



## The Filer Commission in Perspective

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*"Philanthropy will not be free, or open, or  
accessible, or accountable, or in touch unless it has  
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persevering. But also [it must have] a sense of  
humor."*

I've been sort of a house radical in philanthropy for some time. Continuously, when you reach out the hand of friendship I bite it. And tonight you may feel is no exception.

But I want to explain my motive in anything that sounds critical. I respect the philanthropic process very deeply. Many have underestimated the place of philanthropy in modern society, too often seeing it in very provincial and parochial ways. Tonight, I have chosen the topic "The Filer Commission in Perspective," in order to delineate more sharply the philanthropic process as I see it evolving in the United States and, significantly enough, in other cultures as well.

The Commission on Private Philanthropy and Public Needs can be faulted. But I think it will stand as a landmark in the evolution of American philanthropy. I speak more as historian than as an immediate critic, trying to see it in the perspective of a century of developing American institutions.

Something happened about 100 years ago. After the Civil War, affluence came to America, and large corporate structures began to emerge. A process that was essentially one of personal benevolence suddenly developed into something more. We began to bureaucratize both the giving and the getting in philanthropy, separating at an

increasing distance the original donor from the ultimate recipient. This move toward bureaucratized philanthropy is associated, obviously, with the complexity of American life, with specialization and the industrial model; in effect, we have industrialized philanthropy.

Something else happened during this period. The importance and the purpose of the single act of giving began to fade, and other purposes beyond helping one individual began to emerge. Bureaucratized foundations began talking "programmatically," saying that they would like to change this or that feature of American society, move toward new policy, leverage social change. Enough money was put together so that in an organized way we could convert personal giving into social engineering.

This metamorphosis has created something in between, a depersonalized process that to many looks like a mysterious black box. And the ever-quizzical American is compelled to ask, "What's inside?"

Within the last generation, we've had three successive probes into what goes on in that black box. The first was stimulated by McCarthy and Reece in the 1950s.<sup>1</sup> They asked the question, "Is something un-American going on inside?" We went through that decade trying to respond and saying, "No, what's inside is genuine, 100 percent American." And largely we proved it.

The next set of questions came when Congressman Patman<sup>2</sup> persisted in his skepticism, and in 1969 got Congress, speaking for a

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<sup>1</sup> The Reece Committee of 1953 was one of several congressional groups investigating possible communist activities among foundations, although its original mandate was to study interlocking control of foundations and foundation funds by certain families, corporations, and groups. This shift of focus was part of the national obsession with communism that was both fed and exploited by the "witch-hunting" activities of Wisconsin Senator Joseph R. McCarthy.

<sup>2</sup> 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.

public curious about that black box, to ask, "Is something illegal going on inside?" So we opened it up and sure enough, there was. There was enough of the illegal and questionable that a very rough law was passed, and we began to isolate what is proper and not proper in this large-scale, organized social process that philanthropy has become.

In 1976, we're beginning a third public dialogue. The question has shifted again. It is now, "Is what's in that black box of philanthropy worth the price the nation is paying for it?" At his point, Filer—I'm using the shorthand—enters the dialogue. It was intended that the Filer Commission, with the consent of both those who asked the questions and those who would be asked, decided to prepare a factual and reasoned background statement so that the forthcoming dialogue would not get out of hand, would not become as hairy as the furor and forensics of 1969. The Filer Commission represents that common determination to prepare for the question.

Now, credit the Filer Commission. It has done more in an accumulative way to define what philanthropy is than any other group [has done] in the past. Certainly, we now have far more data about philanthropy—more, perhaps, than we know what to do with. But even with all those facts that Filer has gathered, what goes on in that "black box" is still elusive, still not easy to communicate.

First, it's become painfully evident that our vocabulary has not kept up with the evolving thing called "philanthropy." It has been the tax lawyers who have developed the terminology and the jargon: "501(c)(3)," "501(c)(4)," "public charities," etc. Foundations are not philanthropy because philanthropy is something more—you have further to distinguish the donor and the donee, the private foundation and the public charity, etc. A lot of terms are struggling into existence to express something that has become extraordinarily complicated—an evolving organism with an embryonic vocabulary.

Filer, like all of us, found this primitive vocabulary frustrating. The more so, as the commission—in one of its most significant strides forward—broadened the concept of philanthropy to include the entire "third sector": i.e., that which is neither profitmaking (business) nor regulatory (government).

But in stretching the popular view of philanthropy, Filer also made the concept more elusive, more difficult for folks to under-

stand. They thought *before* Filer that philanthropy was where you looked for money. Now they learn there are 500,000 and more organizations, all of which are out to *get* that money, that are part of philanthropy, part of a "third sector." That requires a lot more thinking about to understand.

Filer went on to give us all a lot more to think about before any of us can say we really understand, including some quite disturbing facts. A good part of America has been asking, "Is what's in that black box a sanctuary for the *status quo*? Is it a tool for the chosen few?" Filer gave some very disturbing replies. The commission's report and its research papers make it clear that giving in America is a concentrated process: the higher-income people give most of the money that is available for philanthropy. Professor Martin Feldstein's<sup>3</sup> work shows there is also a class pattern in American philanthropy. The wealthier give predominately to hospitals, culture, and education; the not-so-wealthy give mostly to the common man's charities—the church, the Boy Scouts, the Y, etc.

Filer also showed some concentrated receiving of charitable gifts in America. One example: a third of the gifts of appreciated value end up in twenty educational institutions, a fact that is likely to stir some sharp questioning by Congress and the general public.

Credit the Filer Commission: it displayed these facts. But it's fair to say the commission in its recommendations eased away from confronting and trying to change those facts. For example, the commission voted to continue the deduction system. There is a more equitable alternative: the tax credit. But Filer stayed with the deduction system, which perpetuates higher incentives for the wealthier, more concentrated sources of giving, and the class pattern just described. The tax credit as an incentive to giving is more egalitarian, and the Donee Group,<sup>4</sup> as you know, recommended it.

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<sup>3</sup>Throughout his career, Harvard University economist Martin Feldstein has studied issues relating to taxation, savings, unemployment issues, Social Security, and national economic policy. Six years after Ylvisaker gave this speech, Feldstein was appointed chairman of the President's Council of Economic Advisers.

<sup>4</sup>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 were likely to be overlooked. The commission then funded a separate, parallel investigation (the name Donee Group reflects the grant-receiving status of many

But Filer really didn't confront that choice, except to describe its impact and decry its disadvantages from the point of view of established philanthropy (e.g., the fear that tax credits would make gifts to the church more vulnerable and encourage legislators to abandon [altogether] tax deductions and their concomitant advantages to the wealthy).

Filer also went very light on corporations. Corporate giving in the United States, the facts clearly show, is depressingly meager: 5 percent allowable and less than 1 percent given. A debate did occur within the commission about whether corporations ought to be prodded into 2 percent or more, by such devices as a forgivable excise tax. But the argument dissolved into nothing more than an innocuous sermon. Another instance of Filer's skittishness was the commission's exemption of churches from its recommended requirement of full financial disclosure.

My intent here is not so much to judge as simply to report a pattern: an existing system was fully described but not as fully confronted. The gift of appreciated value was kept as is. Charitable bequests were kept as is. And I was disappointed, I must say, that a more forthright position wasn't taken on the minimum tax: saying loud and clear that philanthropy would render what it owed to Caesar, that no citizen could escape paying taxes altogether, even if that meant that the charitable deduction would to that extent have to yield. By the way, the statement would have cost practically nothing; the loss in charitable revenues would be practically nil.

Filer showed other strains of conservatism. The commission talked more about the budget crisis of established organizations than about the emerging needs of a developing third sector. To be fair, it would not have been a simple matter to have made that inventory, unless one were inclined to accept partisan statements at face value. Still, we have enough evidence to know that relatively little of philanthropy's resources are going to causes that affect women and minorities. The Donee Group was emphatic on this point. Again, the pattern of "establishmentarianism" that emerges from Filer is clear.

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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.

Filer also saw philanthropy more as a matter of money and taxes than of what I shall later argue to be the spirit and essential purpose of philanthropy.

In dealing with philanthropy not simply as foundations but as a third and integral sector of America, Filer did prepare the way for the public dialogue that is now beginning to take shape. I think that this in itself was an historic step. But the inevitable question then follows: "Is that third sector a vital, dependable, and effective instrument of a modern constitutional democracy?" It is not enough to say, "Of course it is," and Filer tended to do just that. There was, and I rather appreciated him, one very strong conservative on the commission who exclaimed one day, "Look, enough of this apologetic nonsense. Let's go down to Congress and pound on the table and say we believe in philanthropy. It's a lot better than anything you can compare it to. Why this hangdog approach?"

Attractive, yes, but also dangerous. Take a look at your own poll of what I'd call the "nodding" American public. Nodding quietly, doesn't know quite what's going on in that mysterious world of philanthropy, knows it's supposed to be good, gives you a favorable rating—65 percent do. But the figure I'd watch in that poll is the 25 percent "no opinion." Constantly, throughout the survey, at least 25 percent are saying they haven't yet made up their minds. That undecided vote is dangerous.

Especially so since the operative attitude in our society is not that of passive assent but of active skepticism. The Filer Report has run into its share of that biting reaction, more I think than it deserved. Reminder enough, if you need one, that philanthropy has some rough questioning ahead.

Thanks to Filer, we're readier for the "Dialogue of 1976" than we otherwise would have been. There are some new elements in this upcoming dialogue. Let me start with one: the vocal presence of the consumer.

When foundations went up against Congress in 1969, they kept looking for their loyal supporters, and nobody showed up. As a matter of fact, grantees were reluctant to go down there and parade their luck, and for every recipient you had given to, there were hundreds of ingrates. This time around, the consumers will be there; their first appearance has taken form in the Donee Group. That is

the significant new development in the dialogue in 1976. It is not just the Congress, nor just a few disappointed people who are about to grill you, but a consuming group of American citizens who need the product of philanthropy, need what it represents. They are saying, "We want you to shape up."

So far, this budding consumerism has not gone beyond the first modest appearance of a well-mannered group. They aren't yet into litigation. But universities and the business community—where consumerism has had a decade to flourish—can predict the near advent of "rights hunting" in philanthropy, the restless search for legal handholds that will support increasing egalitarianism.

And be aware, too, of a rising generation of social entrepreneurs, insistently pressing for the kind of financial leverage philanthropy has to offer. At Harvard, one of the subjects most studied now is philanthropy. Why? There is a breed of Americans who don't want to go into big organizations and get hassled by bureaucracies. They are just as turned off by government as they are by corporations. They know that to do interesting things requires funding, and they want entrepreneurial risk money. You should see a class of seventy at the Graduate School of Education, coming from graduate departments all around Harvard, poring over your reports, inviting philanthropoids to speak, interrogating them about philanthropy's role and their own part in it.

But aggressive consumerism and entrepreneurialism aren't all you're facing. There's that general public, saying in effect, "Personal charity—one willing individual helping another—is one thing. Impersonal philanthropy is quite another. We're not sure we want to be raided by do-gooders coming out of an inaccessible sanctuary where we can't get at them through the vote."

There is something else new in 1976. This time everyone knows the republic is in trouble. Anxious rather than confident, Americans are torn between the conservative wish to go back into the comfortable past and a radicalizing premonition that maybe we need to take some bolder leaps into the future. The latter instinct is growing stronger, and it evokes a memory of a prophecy made back in the 1950s: that foundations one day would be questioned not for being so radical, but for being so timid.

This American republic of ours now needs an auxiliary thrust—



not something in place of its government, nor something (as David Hunter<sup>5</sup> said last year) "above the battle." The republic is looking for a vital force that is complementary to government, at times confronting and countervailing, and always providing options.

Foundations in their role as donors represent a private version of the legislative process in America—a deliberative process that selects goals, sets values, and allocates resources. The donee part of philanthropy is the private counterpart of the administrative process in government, an alternative vehicle for getting things done. You occupy not just a little private preserve; you are a precious institution and asset in this country [that] allows Americans to hear and to speak with the voice of the prophet against their own elected officials, and to try things faster and in another way.

To be what the Republic in 1976 needs, philanthropy has to be—and to be seen as—consistent with democratic ideals: it must be open, it must be accessible, it must be accountable, and it must be in touch. Both Filer and the Donee Group have done us a service by listing some of the steps that can be taken to assure those qualities in philanthropy, both in giving and receiving.

My guess is that the country is ready for another round of legislation that will state more clearly, more precisely, how we can make philanthropy more open, more accessible, and more accountable. If put to the vote, many of the changes that Filer recommended I am sure would pass.

But I want to emphasize what I think you want to emphasize as well. There is another quality in demand. We need a philanthropy that is *free*, and I think here is where Filer came up short. Freedom (and Filer made this mistake) is not the same as elitism, not simply the preservation of established "excellence." I wish I could rid our literature and our preaching of that timidifying notion of excellence, the crippling fear that the mediocrity of the mass will overtake the excellence of the few.

What we are fighting for now is the right to be different.

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<sup>5</sup> David Hunter was executive director of the Stern Fund in New York. He delivered the 1975 keynote address to the twenty-sixth annual conference of the Council on Foundations, encouraging foundations to get down into the fray rather than remain "above the battle."



I don't think Harvard (to cite an example close to home) should claim to have a corner on excellence. We have a right, though, as any other body has a right, to be different and in that very basic sense, to be free. Nor do I think that being free means being tied to the *status quo*, that the only way we can maintain the freedom of philanthropy is, say, by maintaining—or even allowing—tax incentives to those who give. Nor is freedom simply a function of money and taxes, although I don't want to underestimate their importance.

What Filer did, in this perspective, was to pour new wine into old bottles. What emerged, I think, is too clever by half—a recommendation, first, that we keep the present power system that philanthropy represents by preserving the deduction system; and then that we invite a whole lot of other, poorer folk to play the game along with the wealthy. The deduction system remains intact while we encourage another sixty million Americans and more to participate—to get double deductions and 150 percent deductions, depending upon their income.

Watch what this does. Filer asked at one point the most revealing question of all: "How much does the nonprofit third sector spend?" What are the cumulative budgets of hospitals, Boy Scouts, all such enterprises in the third sector? That total comes out to \$80 billion annually. Those revenues are derived roughly as follows: one-third private giving, one-third government, and one-third earnings.

Filer then asked the question, "If we gave up all the tax incentives for giving, how much would we lose of the \$80 billion?" That loss turns out to be \$5 to \$7 billion in current annual revenues.

In other words, if we were to extract entirely from the tax system all inducements to giving, we would lose 10 percent or less of philanthropy's current annual income. Now, that is crucial money, and I don't come quickly to the conclusion that we ought to court its loss. But what Filer recommended is that we more than double the involvement of giving with the tax system; if we followed the commission's recommendations, an additional \$11.7 billion would be leveraged into private giving by tax inducements. The public question not faced by the commission is this: do we want to involve American philanthropy further, if at all, with tax advantage? Simply asking that question is powerful medicine. It *will* be asked because it is a public policy question that Congress cannot avoid. I have no

doubt but that the pressures will be such that we will not abandon the relationship. But it is fair to ask whether we ought to dig philanthropy deeper into tax considerations and into the dependencies and the public doubts that follow on. We may lose—we may already have lost—far more in spirit than we gain in revenue.

The question becomes particularly crucial when tax advantage is tied up with another element of freedom that I firmly believe is more important to philanthropy than financial solvency: the right of free speech. Here I am adamant, and I would ask you, as thoughtful citizens if not as self-interested philanthropists, to think about it hard.

The right to petition Congress, by my reading of the First Amendment, is a right guaranteed to all. But we have allowed the Congress, the legislative body, to condition that right not only for foundations but for the whole nonprofit sector. I believe that free speech—the right to engage the public's mind and its elected representatives—is the most precious cornerstone of a free society—and of any free and vigorous sector within it.

Yet we bargain with Congress over the right. We let them attach conditions to that right; and we think we are doing well when a piece of legislation gives us a couple more percentage points of leeway, or a new formula, basically because we are worried that unless we let that sleeping dog of lobbying lie, Congress will get angry and cut back on the tax advantage it allows.

I feel very categorical about that. In no way should philanthropy be compromising its ability to speak freely and to help fight the battle for this nation's mind. It's that kind of freedom that philanthropy needs if it is to be of any use to a free society. We ought not to be bargaining that birthright away for a mess of tax pottage.

On that most basic point, we can and should be categorical. But we can't on most others. Ours is an incredibly complex time and circumstance, and the Filer Commission has helped us understand how complex and subtle are most of the problems we deal with, the solutions we arrive at, and the trade-offs we'll have to make. A complex society is like a scorpion—come at it from the front and you get stung sharply, quickly, from the rear. It's fascinating to find how counterintuitive the system really is. For example, there is a part

of me, a populist instinct born of the midwest, [that] would like to raise the effective tax rate on wealthier people and reduce some of their advantages. The commission, through Martin Feldstein and others, explored the effects of such a move and discovered this delicious irony: government would get more in taxes but less than the amount otherwise given to charity. Charity would get less. The wealthy would be left with more money to spend on yachts or whatever. And the populist would have been confounded because his tax reform would have made the rich richer. Why? Because the tax deduction is "efficient": more is leveraged into—and out of—philanthropy by existing tax incentives than the amount of tax revenue either forgone or recovered.

Another sting from the scorpion's tail: among those of us who feel minority concerns, there is a tendency to threaten philanthropy when it is slow to respond by saying, "Shape up or we'll sic government on you." I believe that minority causes are the natural and appropriate agenda of philanthropy and ought to be explicitly so declared. But we'll have to think twice about using government as a club, because government is run under democratic rules [that] make it basically a friend of the majority; and by definition, that majority would rather ignore those concerns than activate them. Which is not an argument against using government as a prod—but [it should be used] as a caution.

Let me put this into perspective. I said the question this time around was not "Are you Communists?" or "Are you illegal?" The salient question is now "Are you worth it?" Worth the taxes we forgo—obviously that's part of the question. But more than that, what value is there, what return to society, in allowing philanthropy the freedom to bark at our legislators, to propagate [grantmakers'] own concept of the public interest, to engage in social engineering, to court the public's mind whether demurely through research or boldly through lobbying, even to venture the reform of government and the reordering of social priorities?

Both the question and any relevant answer we may give to it moves us inexorably toward the concept of philanthropy and foundations as public trusts, and away from a time when foundations and philanthropy could be regarded as a personal affair and a personal prerogative. Go back to the corporation of the late

nineteenth century; you can see how it became domesticated, regulated, and constrained because we realized that a corporation, even when declared by the Supreme Court to be a person, was a person with a public responsibility and a public role. We are now watching philanthropy go through the same process of being steadily converted from a personal instrument into a public trust.

Institutional expressions of this change will be difficult to work out. But as we go ahead, trying falteringly to invent some kind of regulatory process that doesn't destroy freedom, some way of moving money—whether by revenue-sharing or whatever—from the public sector into the private sector without contaminating it, we are going to have to rely basically on the spirit of philanthropy rather than simply on our technical smarts. That spirit, as I feel it, has several qualities. One is the patient intelligence that works steadily at what seems unworkable, that chips away at impossibilities, and over time produces at least passable answers.

But patient intelligence is not the whole of the philanthropic spirit. It is also the impatience that constantly tugs at the inertias in our social system. Those inertias are all around us. During this decade, I think, philanthropy should be spending a large part of its energies tugging at one stubborn form of inertia: that of the barons of the post-industrial society—the professions and related magnates of the service economy. They are the ones now whose minds we should be fighting for, they who—though they resist the responsibility of leadership while enjoying its benefits—will have most to say about the quality of life in the generation ahead.

How are you doing with that battle, now that it is 1976 and you've had half a decade to engage the professions and other captains of post-industrial society?

In law, I think, progress has been made. I commend to you a publication just issued by the Ford Foundation [that] reviews the development of public interest law. The difference between current acceptance of the concept by the legal guild and the stubborn resistance encountered when it was first institutionalized a dozen years ago is an encouraging measure of what philanthropy can accomplish.

In medicine and education, I am not so optimistic. These are powerful guilds [that] probably will be bypassed before they can be

socially vitalized. It will happen to medicine now that we've discovered the diminishing returns on further investments in medical care and technology and the rising return from self-care, health education, nutrition, and prevention.

Conventional educators are being bypassed by Sesame Street, by lifelong learning in nonformal settings, by schooling within industry, by late-night talk shows, to mention but a few of the burgeoning alternatives to education as we have known it.

And how is the tug-of-war going with the inertias of the philanthropic profession? I asked you four years ago what you were going to do about your own profession. It did not then have a code of ethics; it did not have much of a sense of itself as a group of professionals. Be thankful for the Tax Reform Act and now for the consumer movement: they do you a favor by tugging at you. Neither you nor our needful society can afford to be comfortable with your inertias.

Another essential quality of philanthropy is the spirit of caring, of nurturing, of persevering. These are qualities that don't fare very well in the professionalized bureaucracies of men and majorities, with their heavily technical calculations of whom to help and when. But they are qualities that women and minorities have come to appreciate from life in a different milieu—and philanthropy would be the better for speeding their participation (if indeed they keep the faith they bring with them).

Philanthropy will not be free, or open, or accessible, or accountable, or in touch unless it has those qualities of caring and nurturing and persevering. But also [it must have] a sense of humor. One glaring weakness in Filer is that not once, as you read the report, do you find the cause even to smile. And which of us can do this society any good without a bit of the droll, the whimsical, whatever it takes to see ourselves and what we do in perspective?