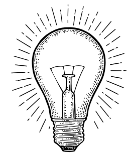

Protecting Your Legacy

Whys and ways of preserving donor intent

By Joanne Florino

An outsized role in elevating the education available to African-American children was filled by a private donor named Julius Rosenwald. He started his career in New York City's garment industry making ready-to-wear men's suits, then opened his own clothing store in Chicago. By age 30 he had acquired sufficient capital to invest in a booming new company known as Sears, Roebuck. In 1910 he became president of Sears and methodically tamed its chaos as it mushroomed into one of the most successful businesses in America. Rosenwald's managerial genius made him a rich man.

When he turned to philanthropy, Rosenwald's interests were wide-ranging. They included Jewish cultural and theological institutions, social-service charities, and affordable housing in Chicago. He was the founding donor of the city's Museum of Science and Industry, and a patron of the University of Chicago. He is most remembered, however, for his work with Booker T. Washington to build nearly 5,000 elementary and secondary schools for black children, at a time when their needs were ignored by government at many levels. For decades, Rosenwald was an extraordinarily effective philanthropic problem-solver.

Rosenwald's most lasting influence among fellow donors was in the specific ways he practiced philanthropy. When Rosenwald favored a cause he offered extensive time and oversight talent as well as treasure. He encouraged "a personal interest by the donor in all activities to which he contributes." Opposed to handouts, Rosenwald believed beneficiaries should be expected to help themselves in tandem with the gifts they received. His school-building program required local residents (most of whom were extremely poor black families) and state and county education authorities (many of whom were averse to spending on black constituents) to match his donations.

Rosenwald opposed perpetual endowments. He warned that "dead hands" frequently leave behind obsolete charities. If you want to make sure your gifts have the effects you desire, the best strategy is to "give while you live."

He urged that a wise donor should focus on his generation's pressing problems, and leave future charitable needs to future people. Tomorrow's givers will be better positioned to understand the needs of their day. And in the continually expanding society that is America, they will have more money to act with.

So Rosenwald stipulated that his own fund should disburse its grants briskly. He wanted it to exhaust its endowment no later than 25 years after his death. In practice it closed its doors in 1948, 9 years ahead of his schedule.

When spent out rapidly like this, rather than distributed in small percentages of the corpus each year in order to preserve the endowment permanently, any given fortune can have a much larger impact. Rosenwald's example showed how aggressive giving while living can result in a large bang for each donated buck. At the time he died in 1932, fully 36 percent of all black children in the South were being educated in one of the schools Rosenwald built.

And giving mostly while living has an additional powerful benefit. It obviates the risk that your money will go to causes you don't support. It helps, in other words, to protect donor intent.

Sunsetting at the Olin Foundation

Many donors have recognized how easily foundation resources can drift into purposes the giver never intended. Yet a majority of major philanthropists never

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This is an excerpt from the new guidebook Protecting Your Legacy: A Wise Giver's Guide to Honoring and Preserving Donor Intent, *which will be published by The Philanthropy Roundtable in spring 2020. Author Joanne Florino is the Roundtable's vice president of philanthropic services.*

take concrete steps to avoid this. Thus, what donors hoped to see happen and what their trust funds frequently end up being are very different things.

Unless you give careful attention to protecting the principles and intent of your giving, your philanthropy may deviate from your priorities. It can happen during your lifetime, even while you are personally engaged in your giving, and certainly after you're gone. Staying true to donor intent requires a sort of institutional humility—a set of policies and practices that keep your board and staff grounded in the mission and guiding ideas of your philanthropic endeavor.

Protecting donor intent is not about denigrating change. Nor does it require rigidity. A philanthropic mission may stay constant even while the means to achieve that mission change in ways that continue to honor the donor's intent. For too many givers, however, donor intent is an oversight or afterthought, and that's when founding principles get ignored or trampled upon in favor of new fads or staff preferences.

It's very easy to let your philanthropy slip into a comfortable routine of present-oriented grantmaking, giving minimal thought to the legal structures, mission statements, governance policies, and succession plans needed to sustain your ideals in the future. Donors are understandably eager to put their money to work as soon as possible, and are consequently reluctant to tackle challenging conversations about mortality, core values, and letting go of hard-won assets. This is especially true when those discussions might upset members of extended (or complicated) families. But if you care about your charitable legacy, careful consideration of a range of structures and strategies for securing your philanthropic intentions is necessary. And in doing that work you are also helping your family, associates, and future directors to understand and carry out the mission you set for them.

John Olin recognized the risks of a blurring mission, or even hostile takeover, within philanthropic organizations. At his own foundation he took action to avoid those possibilities. Troubled by the growing anti-business atmosphere among college students and their professors on many campuses in the late 1960s, Olin decided to apply his personal fortune to counteract that trend. He set his foundation on a path to build appreciation for market economics in academe, law, and other fields. And to maximize the effects of his dollars, and minimize the risks of lost focus, he required this to be done in a limited time span.

In his 2002 article, "Switching Off the Lights at the Olin Foundation," former Olin Foundation president Jim Piereson wrote that his founder "was greatly influenced by Julius Rosenwald, an early advocate of the idea that foundations should spend their assets within a generation of their donor's demise." Olin understood that by sunsetting his foundation in that timeframe, he would accomplish two goals. His intentions would be pursued by trustees who knew him personally and understood and respected his values. And his charitable gifts would be concentrated in a relatively short period of time to maximize his impact on the causes he cherished.

Both Rosenwald and Olin hoped to have immediate, powerful ultimate effects on big, complex issues. Both worried about how their dollars might be used after they were gone, realizing that over the long term, successor trustees might not carry out their wishes. Both gave careful consideration to those who would serve on their foundation boards. And both limited the life of their foundation, believing it would help them succeed in their ambitious quests.

Duke combines donor intent with perpetuity

Sunsetting may be the single best way to prevent a charitable endowment from getting away from the donor's intent, but it is not the only option. There are foundations set up to exist in perpetuity whose founders took strong precautions to preserve the founding principles. The Duke Endowment is a useful example.

James Buchanan Duke made his fortune in tobacco and hydroelectric generation. When he established a foundation in 1924 with $40 million, his trust limited its philanthropy to North and South Carolina, and directed that grantmaking focus on hospitals, orphan care, rural Methodist churches, and four colleges (most notably Duke University). These were all areas that carried deep personal meaning for James Duke.

Duke entrusted the governance of his philanthropy to his closest personal and business associates. He left detailed guidelines for his giving, however—even delineating the percentages of annual funding that should go to each area. He also spelled out a precise process for the selection of future trustees, and stipulated that trustees should be compensated—as a way to bind them morally and financially to the performance of their duties as defined in his indenture.

Since the founder's death in 1925, the Duke Endowment has distributed more than $2 billion. Today, all of its grants fall into the same categories—and largely abide by the same percentages—established by the creator nearly 100 years ago. Though a century of economic and social change has challenged the trustees and staff to make new meaning of some of their founder's specific instructions, it is Duke's original intent that guides the endowment in making these adaptations. Early grantmaking to orphanages, for example, has evolved into support for foster care, adoption, and programs for children at risk of abuse and neglect. The donor's concern for the health of Carolinians, which once meant only capital grants for hospitals, is now also manifested in funding to bring health care to the underserved through home visits and rural clinics.

Anticipating his trustees' need for some flexibility, Duke included in his trust a provision giving them discretion to redirect funds so long as they did so "for the benefit of any such like charitable, religious or educational purpose within the State of North Carolina and/or the State of South Carolina." Far more important, he included an explanation of his reasons for choosing the endowment's specific beneficiaries. "I have included orphans in an effort to help those who are most unable to help themselves," he wrote in one instance. In another he expressed his hope that "adequate and convenient hospitals are assured… with especial reference to those who are unable to defray such expenses of their own." The Duke Endowment trustees continue to meet ten times annually, as Duke stipulated. And at one meeting each year, they read the full text of the indenture aloud. The donor's voice and values thus remain a constant guide in their decisions.

Donor intent is easily lost

Stories abound of philanthropists whose charitable intentions were disregarded over time—in some instances while they were still living. The names are familiar: Carnegie, Ford, MacArthur, Pew, Rockefeller. And the tale is largely the same. Great tycoons of the capitalistic system earn their wealth through entrepreneurial endeavor before turning their skills and knowledge to the world of philanthropy. Many give to religious and cultural institutions that emphasize right-of-center ideals: faith, patriotism, free enterprise, charity grounded in the hand-up (not handout) ethic, liberty, and personal responsibility. Yet within a generation or two, these donors' philanthropic dollars are diverted to causes alien to their own values.

In some cases, the donors themselves made crucial missteps. Often cited as one of the most egregious violations of donor intent, the Ford Foundation's swing to left-wing grantmaking led to Henry Ford II's resignation from the board of trustees in 1976. Hardly a conservative himself, Ford nonetheless felt compelled to pen a powerful resignation letter that charged the liberal foundation staff with having no understanding of capitalism, the very system that produced the foundation's considerable resources. But at the core of the dispute was a common example of donor neglect. Neither Henry Ford nor his son Edsel, who established the foundation, left clear directives on how its vast wealth should be used. The language in the charter included only the broad, non-specific directive "to administer funds for scientific, educational and charitable purposes, all for the public welfare." The problem was compounded after the deaths of both Edsel and Henry Ford when Henry Ford II relinquished family control of the foundation, allowing that his vote would be equal to that of any other trustee.

MacArthur left no instructions at all for his foundation's trustees, vague or otherwise. And Carnegie, who had so clearly expressed in his 1889 *The Gospel of Wealth* a faith in free enterprise, limited government, and self-reliance, failed to imbed these values in the Carnegie Corporation. Instead he wrote, "…no wise man will bind Trustees forever to certain paths, causes or institutions. I disclaim any intention of doing so. On the contrary, I give my Trustees full authority to change policy or causes hitherto aided, from time to time, when this, in their opinion, has become necessary or desirable. They shall best conform to my wishes by using their own judgment." Rockefeller defined his mission so broadly—"to improve the well-being of mankind throughout the world"—that almost any philanthropic decision would suffice.

Pew did spell out his charitable intentions. A religious and political conservative, he ensured that the charter of his philanthropy—the J. Howard Pew Freedom Trust, one of seven family trusts that collectively formed the Pew Charitable Trusts—included a mission statement that quite clearly delineated his core principles and objectives. Founded in 1957, that trust was intended "to acquaint the American people with the evils of bureaucracy and the vital need to preserve a limited form of government in the United States…the values of a free market…the paralyzing effects of government controls on the lives and activities of people…and… the struggle, persecution, hardship, sacrifice, and death by which freedom of the individual was won." For a period of time, the Pew Charitable Trusts funded conservative and libertarian organizations including Grove City College, the Christian Freedom Foundation, and the American Enterprise Institute. But as the original founders of the Trusts died and professional staff played a larger role in grant decisions, support for the causes dear to Pew disappeared. By 1991, the Trusts had "eliminated almost all of their right-wing grantmaking and embraced a broad range of projects, including some that manifestly oppose the business interests the old Pews held inviolable," wrote Roger Williams in *Foundation News*. When the Trusts transitioned in 2003 from a grantmaking foundation to a public charity, all the constituent trusts—including the J. Howard Pew Freedom Trust—were abolished.

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Make your principles clear

Recording what matters to you, prioritizing the things you cherish, and noting the approaches and topics you consider unproductive are the most important things you can do to make sure your donor intent doesn't get swept away by time. In their book *Give Smart*, Thomas Tierney and Joel Fleishman describe a values statement as "the best way we know to ensure that your philanthropy will continue to express what matters most to you."

> The specific priorities you establish today may evolve and change over the course of time. But deep personal values tend to persist and, as a consequence, they can provide a continuing touchstone throughout a lifetime of philanthropy. If you establish a foundation intended to last in perpetuity, explicitly clarifying your values will make it far more likely that your foundation will continue to embody and act on them long after you've left the stage.

If left unchecked, a shift away from honoring donor intent is often the natural drift. Heather Templeton Dill, president of the John Templeton Foundation and granddaughter of the original wealth creator (Sir John Templeton), says that her family's foundation experienced some pressure to reconsider aspects of donor intent when her grandfather passed away in 2008. Linda Childears, president of the Denver-based Daniels Fund, learned the hard way that efforts to derail donor intent are often sudden and aggressive. "Once the person who earned the original wealth is gone," she states, "the people in power—whether that be family or future boards—tend to forget where the wealth came from." Even subtle deviations from donor intent that are much less dramatic than the battle that broke out at the Daniels Fund can be dangerous if there aren't people (like Childears and others who knew Bill Daniels well) in position to stop the takeover.

Most deviations from donor intent are not the result of conspiracy or malice but are the consequence of largely preventable issues like ill-conceived plans for leadership succession, or unclear, inadequate, or contradictory instructions. Lack of crisp guidance on exactly how donated assets are to be used is often the primary culprit in donor-intent violations. To keep your resources dedicated to the causes you care about the most, it's essential that you take pains to define your mission, and safeguard the means of carrying it out.

You might assume that your successors will be able to discern your wishes. "Even where a donor has not made his intentions explicit, it will usually be possible, perhaps within a wide range but a range nevertheless with limits, to determine from his life and activities what uses he would not approve," was the reassuring assumption of the late Robert Bork. In reality, though, few successors make this effort in good faith. And even if they want to, the trail of breadcrumbs left behind by the donor is often sufficiently obscured by the winds of change as to make it easy for an ambitious executor to seize the reins and steer a new direction.

A moral imperative

The roots of private giving in the United States go deep, and are continually nourished every time individuals voluntarily offer resources, creativity, and knowledge for the benefit of others. Our mix of small- and large-scale philanthropy has built up a potent civil society in America that responds powerfully to problems as soon as they crop up in our neighborhoods, or around the world. Gratitude to the many Americans who devote their personal wealth to serve the public good, and respect for individual choice, demand that we show fidelity to the aims and intentions of donors.

Deviations from donor intent will inevitably dampen the generosity of givers. If donors fear their philanthropic wishes may not be respected, intentionally or unintentionally, offerings will shrivel. This affects not just the person whose causes and concerns have been shoved aside, but the entire philanthropic mechanism.

"Our American system thrives in a way that other systems don't because of charitable giving—these institutions of civil society, this enormous nonprofit sector, that provides so much of what's good and appealing about American life. But when donor intent is undermined, it has a chilling effect on giving and takes some of the polish off it," says Tom Riley, president of the Connelly Foundation in Philadelphia. "That's not just bad for the person—that's bad for everybody."

Taking steps to protect donor intent is thus essential both to the success of your personal undertakings and to the integrity of our charitable system. Well-articulated and faithfully observed donor intent is what establishes the culture and effectiveness of your foundation. It will pay dividends now and in the future.

Understanding and promoting donor intent "is the touchstone for how board and staff members ensure the foundation acts according to the right values," says Cheryl Taylor, president of the Foellinger Foundation. "It's where we start. It guides everything."

For Ingrid Gregg—former president of the Earhart Foundation and currently senior program director at the Lynde and Harry Bradley Foundation—donor intent is at its core a matter of trust. "There are few things in civil society that work well without trust. All the good that flows in philanthropic giving comes from donors knowing that their wishes, and the original trust they placed in people, are going to be respected by those who come after them."

In a nation like ours built on the inviolable rights of every individual, there is a strong moral imperative in this area. Respect for donor intent is a crucial part of respecting individuals, their unique values, and their right to express themselves without interference. "My giving is my creation, really," says donor Frances Sykes of the Pascale Sykes Foundation. "I talk about it the way some people talk about their grandchildren. It's part of me." P