Ethics and Philanthropy

(Adapted from a presentation to the Associated Grantmakers of Massachusetts, Inc., March 18, 1982)

"I wonder whether giving in our tradition has become an impersonal way of relieving ourselves of responsibility for others rather than personally accepting it."

I'm counting, in this presentation, on your open-mindedness—an open-mindedness that for better or worse seems to go with philanthropy. At the Ford Foundation some years ago, one of my colleagues explained what a philanthropoid was. "A philanthopoid," he said, "is like a monkey in a cage—present him with anything and he'll consider it seriously."

Ethics and philanthropy—I'm not sure exactly why the topic appealed to those who organized this meeting. The topic appealed to me because ethics is the one course I've chosen to teach at the Graduate School of Education. My feeling is that if deans are to teach anything, they ought symbolically to deal with the ethical dimensions of the profession they represent.

Ethics, to a philosopher, is an arena for clear systematic thinking. Ethics for a practitioner is something far more mercurial. When one finds oneself in a real-life situation, sometimes it's almost impossible to say with certainty that there is an ethical dilemma or dimension to the case and even more difficult to prescribe how one should act in that circumstance.

I want to deal today at case level with the question of ethics and philanthropy. Let me start by saying that when you put two words like ethics and philanthropy together, you're in trouble: each of them resists definition, and when combined they can be totally elusive.

Take ethics first. Ethics is a study of what is "right." I put "right" in quotation marks because when we talk about ethics, we talk about a sense in us that goes far beyond what is simply legal. Yes, we do have legislated ethics, codes of ethics. We also have laws that tell us how we can behave and not behave. But in our ambition to be ethical, we're expressing a sense that transcends what is lawful or even what may be socially acceptable. We are indeed stretching toward that seemingly innate, surely elusive ideal of acting nobly and of being judged as doing so, not least by ourselves. That constant urge keeps testing conventional measures, and over time—in any caring society—tends in an evolutionary way to raise the standards of behavior that have been codified in law or custom.

Next, philanthropy—also teasingly imprecise. Literally, as derived from the Greek, it means a love of humankind. It assumes that our actions as philanthropists stem from love and caring and not from some baser motives. Those baser motives (which are usually submerged in our public rhetoric) include self-interest, personal aggrandizement, power, a calculus of advantage like tax benefits, and in a subtle way professions of the public interest that carry a whiff of the egocentric. The latter is one of the vulnerabilities of professionalized philanthropy, where "the public interest" more and more has become a touchstone for determining whether one's actions and choices are proper, right and noble.

If one starts from the literal meaning of philanthropy, the interesting question arises as to whether we're knee-deep in some contradictions in terms. For example, is corporate philanthropy one such contradiction? Simply, the argument would go [that] corporate philanthropy historically has had to justify itself by demonstrating some benefit to the giver. If indeed philanthropy is a matter of altruism—a love and caring for other people—can the word philanthropy logically be applied to corporate giving?

Another possible contradiction is implicit in the concept of professional philanthropy, which over the last century has emerged as a recognizable career. Philanthropy originally was a one-to-one act of charitable giving. It is now practiced almost impersonally—in some cases by large bureaucracies—and by a code of behavior that frowns on becoming emotionally involved with its clientele. Dispassionate analysis is the hallmark of the trade, which is plied not by, but on behalf of, a now-distant donor. Can you be philanthropic and be dispassionate? Or does the love of human beings, which is a passion in itself, require a dimension of human feeling outside the reach of professional standards and bureaucratized donors?

Could it also be a contradiction in terms to talk about tax-induced giving? Is it giving if it's tax-induced? With modern philanthropy, both personal and corporate, now inextricably entwined in the tax system, we've taken to calculating with scientific precision how to induce giving. The Filer Commission was based on some very sophisticated analyses by economist Martin Feldstein of the philanthropic consequences and efficiency of present and proposed tax incentives. The question is, is that really philanthropy? Or are we measuring another motive than compassion?

It's interesting that philanthropists have never produced a code of ethics. It's one of the major professions without one; curiously, you're joined in that respect by philosophers. Could it be that both professions deem themselves so self-justifying that they don't need codes of ethics? Or is it simply that philanthropists are so diverse that there is no possibility of framing and enforcing common standards of behavior? That diversity certainly accounts for part of the Council on Foundations' historic reluctance to legislate and enforce a code of ethics for its "trade association." Instead, it has relied on persuasion and the force of heralded example; thus its featuring of pace-setting and best practices.

This gentler process of pace-setting from within the profession has been outstripped by two external pressures on philanthropy to raise its behavioral standards. One is a slow but steady accumulation of public feelings about how philanthropy ought to be practiced in an evolving democracy. The other is legislation [that] periodically crystallized those feelings, most commonly the rhythmic outbreaks of congressional criticism, from Walsh to Patman,[1] leading to legislated codes such as the Tax Reform Act of 1969. No accident that such a law was passed, or that its terms and tone were so punitive.

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[1] Frank Walsh was chief counsel for the first congressional commission to investigate large U.S. foundations, including the Carnegie and Rockefeller foundations. After holding hearings in 1915, the Walsh Commission made a number of recommendations intended to protect the public interest which were never

A century's scan of philanthropy shows some significant differences—and, I would argue, improvements—in the way it goes about its business. A code of ethics, if not yet explicit, is clearly evolving: a public, sometimes legislated, sometimes self-imposed, set of expectations about how philanthropists should behave. Recent historical essays etch the sharp contrast between the imperious style of the early benefactors (Carnegie, Rockefeller, et al.) and the studied social sensitivity of their modern counterparts. The magnates of those early days seldom bothered to delineate where business left off and philanthropy began—mostly, the two were carried on in the same offices. Fear of the law, and a sense of what's proper, nowadays would blow the whistle on such conduct.

Clearly, [there is] an evolving code of behavior. It may never become fixed or explicit. An argument can be made that an articulated code would stifle the freedom and discretion that are the essence of philanthropy, that an unwritten constitution capturing the gist rather than the exegesis of noble conduct is what we should be striving for. Whatever the form, I am convinced an evolutionary process is at work. Some indication of the agenda of issues being worked out can be gained by asking the following questions. You may disagree and want to add questions of your own. My purpose here is simply to crystallize and constructively to provoke.

Is there an ethical requirement to give, and if so, how much, and in what form?

We all know it's deep within most cultural and religious traditions to give—a concept rooted within Judaic, Christian, and Moslem religions. It's also a part of oriental cultures, although my sense is that the practice in China and Japan is more confined (to established

implemented. Congressman Wright Patman (D-Texas), chairman of the House Committee on Banking and Currency for forty years, waged an anti-foundation campaign during the early 1960s. He believed that wealthy east coast families exploited legal loopholes available to foundations in order to protect their fortunes, thus unfairly competing against emerging fortunes in the south. Ylvisaker often speculated that Patman's intense suspicion and contempt for the wealthy and their foundations stemmed from a childhood experience—Patman's father's small grocery store was forced out of business when a large east coast supermarket chain moved into his Texas hometown.

relationships) and is accompanied by a considered set of reciprocal obligations and responsibilities (e.g., the obligation one takes on in saving another person's life). I'll return to that sense of responsibility later. For the moment, let me add it's made me wonder whether giving in our tradition has become an impersonal way of relieving ourselves of responsibility for others rather than personally accepting it. A subtle but very important difference.

Granted the cultural heritage of a personal obligation to give, is that also an ethical imperative for corporations? A century ago, the answer was a definite No; as Britain's Lord Justice Bowen vehemently declared, "Charity has no place at the directors' table." Yet a bit later (1883), he relented, ruling that charity may have a place at the directors' table *if* it involved a direct benefit to the corporations, i.e., a demonstrable self-interest.

Bowen's dictum wedged an opening that others would progressively widen. Andrew Carnegie's homilies on the social obligations of wealth hastened the trend in the United States, setting an example for other heads of amassing corporate affluence.

During those formative years, it was hard to distinguish personal and corporate philanthropy. But not after enactment of the income tax, and in particular passage of the Tax Act of 1935 which explicitly allowed corporations to deduct 5 percent (now 10 percent) of pretax profits, in the form of charitable contributions. Corporate giving was now not only legitimate, it was to be encouraged by public policy. The state of Delaware—the legal home of a host of American corporations—acted in consort, acknowledging the propriety of giving in its charters of incorporation.

But Bowen's rule of a demonstrable self-interest still persisted as a hard-line restraint. Then came the softening interpretation by the New Jersey Supreme Court in the 1950s, not only affirming the right of a corporation to give general support to a university (Princeton), but declaring such support to be "a solemn duty." That decision was announced just as the excess profits tax of the Korean War period spawned a myriad of new corporate foundations; it opened for them a far broader range of charitable activity. Civil violence and social activism in the 1960s further accelerated corporate giving, in both scope and volume. Now it's commonly accepted that corporations *should* give—an obligation President Reagan has turned into an operational premise of a conservative administration. The requirement of a demonstrable self-interest remains, but has been relaxed into a Cheshire-cat smile by such socially sensitive corporations as Dayton-Hudson: "We serve our own interest by advancing the community's interest."

Giving in the general interest is finding its place in the corporate ethic. But not without challenge. It is still a leadership practice, growled at and begrudged by many a corporation. [Economist] Milton Friedman[2] remains an articulate skeptic. And an interesting theoretical argument has been raised by one Christopher Dukakis in his continuing opposition to AT&T's social contributions. They may, he contends, have been justified before the era when the federal government finally accepted its social responsibilities. But now that the feds are into social security, etc., corporations should stick to their immediate business.

However one feels about Dukakis's principle, President Reagan and his campaign of retrenchment seem to have dulled its practical edge. They've also placed corporations on the defensive, having to explain why they're *not* giving. So too have the spreading growth of the "5 percent" and "2 percent" clubs[3] and the tenacious pressures being brought by shareholders such as L. Wien of New York City, who is haunting annual meetings with his persistent cry for increased contributions.

The ethic of giving seems accepted. But there is still no consensus of how much or in what form. Tithing is still the rule for certain religious groups; Senator Kennedy's recent amendment to the tax laws has also set 10 percent as a seemingly impossible norm for corporations. Even the "5 percent club" is an exclusive one in the corporate sector; attempts to spread its membership have met with fierce resistance among those who see 1 percent or 2 percent as a proper target. Debate also continues about the form of giving, a

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[2] Nobel laureate economist Milton Friedman objected to the use of corporate dollars for community purposes on the grounds that corporate executives had neither the knowledge nor the political license to make those decisions.

[3] The 5 percent and 2 percent clubs refer to corporations committed to contributing 5 percent and 2 percent of pretax net income to charitable organizations and causes.

debate symbolized in the contrast between Dayton-Hudson's emphasis on grants and Control Data's stress on contributed services and direct involvement.

Is there an ethical imperative for philanthropy not to take the easier way out?

The question has become far more insistent, and much harder to avoid, in this emerging era of triage, a time of hardening conditions and choices. Thousands of charitable agencies will be facing the prospect of going under; meanwhile, social needs accumulate—witness the growing number of homeless, a million Americans adrift on our streets. In that environment, is it ethical for an organized philanthropy to define its way out of those hard realities by declaring "safer" programs and priorities? Whether it will ever emerge as unethical to avoid those choices, God only knows. But I predict that we will get into a lot more public debate with questions raised about corporations, foundations, and individuals remaining aloof from the turbulence and trauma of contemporary social triage.

Is it ethical to sidestep public accountability?

For example, grantmakers have been required since 1969 to file [IRS Form] 990s with the federal government. But in an age of public accountability, that is a minimal obligation. What about annual reports, public meetings, equal access, open communications? Current expectations are that philanthropy should be public, reachable, communicative, and accountable.

Is it ethical in an age of democratization to continue self-perpetuating boards [that] may or may not reflect the various interests of society?

Within the Filer Commission that question was hotly debated—some insisting that boards should be open and representative, others contending that philanthropy is a private, independent affair and should not be subjected to such constraints. It was in the midst of that debate that the Donee Group emerged[4]—a harbinger, I think, of

[4] As the Filer Commission began its work, some were concerned that it was "too elitist" and that the concerns and work of more broad-based or smaller nonprofits

an emerging public expectation (if not yet an ethical imperative) that philanthropy in both its governance and its programming demonstrate that it is in touch with and responsive to a broad range of social issues and constituencies. In the face of that expectation, surely it will be hard to justify the easy money that has (less frequently now than in the past) flowed from philanthropy to friendly clients, financial trustees, and legal advisors.

How ethical is giving that stems from self-aggrandizement?

Philanthropy is the love of other people, not one's self. Yet one of the common behavior patterns in philanthropy is to seek recognition for the donor, whether a person, corporation, or foundation. There are subtle and not-so-subtle expressions of that motive, ranging from statues in the park to press releases designed for headlines.

How appropriate is it to use foundation grants to substitute for personal giving or to extend networks of control?

Robert Anderson of ARCO, one of the notable figures in corporate philanthropy, is now being questioned on why it was that nine out of fifteen grants and a major part of ARCO's giving last year [1981] went to charities on whose boards he served. (This and a number of other examples are drawn from a recent IRRC [Investor Responsibility Research Center] publication on corporate philanthropy.)

Considerations of equity, and in that sense of ethics, might also be raised when favorite causes and institutions are singled out for gifts by foundations whose trustees have a personal stake and might substitute that grant by a contribution of their own. Common examples are grants to schools and colleges [that] trustees and/or their families attended, grants made without an annotated programmatic rationale or competitive access and consideration for other potential recipients in the same category.

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were likely to be overlooked. The commission then funded a separate, parallel investigation (the name Donee Group reflects the grant-receiving status of many smaller nonprofits) into issues important to such organizations. The Donee Group's report to the Filer Commission recommended—among other things—that Filer advocate open reporting by foundations and add to its membership representatives of smaller, minority-based and female-based nonprofits.

Now I'm walking on some territory that is extraordinarily sensitive. Charitable activity historically has always meant freedom to give with the added presumption that personal predilection, even whim and fancy, are a legitimate part of the game. But when wealth is translated into organized philanthropy with protected status in public policy, a new set of rules and expectations come into existence, and I detect a new ethical code barking at the traditional culture.

How legitimate is it to use philanthropy to buy goodwill?

What is to be said if a national retailing chain times its store openings with the announcement of gifts by its foundation to charities in those communities? A questionable use of philanthropy, or appropriate corporate and foundation behavior? What is to be said about Kellogg, which as a charitable program provides nutritional information to schools and features the eating of cereals? Or about Mobil, Exxon, ARCO, and Gulf, who together in 1980 brought 72 percent of the prime time of public broadcasting during the period when they were under attack for excess earnings?

What about Nestlé and its charitable financing of the Coordinating Center for Nutrition in Washington? That center has served to counter the criticism coming from the World Health Organization and representatives of the World Council on Churches—criticism focused on the advertising and sale of Nestlé products as substitutes for breastfeeding among Third World populations.

What about Freddie Richmond, congressman, industrialist, and philanthropist, who translated corporate profits into foundation grants spread generously through his congressional district?

What about the spreading support by corporate philanthropy for the teaching of "free enterprise" in American colleges and universities? Given the hostility that corporate leaders have sensed on the nation's campuses, that response is understandable. But is it an appropriate act of philanthropy, viewed either from the position of the corporate donor or of the university?

What about *Time* [Magazine]'s philanthropic investment through museums in the King Tut exhibition? Philanthropy or commercialization?

What obligations does one who gives have to one who receives?

This is the most fundamental of all ethical questions to be asked of philanthropy. It's also the most difficult; it admits of no easy answers. One might start by recalling the ancient Chinese admonition that in saving a person's life, one accepts a continuing responsibility.

If indeed giving involves an obligation, what's the nature of that ethical requirement? One more case in the ethics of power: the ethics of helping. The act of helping, implying the capacity to help, is an expression of power. The question is, does the exercise of that power become—explicitly, subtly, unintentionally—a process of manipulation and control, or a gift of autonomy, assurance of dignity, integrity and mutual respect?

Those are abstractions, and at that level none of us has difficulty choosing and expressing our values. But in the everyday of our grant negotiations, motive and effect tend to become hazy, and the route to ethical philanthropy obscured. Again some cases: two current situations in which the power of helping is being put to the test.

First, [there is] the financial predicament of universities now struggling to maintain their integrity while raising the money they need for research. Early in the 1970s, political animus—in one notable case voiced by President Nixon against the antiwar stance of Jerome Wiesner[5]—showed the vulnerability of heavy reliance on government for funding. Counterbalancing support has been sought from industry, now attracted by breakthroughs in biological and electronic technology. Movement of corporate grants toward university research labs has been swift and massive, in forms and under terms that have made many a scientist and academic administrator

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[5] Jerome Wiesner (1915–1994) was a professor at MIT and served as its president in the 1970s. His early work on radar and electronic components used in atomic bomb testing greatly advanced military technology, but these experiences may have led to his pacifism later in life. As an advocate of nuclear arms control, Wiesner helped establish the U.S. Arms Control and Disarmament Agency and to restrict deployment of antiballistic missile systems. His efforts led to the 1963 Limited Nuclear Test Ban Treaty signed by the United States, the Soviet Union, and Great Britain.

fearful of flooding and erosion of the scholarly ethic. Sophistication in negotiating such support is also growing with encouraging rapidity. But there is still reason to wonder whether philanthropy emanating from and driven by the market will be able to balance its own imperatives with those which assure fair and open inquiry within the university.

The second theater for testing the sensitivity and spirit of philanthropy is the triage now forced upon the nonprofit world by recession and Reaganomics. Those who pay the piper can now easily call the tune; the temptation to dictate and direct will be enormous.

This is not to say that the helping hand should suddenly go limp—leverage and a firm lead are part of what philanthropy has to contribute—but to warn that arrogance is the occupational hazard and original sin of this profession. Irving Kristol was right in saying that not so long ago.[6]

Where I thought he was wrong was in not acknowledging his own—a case of the pot calling the kettle black. When I chided him for that, his winning response came quickly: "But Paul, I never pretended to the virtue of humility."

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[6] Social critic Irving Kristol, known as the father of the neoconservative movement (he began as a socialist), has written essays and books on politics, economics, society, religion, culture, literature, education, and social values. In 1965, he founded the magazine *The Public Interest*, in part because he found contemporary conservative intellectual thought insufficiently analytical, too hostile to the realities of American politics, and too willing to ignore civic responsibility.