Uncas Whitaker was a man who kept his own counsel," writes biographer W.H. Cohn. "Typically, he told his family very little about his personal or professional life."[3] An anecdote typifies Whitaker's secrecy: when he earned a law degree in 1935, he refused to tell his father about it for weeks, even though the senior Whitaker was a politician and part-time lawyer.

In a 1968 letter to Sen. Robert F. Kennedy, Whitaker described himself politically as a "right-wing, ultra-conservative Republican."[4] He was a regular, though small, contributor to the Republican Party, never donating more than $4,000 a year. He was not known to have given money to or been associated with any public-policy organizations.

"Like nearly all of his acquaintances, friends, and business associates," writes Cohn, Whitaker "was a conservative. Therefore, conservative causes and conservative politics attracted him. . . . In fact, Whitaker behaved politically like most ordinary middle-class Americans, writing an occasional letter to his senator and making fairly regular contributions to a political party. . . . Whitaker seldom made more than a passing comment about politics in his correspondence and as a topic of general conversation it seldom occupied a great deal of his attention, except perhaps in those areas where individual freedoms were affected."[5]

According to Cohn, Whitaker made regular contributions to local charities in the Harrisburg, Pennsylvania area, where AMP was headquartered. But in the 1950s, as AMP became more prosperous, his donations rose. He also began making large contributions to his alma mater, Massachusetts Institute of Technology, contributing about $10 million to its efforts to expand into medical research. Whitaker had long been interested in medicine, and considered getting a medical degree after completing his law degree.[6]

After Whitaker's death in 1975, most of the wealth he created went into the Whitaker Foundation, which began operations in 1976. While Whitaker left no specific instructions regarding what the foundation should do, he suggested (but did not require) that it spend itself out of existence by 2016.

The foundation's board of directors, most of whom were Whitaker's friends and associates, decided that the foundation should have two purposes. Because of Whitaker's interest in medicine and engineering, they decided that the foundation should support biomedical engineering, funding the invention of new devices that would ensure medical advances. A secondary purpose would be general philanthropy in the Harrisburg, Pennsylvania area.

More Bang for the Bucks

In 1992, the board of directors voted to spend the Whitaker Foundation out of existence by 2006. Such a move will ensure that the foundation adheres to Whitaker's request that it not be immortal. A term limit will also terminate the foundation within the lifetimes of Whitaker's daughters, Portia Whitaker Shumaker and Ruth Whitaker Holmes, both of whom are Whitaker Foundation trustees. Finally, the term limit allows the foundation to spend more on grants. In a recent *Washington Post* article, *Science and Government Report* editor Daniel S. Greenberg argues that the purpose of establishing a term limit is to make "biomedical engineering as a robust field of research and therapy—and then getting out of the way before bureaucratic self-preservation infested headquarters."[7]

The most detailed explanation for the term limit was written by G. Burtt Holmes, the Whitaker Foundation's chairman, in the foundation's 1995 annual report. "Mr. Whitaker created the foundation in the hope that it would accomplish something worthwhile. He was not inclined to create an institution that would perpetuate his name. Furthermore, he was concerned that private foundations often continue after they have achieved their purpose, principally to maintain their bureaucracy. As a result, he inserted into the trust instrument a provision strongly suggesting that the foundation have a finite life."[8]

Holmes added that when the Whitaker Foundation's governing committee voted for termination, "all of the members of the Committee, with one exception, were personally acquainted with Mr. Whitaker. The Committee members had become more enthusiastic about the future potential of biomedical engineering while recognizing that there were few sources for external funding to support its expansion. They did not simply want to sustain the field at its then present level, but rather wanted to be a catalyst in the development of this relatively new discipline . . . . Without the decision to utilize both principal and income, the foundation could not provide its current level of support for biomedical engineering, particularly in the area of academic infrastructure development. At prior spending levels, the foundation would not have been able to fulfill one of the principal roles for private foundations, to be an agent for systemic change."[9]

In 1996, the Whitaker Foundation's assets were $421 million. It had begun to spend down its endowment, increasing grants to $43.5 million, a substantial rise from the $23.8 million awarded in 1993. One hundred thirteen grants totaling $17.6 million went to biomedical engineering research; 44 fellowships totaling $3.3 million went to graduate students; and $5.1 million went to local charities in Harrisburg, Pennsylvania, and Naples, Florida, where U.A. Whitaker spent his retirement.

The Stern Fund

The Stern Fund, also known as the Edgar B. Stern Family Fund and the Stern Family Fund, is in some ways a continuation of the Rosenwald Fund. Created by Julius Rosenwald's daughter, Edith Rosenwald Stern (1895-1980), and her husband, Edgar B. Stern Sr. (1885-1959), the fund's assets originated from Julius Rosenwald's fortune. The Rosenwald Fund also transferred staff members and $900,000 to the Stern Fund shortly before the Rosenwald Fund was liquidated in 1948.

The Stern Fund was created in 1936 with a fifty-year time limit. But the fund's anonymous historians note that the extent to which Edith and Edgar Stern shared Rosenwald's belief in term-limited foundations "is difficult to discern. There is no record indicating that the issue had been discussed by Stern Fund trustees, either in the Fund's formative years or during later deliberations pertaining to the Fund's termination."[10]

At first the Stern Fund primarily supported charitable causes in New Orleans, where Edgar Stern Sr. was a cotton merchant and later president of the New Orleans Chamber of Commerce. Among its principal grantees were the New Orleans Philharmonic-Symphony and the New Orleans Museum of Art. The fund also continued Julius Rosenwald's support of African-Americans through substantial contributions to Dillard University, an historically black institution in New Orleans. In its 1977 centennial issue, the *New Orleans States-Item* declared the Sterns to be that city's greatest philanthropists.[11]

The Stern Fund was radicalized after Edgar Stern's death in 1959, when it came under control of his son, Philip Stern (1926-1992).[12] Under the younger Stern, it became known as a foundation that bankrolled a wide range of liberal groups. Among the organizations it claimed to give initial grants to were the Center for Investigative Reporting, the Center for Science in the Public Interest, the Fund for Investigative Journalism, the Government Accountability Project, the Institute for Policy Studies, Midwest Academy, the National Insurance Consumers Organization, 9 to 5, and the Teamsters Rank and File Education and Legal Defense Fund.[13] "A consistent backer of radical, liberal and consumer causes, the Stern Fund has a list of beneficiaries that reads like a conservative's demonology: Ralph Nader, Cesar Chavez and Jane Fonda's anti-Army road show," noted a 1972 report in the *Wall Street Journal*. The fund largely became a champion of the left because of Philip Stern's "disenchantment with ordinary politics."[14]

On at least two occasions, Stern Fund grantees used their awards to attack Sears, Roebuck, the corporation whose wealth made the Stern Fund possible. In 1969, the National Welfare Rights Organization (NWRO), to which the Stern Fund had given $43,000 and to which other members of the Stern family had also contributed, launched a campaign to demand that Sears give at least $150 in credit to any welfare recipient who requested it. Sears, of course, refused the NWRO's demand, and the campaign prompted Edgar Stern Jr. to resign from the Stern Fund board.

In 1972, the Stern Fund debated whether to give a grant to the Council on Economic Priorities (CEP) to analyze the "social responsibility" of five giant retailers, including Sears. As part of the effort, CEP proposed that the Fund request that two of Julius Rosenwald's grandchildren on the Sears board, Edgar Stern, Jr. and Julius Rosenwald II, seek the company's cooperation. Edgar Stern, Jr. strenuously objected, stating that the government "is already doing a thorough job of analyzing corporations . . . in various areas of their activity."[15] However, Stern Fund trustees convinced the board that investigating Sears was in the spirit of Rosenwald's ideas, since he once complained that he was powerless to prevent discrimination at Sears, Roebuck.

After the Stern Fund voted 5-4 to give CEP money to investigate Sears, Monte Stern, one of Edgar Stern Jr.'s children, resigned from the Stern Fund board. "I disagreed with the direction of the Stern Fund," he told Edith Stern's biographer, Gerda Weissmann Klein, "as it turned from the liberal causes of the sixties to the more Leftist cause of promoting socialism."[16]

Ultimately, the Tax Reform Act of 1969 helped lead to the demise of the Stern Fund. First, it limited the percentage of income that individuals could use in declaring charitable tax deductions. Since the Fund had only a small endowment and was probably funded by annual donations from the Stern family, these conditions limited the Fund's grantmaking. In addition, much of the Stern Fund's revenue came from three 20-year charitable trusts established by Edgar Stern Sr. in the 1950s. Under the terms of these trusts, which expired between 1975 and 1978, income which went to the Stern Fund during the trusts' lifetime now went to Edgar Stern Sr.'s grandchildren.

Edith Rosenwald Stern made no contributions to the Stern Fund after 1969. In the early 1970s, the fund's lawyers decided the best course was to spend the fund's assets and terminate it in 1986.

The Stern Family Fund

The Stern Family Fund was created from the inheritance of Philip Stern and is controlled by his children. As of 1994, it had assets of $2.5 million and its directors included Ralph Nader and Sidney Wolfe. The fund is supposed to terminate by 2017, 25 years after Philip Stern's death. In a recent interview with the *Washington City Paper*, fund president David Stern says that his father imposed a term limit "because he did not want the dead hand to rule."[17]

The Aaron Diamond Foundation

Created in 1986 by Manhattan real estate developer Aaron Diamond (1910-1984), the Aaron Diamond Foundation had a ten-year time limit. It ceased to exist in December 1996, having spent over $200 million on causes including minority education and AIDS research. Its most notable program was the Aaron Diamond AIDS Research Center, created with a $25 million grant. In 1995, the center's researchers discovered a "cocktail" of several drugs called protease inhibitors that can substantially prolong the lives of AIDS patients. According to foundation executive director Vincent McGee, had the philanthropy not had a time limit, "it would have spent about $7 million annually in grants, ensuring that the research center could not have been created."[18]

The Vincent Astor Foundation

Vincent Astor (1888-1959) was a New York City real estate developer and publisher and owner of *Newsweek*. On his death, he left $67 million to his foundation and included only one instruction—that his money aid in "the alleviation of human misery." His widow, Brooke Astor (b. 1902), decided that since much of her husband's wealth was made in New York City, the Vincent Astor Foundation's programs should be centered in New York. Over the years, it distributed $175 million.

The Foundation was apparently created without a term limit. But in 1996, Brooke Astor, who had been the organization's only president, announced that it would spend itself out of existence in 1997. She thought it best to close the foundation since she and her husband had no children (although she has one child from an earlier marriage). "My son is not an Astor," she told the *New York Times*. "There is no family to leave it to. If you have children, like the Rockefellers did, then you leave it to your children. If you have no children, then I think it is a nice idea to close it [the foundation]."[19]

The Max C. Fleischmann Foundation

Max C. Fleischmann (1885-1951) was a major backer of *The New Yorker* and the heir of the inventor of Fleischmann's Yeast. His foundation, created in 1952, was designed to end 20 years after the death of his widow, Sarah Fleischmann, who died in 1960. The foundation donated $192 million during its lifetime, chiefly to education programs in Nevada, including scholarships for high school students and grants to the University of Nevada. The foundation closed on schedule in 1980.[20]

AFTERWORD FOR DONORS

What should donors do about the question of perpetuity?

In my opinion, they should create foundations that expire no later than 25 years after their deaths. There are several ways to do this. Lucille Markey, Julius Rosenwald, and Maurice Falk set a specific date by which their foundations had to terminate. U.A. Whitaker urged, but did not require, that the trustees of the Whitaker Foundation spend all the foundation's endowment by a future date, which they have chosen to do. Joseph Jacobs and his family have designated a period of time during which the Jacobs Family Foundation must terminate. And George Eastman decided not to create a foundation but to donate the bulk of his wealth during his lifetime. Remaining assets were dispersed to charities upon his death.

On the other hand, donors may agree with Michael Joyce that the lives of foundations can be safely extended beyond one generation without compromising donor intent. They may agree with James Buchanan Duke, who left detailed instructions on how the Duke Endowment, created 73 years ago, should distribute grants to charity—instructions that are still followed today. Another long-lived foundation that honors its donor's intentions is The JM Foundation, created in 1924 by Jeremiah Milbank. The Milbank family carefully instructs each generation about the wishes and ideals of Jeremiah Milbank.

Whatever a donor decides, he should make his wishes as explicit as possible. The Rockefellers, for example, may have disapproved of perpetuity in foundations, but they failed to express that disapproval in legally binding documents. Donors should also make up their own minds about how to donate their wealth without relying on peer pressure, family lawyers, or professional grantmakers. People who are smart enough to create fortunes are smart enough to decide how their wealth should be used.

NOTES

CHAPTER I

1. Cited in Martin Morse Wooster, *The Great Philanthropists and the Problem of "Donor Intent"* (Washington, DC: Capital Research Center, 1994), p. 29.

2. According to historian Joseph C. Goulden, Sage was notorious for his thriftiness. He once deducted 10 cents from an office boy's pay when the boy delivered a 15-cent sandwich instead of a nickel one. Sage also allegedly grabbed a clerk and used him as a shield when a madman with a bomb stormed into his office. After the explosion, the maimed clerk sued and won $40,000, but Sage appealed and appealed until a court ruled that he did not have to pay anything.

Sage once said that it was hard to please his critics. "If you don't hold onto your money, you are a spendthrift. If you give your money to charity, you are doing it for show. If you spend it for pictures, you are taking bread from the needy. When you die . . . if you leave it for charity, you should have done it while alive." Cited in Joseph C. Goulden, *The Money Givers* (New York: Random House, 1971), p. 45.

3. *Tax-Exempt Foundations: Hearings before the Select Committee to Investigate Tax-Exempt Foundations and Comparable Organizations* (Washington, DC: Government Printing Office, 1953), pp. 566, 568.

4. "Mr. Junior's Beneficences: An Audit," *Fortune*, January 1936.

5. Wooster, *op. cit.*, pp. 4-5.

6. "The Rockefeller Foundation," *Washington Post*, March 11, 1910.

7. Edward T. Devine, "The Rockefeller Foundation," *The Survey*, March 12, 1910.

8. *Ibid.*

9. *Information Furnished by the Rockefeller Foundation in Response to Questionnaires Submitted by United States Commission on Industrial Relations* (New York: Rockefeller Foundation, 1915), p. 88.

10. Edward T. Devine, "The Rockefeller Foundation," *The Survey*, January 14, 1911.

11. Rockefeller Foundation, *Information, op. cit.*, pp. 20-26.

12. "Kenyon Reveals Dark Plot," *New York Times*, May 2, 1914. The best analysis of Sen. Kenyon's activities is contained in John Lankford, *Congress and the Foundations in the Twentieth Century* (River Falls, WI: Wisconsin State University—River Falls, 1964), pp. 22-25.

13. *New York Times*, May 6, 1914. Sinclair explained that he did not actually want to murder Rockefeller, only to "kill the foul part of Rockefeller's spirit."

14. Frank P. Walsh, "Perilous Philanthropy," *The Independent*, August 23, 1915.

15. William H. Allen, "Suggestions Regarding Foundations Operating in More than One State—Prepared for the U.S. Industrial Relations Commission," *The Survey*, February 27, 1915.

16. "Mr. Junior's Beneficences," *op. cit.*

17. *Final Report of the Commission on Industrial Relations* (Washington, DC: Commission on Industrial Relations, 1915), pp. 120-121.

18. *Ibid.*, p. 261.

19. *Ibid.*, p. 388.

20. *Ibid.*, p. 392.

21. In 1917, Congress also allowed individuals to deduct charitable contributions from their income taxes.

22. Lankford, *op. cit.*, p. 32.

23. "I hope I have given you some idea of the difficulties which daily face the philanthropoid, to use the pet name applied to those who give away the money of others." Frederick P. Keppel, *The Foundation: Its Place in American Life* (New York: Macmillan, 1931), p. 58.

24. *Ibid.*, p. 3.

25. The trustees responded by preserving the form of the Guggenheim fellowships, but dramatically altered their nature. See Martin Morse Wooster, "The Guggenheim Foundation's Slide Towards Irrelevance," *Foundation Watch* (Washington, DC: Capital Research Center), March 1997.

26. Cited in M.M. Chambers, *Charters of Philanthropies: A Study of Selected Trust Instruments, Charters, By-Laws, and Court Decisions* (New York: Carnegie Endowment for the Advancement of Teaching, 1948), p. 138.

27. *Ibid.*, p. 217.

28. *Ibid.*, p. 32.

29. Henry S. Pritchett, "The Use and Abuse of Endowments," *Atlantic Monthly*, December 1929.

30. *Ibid.*

31. Cited in F. Emerson Andrews, *Foundation Watcher* (Lancaster, PA: Franklin and Marshall College, 1973), p. 132.

32. Among the intellectuals the Reece Committee extensively investigated were philosopher Mortimer Adler, anthropologist Ruth Benedict, novelists Pearl S. Buck, James T. Farrell, and Norman Mailer, choreographers Agnes De Mille and Martha Graham, and historians Henry Steele Commager and Arthur M. Schlesinger, Jr.

33. *Tax-Exempt Foundations: Report of the Special Committee to Investigate Tax-Exempt Foundations and Charitable Organizations* (Washington, DC: Government Printing Office, 1954), p. 224.

34. *Ibid.*, p. 216.

35. *Ibid.*, p. 214.

36. Bernard DeVoto, "Guilt by Distinction," *Harper's Magazine*, April 1955.

37. Rep. Wright Patman, "The Free-Wheeling Foundations," *The Progressive*, June 1967.

38. *Ibid.*

39. *Treasury Department Report on Private Foundations* (Washington, DC: Government Printing Office, 1965), p. 54.

40. *Ibid.*, p. 13.

41. *Ibid.*, p. 56.

42. Thomas C. Reeves, *Foundations Under Fire* (Ithaca, NY: Cornell University Press, 1970), p. 33.

43. The most authoritative analysis of this provision is in William H. Smith and Carolyn P. Chiechi, *Private Foundations: Before and After the Tax Reform Act of 1969* (Washington, DC: American Enterprise Institute, 1974), pp. 58-64.

44. *Foundations, Private Giving, and Public Policy: Report and Recommendations of the Commission on Foundations and Private Philanthropy*

(Chicago: University of Chicago Press, 1970), p. 172.

45. *Ibid.*, p. 172.

46. Heather R. Higgins, "The Case for Limiting the Lives of Foundations," in *Should Foundations Exist in Perpetuity?* (Indianapolis: Philanthropy Roundtable, 1996), p. 29.

47. Michael Joyce, "The Case for Perpetuity," in *ibid.*, p. 39.

48. *Ibid.*, pp. 42-43.

CHAPTER II

1. Arthur Gleason, "A Man Who Has Fun with His Wealth," *Hearst's International*, September 1923.

2. Cited in Elizabeth Brayer, *George Eastman: A Biography* (Baltimore: Johns Hopkins University Press, 1996), p. x.

3. Carl W. Ackerman, *George Eastman* (Boston: Houghton Mifflin, 1930), p. 332.

4. Ackerman's book, allegedly a biography, more closely resembles an annotated collection of Eastman's papers.

5. B.C. Forbes, "What Makes 'The Mysterious Mr. Smith' One of the Country's Fifty Greatest Business Men," *World Outlook*, July 1920.

6. Kodak's engineers tried to perfect color film during Eastman's lifetime, but Kodachrome film did not become widely available until 1935, three years after Eastman's death.

7. Cited in Henry Clune, *Main Street Beat* (New York: Norton, 1947), p. 211. Clune's novel about Eastman is *By His Own Hand* (New York: Macmillan, 1952).

8. B.C. Forbes, *Men Who Are Making America* (New York: B.C. Forbes, 1917), pp. 91-92.

9. Mrs. Rush Rhees, "Rochester at the Turn of the Century," in *The Rochester Historical Society Publications*, vol. 20, 1942, p. 82.

10. *Ibid.*, pp. 82-83. Brayer, *op. cit.*, p. 605. Historian Arthur F. May notes that Rhees and Eastman were so reserved that they did not address each other by their first names until 1925, 23 years after they first met. May, *A History of the University of Rochester*, 1850-1962 (Rochester: University of Rochester, 1977), p. 130.

11. Cited in Henry Greenleaf Pearson, *Richard Cockburn Maclaurin: President of the Massachusetts Institute of Technology, 1909-1920* (New York: Macmillan, 1937), p. 124.

12. *Ibid.*, pp. 125-126.

13. *Ibid.*, p. 128.

14. Cited in Ackerman, *op. cit.*, p. 348.

15. Eastman attended the event because he had publicly given M.I.T. $300,000. Brayer, *op. cit.*, p. 342.

16. Cited in Brayer, *op. cit.*, p. 345.

17. William L. Chenery, "Philanthropy Under a Bushel," *New York Times*, March 21, 1920.

18. Claude Bragdon, *More Lives than One* (New York: Knopf, 1938), p. 77.

19. George W. Corner, *George Hoyt Whipple and His Friends: The Life-Story of a Nobel Prize Pathologist* (Philadelphia: J.B. Lippincott, 1963), p. 161.

20. Cited in Ackerman, *op. cit.*, p. 422.

21. Brayer, *op. cit.*, p. 505.

22. Blake McKelvey, *Rochester: An Emerging Metropolis, 1925-1961* (Rochester: Christopher Press, 1961), p. 2.

23. Eastman was a Republican who served as a presidential elector three times—for William McKinley in 1901, Charles Evans Hughes in 1917, and Herbert Hoover in 1929. But he never sought to influence national public policy. He limited his contributions to the Republican Party to $1,000 a year or less—"about what he would give to a small Rochester charity," Brayer notes. He was, however, an admirer of the Institute of Government Research, a predecessor of the Brookings Institution, and contributed about $65,000 to Brookings over a 16-year period. (Brayer, *op. cit.*, p. 377.)

24. Forbes, *op. cit.*, p. 92.

25. Gleason, *op. cit.*

26. Brayer, *op. cit.*, p. 473.

27. *Ibid.*, p. 474.

28. *Ibid.*, p. 475.

29. *Ibid.*, p. 605.

30. Cited in "Given Away—The Duke and Eastman Millions," *op. cit.*

CHAPTER III

1. Daniel J. Boorstin, "Transforming the Charitable Spirit: From Conscience to Community," in *The Julius Rosenwald Centennial* (Chicago: University of Chicago Press, 1963), pp. 30-31.

2. In the 1930s, Roebuck rejoined the firm in a minor capacity.

3. Cited in Boris Emmet and John E. Jench, *Catalogues and Counters: A History of Sears, Roebuck and Company* (Chicago: University of Chicago Press, 1950) p. 49.

4. *Ibid.*, p. 130.

5. Cited in James C. Worthy, *Shaping an American Institution: Robert E. Wood and Sears, Roebuck,* 2nd ed. (New York: New American Library, 1986), p. 27.

6. Cited in Emmet and Jench, p. 180.

7. Louis E. Asher and Edith Heal, *Send No Money* (Chicago: Argus Books, 1942), p. 160.

8. Waldemar Nielsen, "Radical Robber Barons," *City Journal, Spring* 1997.

9. Sherman C. Kingsley, "Julius Rosenwald," *The American Magazine,* June 1912.

10. Cited in M.R. Werner, *Julius Rosenwald: The Life of a Practical Humanitarian* (New York: Harper, 1939), p. 115.

11. August Meier, *Negro Thought in America 1880-1915: Racial Ideologies in the Age of Booker T. Washington* (Ann Arbor, Michigan: University of Michigan Press, 1963), p. 114.

12. Cited in Louis R. Harlan, ed., *The Booker T. Washington Papers: Volume 1, The Autobiographical Writings* (Urbana, Illinois: University of Illinois Press, 1972), p. xxx.

13. Louis R. Harlan and Raymond W. Smock, eds., *The Booker T. Washington Papers: Volume 11, 1911-12* (Urbana, Illinois: University of Illinois

Press, 1981), p. 576.

14. Booker T. Washington, "A Remarkable Triple Alliance: How a Jew Is Helping the Negro Through the Y.M.C.A.," *Outlook*, October 28, 1914.

15. Cited in Boorstin, p. 23.

16. *Ibid.*, p. 26.

17. Werner, pp. 321-322.

18. *Ibid.*, p. 323.

19. Cited in Samuel Joseph, *History of the Baron de Hirsch Fund: The Americanization of the Jewish Immigrant* (Philadelphia: Jewish Publication Society, 1935), p. 280.

20. *Ibid.*, pp. 168-169.

21. Edwin R. Embree and Julia Waxman, *Investment in People: The Story of the Julius Rosenwald Fund* (New York: Harper, 1948), pp. 28-29.

22. *Ibid.*, p. 31.

23. Cited in Werner, pp. 325-326.

24. Julius Rosenwald, "Principles of Public Giving," *Atlantic Monthly*, May 1929.

25. *Ibid.*

26. *Ibid.*

27. *Ibid.*

28. Cited in Julius Rosenwald, "The Trend Away from Perpetuities," *Atlantic Monthly*, December 1930.

29. Edward A. Filene, "Ten Key Men of Business," *North American Review*, April 1930.

30. Werner, p. 326.

31. Agnes Lynch Starrett, *The Maurice and Laura Falk Foundation: A Private Fortune—A Public Trust* (Pittsburgh: Historical Society of Western Pennsylvania, 1966), p. 9.

32. *Ibid.*, p. 246.

33. *Ibid.*, p. 224.

34. Embree and Waxman, p. 208.

35. Rosenwald, "The Trend Away from Perpetuities."

36. Nearly 70 years later, Kraft General Foods still owns all these brands.

37. Ann Hagedorn Auerbach, *Wild Ride: The Rise and Tragic Fall of Calumet Farm, Inc., America's Premier Racing Dynasty* (New York: Henry Holt, 1994), p. 43.

38. Accounts differ as to whether Warren Wright, Jr. was Lucille Wright Markey's son or stepson.

39. Auerbach, *op. cit.*, p. 58.

40. *Ibid.*, p. 60.

41. According to Auerbach, Markey would throw all letters not addressed to "Admiral Markey" into the trash. Auerbach, *op. cit.*, p. 65.

42. Irene Nolan, "First Lady of Calumet," *Louisville Courier-Journal*, May 1, 1971.

43. Auerbach, *op. cit.*, p. 96.

44. *Lucille P. Markey Charitable Trust: Final Report*, 1983-1996 (Miami: Lucille P. Markey Charitable Trust, 1997), p. 4.

45. *Ibid.*, p. 4.

46. *Ibid*, p. 51.

47. Margaria Fichtner, "Mrs. Markey's Money," *Miami Herald*, December 2, 1990.

48. Julie L. Nicklin, "By 1997, When It Must Shut Down, Markey Trust Expects to Have Awarded $450 Million for Biomedical Research," *Chronicle of Higher Education*, September 4, 1991.

49. Julie L. Nicklin, "Lucille P. Markey Trust Will Close this Year," *Chronicle of Higher Education*, February 28, 1997.

CHAPTER IV

1. Joseph J. Jacobs, *The Compassionate Conservative: Seeking Responsibility and Human Dignity* (Lafayette, LA: Huntington House, 1996), p. 287.

2. Joseph J. Jacobs, *The Anatomy of an Entrepreneur: Family, Culture, and Ethics* (San Francisco: Institute for Contemporary Studies, 1991), p. 22.

3. *Ibid.*, p. 41.

4. In one of his experiments on DDT, Jacobs writes that after a stretch of 48 hours on the job, a valve was accidentally opened, ensuring that "I was completely covered with hot DDT in a solvent. When it dried, I had DDT an inch thick all over me—in my hair, in my ears, and in my mouth and nose. I took off my clothes, showered, and scrubbed, but probably ingested more DDT during that one incident than is today considered safe to absorb over many years."

This incident has led Jacobs to condemn environmentalists who favored banning DDT as people who "in their elitist arrogance, do more harm than good. I have never seen the harmful effects of DDT compared to the enormous good it has done and could still do." Jacobs, *Anatomy*, pp. 86-87.

5. *Ibid.*, p. 87.

6. *Ibid.*, p. 106.

7. In 1963, Jacobs Engineering spun off its business as a manufacturer's representative.

8. Joseph J. Jacobs, *Jacobs Engineering Group Inc.: A Story of Pride, Reputation, and Integrity* (New York: Newcomen Society, 1980), p. 22.

9. Jacobs, *Anatomy*, p. 242.

10. *Ibid.*, p. 243.

11. I provided research to Jacobs for *The Compassionate Conservative.*

12. Jacobs, *The Compassionate Conservative*, p. 19.

13. *Ibid.*, p. 55.

14. *Ibid.*, p. 283.

15. *Ibid.*, pp. 284-285.

16. Letter from Joseph Jacobs, dated October 31, 1997.

17. "A Family Foundation Finds Its Way," *Family Money*, Winter 1996.

18. "A Family Affair, Jacobs Style," *Philanthropy*, Spring 1995.

19. "A Family Foundation Finds Its Way."

20. Jacobs, *The Compassionate Conservative*, p. xii.

21. Jacobs Family Foundation, 1995 annual report (San Diego: Jacobs Family Foundation, 1996), p. 18.

22. Letter dated August 18, 1997.

CHAPTER V

1. "Uncas Whitaker's Better Mousetrap," *Forbes*, May 1, 1969.
2. Bern Sharfman, *The AMP Story: Right Connections* (Harrisburg, PA: AMP, 1994), pp. 60-61.
3. W.H. Cohn, *The End Is Just the Beginning: U.A. Whitaker, Biography of an Engineer* (Pittsburgh: Carnegie-Mellon University Press, 1980), p. 65.
4. *Ibid.*, p. 233.
5. *Ibid.*, p. 267.
6. *Ibid.*, p. 261.
7. Daniel S. Greenberg, "The Finite Foundation," *Washington Post*, June 29, 1996.
8. Whitaker Foundation, 1995 annual report (Rosslyn, VA: Whitaker Foundation, 1996), p. 2.
9. *Ibid.*, pp. 2-3.
10. *The Stern Fund: The Story of a Progressive Family Foundation* (New York: Institute for Media Analyses, 1992), p. 3.
11. John Pope, "Stern Wealth 'An Investment in Humanity,'" *New Orleans Times-Picayune / States-Item,* November 12, 1980. One building at Dillard University is named for Julius Rosenwald and another for Edgar Stern Sr.
12. I edited Philip Stern's last, posthumous book, *Still the Best Congress Money Can Buy* (Regnery, 1992) and met with him several times while editing the manuscript.
13. Stern Family Fund, *op. cit.*, pp. 161-163.
14. Frederick Andrews, "Maverick Foundation Challenges Status Quo by Financing Gadflies," *Wall Street Journal*, August 4, 1972. In 1972 the Stern Fund had assets of $6 million and gave grants of $600,000 annually.
15. Stern Family Fund, *op. cit.*, p. 113.
16. Monte Stern, quoted in Gerda Weissmann Klein, *A Passion for Sharing: The Life of Edith Rosenwald Stern* (Chappaqua, NY: Rossel Books, 1984), p. 224.
17. David Stern, quoted in Juliet Eilperin, "Phil Stern: Muckraking with Dollars," *Washington City Paper,* January 28, 1994.
18. Ernest Tollerson, "Charities Debate Strategy of a Limited Time Span for Gifts," *New York Times*, December 19, 1996. See also Gerald A. Achstatter, "Philanthropy's Diamonds," *Investors Business Daily*, March 7, 1997.
19. Brooke Astor, quoted Geraldine Fabrikant, "Brooke Astor Has a Year's Worth of Giving Left," *New York Times*, December 18, 1996. See also Brendan Gill, "A Party for Brooke," *The New Yorker,* April 21, 1997.
20. The most detailed account of the Max C. Fleischmann Foundation's grantmaking is in Sessions S. Wheeler, *Gentleman in the Outdoors: A Portrait of Max C. Fleischmann* (Reno: University of Nevada Press, 1985), pp. 133-146.

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Capital Research Center (CRC) was established in 1984 to study nonprofit organizations, with a special focus on reviving the American traditions of charity, philanthropy, and voluntarism.

Since the launching of the Great Society, thousands of nonprofit advocacy groups have emerged, often promoting more government welfare programs in areas once considered the domain of families, charities, neighborhood associations, and other voluntary organizations. The growth of government has increasingly supplanted the voluntary action and community-based problem-solving that the great observer of early American society, Alexis de Tocqueville, recognized as a defining feature of our country.

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"If a man has wealth, he has to make a choice, because there is the money heaping up. He can keep it together in a bunch, and then leave it for others to administer after he is dead. Or he can get it into action and have fun, while he is still alive. I prefer getting it into action and adapting it to human needs, and making the plan work."

-George Eastman
Eastman Kodak

"I think it is inevitable that as trustees and officers of perpetuities grow old they become more concerned to conserve the funds in their care than to wring from those funds the greatest possible usefulness. That tendency is evident already in some of the foundations, and as time goes on it will not lessen but increase. The cure for this disease is a radical operation. If the funds must exhaust themselves within a generation, no bureaucracy is likely to develop around them."

-Julius Rosenwald
Sears, Roebuck

"I believe that, after the first generation, inherited wealth loses the spirit and the values of the people who earned that wealth. There comes a disconnection between the funds and the source of the funds. . . . The culture of those in charge becomes not too dissimilar from the culture of the government bureaucracies who dispense funds confiscated from the taxpayers."

-Joseph J. Jacobs
Jacobs Engineering Group

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