

CHAPTER

1

An Introduction to Donor Intent

Born in the second year of the Civil War, Julius Rosenwald played an outsized role in elevating the education available to African-American children in the South during the Jim Crow era. An unlikely philanthropist, Rosenwald spent his early career working in New York City's garment industry making ready-to-wear men's suits. He eventually opened his own clothing store in Chicago and by age 30 had acquired sufficient capital to invest in Sears, Roebuck. His involvement with Sears increased and the store's successful stock offering in 1906 made him a very wealthy man. From 1908 until 1924 Rosenwald served as the company's president and remained its chairman until his death in 1932.

Rosenwald's philanthropic interests were wide-ranging and 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—over a 20-year period—nearly 5,000 elementary and secondary schools for black children.

Rosenwald's monetary gifts were themselves extraordinary, but his continued influence among donors derives from the way he practiced his philanthropy. Encouraging “a personal interest by the donor in all activities to which he contributes,” he gave his time and talent, as well as his treasure, to the causes he favored. Opposed to handouts, he believed that beneficiaries should be encouraged to help themselves. In his school-building program he required that his donations be matched by local residents (most of whom were poor black families) and by state and county education authorities. He embraced a “give while you live” ethic, stipulating that his own foundation close within 25 years after his death. He opposed perpetual endowments that distributed only a small percentage of their corpus each year and gave so aggressively to his “Rosenwald Schools” that he made both an immediate and enduring impact. By the time of his death, 36 percent of all black children in the still-segregated South were educated in one of the schools he built.

While other donors of his era may have agreed with his principles—Andrew Carnegie, for example, famously wrote, “The man who dies rich, dies disgraced”—they didn't take as many concrete steps to abide by them. Rosenwald believed that a wise donor should focus on his generation's pressing problems, leaving future philanthropic decisions to the judgment of those who would follow. He passed away in 1932 and the Rosenwald Fund closed its doors in 1948, nine years ahead of the schedule he designed. Rosenwald left behind many blueprints for other wise donors to follow.

John Olin was one such donor. Increasingly troubled by a growing anti-business atmosphere among college students and their professors on many campuses in the late 1960s, Olin was determined to counteract that trend. In his 2002 article, “Switching Off the Lights at the Olin Foundation,” former Olin Foundation president Jim Piereson noted that John Olin “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 sunseting his foundation in that timeframe, he would accomplish two goals: ensure that his intent would be fulfilled by trustees who knew him personally and understood and respected his values, and concentrate his charitable gifts over a relatively short period of time to maximize his impact on the conservative and libertarian causes he cherished.

Both Rosenwald and Olin worried about how their charitable dollars might be used after they were gone. Both gave careful consideration to those who would serve on their foundation boards, and both understood that over the long term, successor trustees might not carry out their wishes. Both tackled big and complex issues, and both strategized about maximum effectiveness and early impact. These priorities ultimately led each to limit the life of his foundation.

Perpetuity and donor intent at the Duke Endowment

Sunseting may be the single best way to prevent a charitable endowment from drifting 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 precautions to protect donor intent. The Duke Endowment is a useful example. James Buchanan Duke made his fortune in tobacco and hydroelectric generation in the late nineteenth and early twentieth centuries. When he established a foundation in 1924 with \$40 million, his trust limited his philanthropy to North and South Carolina, and directed that grantmaking focus on hospitals, orphan care, rural Methodist churches, and four colleges (Duke University, most notably)—all areas that carried deep personal meaning for him. He even delineated the percentages of annual giving for each area. He entrusted the governance of his philanthropy to his closest personal and business associates, left clear guidelines for the selection of future trustees, and provided for their compensation as a way to bind them—both morally and financially—to the performance of their duties as defined in the indenture.

Since J. B. Duke's death in 1925, the Duke Endowment has distributed more than \$1.4 billion. All of its grants fall into the same categories—and largely abide by the same percentages—established by the creator nearly 100 years ago. A century of economic and social change, however, has challenged the trustees and staff to make new meaning of some of their founder's specific instructions. 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 today manifested in funding to bring health care to the underserved through home visits and rural clinics. Yet it is still J. B. Duke's original intent that guides the endowment in making these adaptations.

Anticipating his trustees' possible need for some flexibility, Duke included in his indenture of trust a provision allowing them to redirect funds "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



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"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 J. B. Duke stipulated. And at one meeting each year, they read the full text of the indenture aloud. The donor's voice and values remain a constant guide in their decisions.

When donor intent is 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 each tale is largely the same. Great tycoons earn wealth through entrepreneurial endeavor before turning their skills and knowledge to the world of philanthropy. Most 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, making his vote equal to that of any other trustee.



A shift away from honoring donor intent is the natural drift if left unchecked.

John MacArthur left no instructions at all, vague or otherwise, for his foundation's trustees. 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 embed 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." John D. Rockefeller defined his mission so broadly—"to improve the well-being of mankind throughout the world"—that almost any philanthropic decision would suffice.

J. Howard 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 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 J. Howard 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 Pew transitioned in 2003 from a grantmaking foundation to a public charity, all the constituent trusts—including the J. Howard Pew Freedom Trust—were abolished.

Advice on donor intent from philanthropists and experts

As Thomas Tierney and Joel Fleishman write in *Give Smart: Philanthropy That Gets Results*, “Clarifying your values is...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 result, 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.”

A shift away from honoring donor intent is often the natural drift, if left unchecked. Heather Templeton Dill, president of the John Templeton Foundation and granddaughter of the original wealth creator (Sir John Templeton), says that the foundation experienced some pressure to reconsider aspects of donor intent when her grandfather passed away in 2008. Linda Childears, former president of the Denver-based Daniels Fund, agrees that efforts to derail donor intent are often sudden and aggressive. “Once the person who earned the original wealth is gone,”

Separating donor intent and grant compliance

Donor intent, properly understood, is distinct from grant compliance. Donor intent is concerned with ensuring that the wealth of a philanthropy's founding benefactor is distributed in a manner consistent with his or her wishes. It operates on a macro-level, concerned with overall fidelity to a wealth-creator's vision. Grant compliance, in contrast, is focused on the micro-details of individual grants and whether a grantee is following the specific terms of a grant agreement.

The distinction between these two concepts is not always obvious, and sometimes the terms are used interchangeably. Both donor intent and grant compliance involve a relationship of trust—the former between an original donor and his heirs and succeeding trustees, and the latter between a donor and her grantees.

she observes, “the people in power—whether that be family or future boards—tend to forget where the wealth came from.”

Deviations from donor intent can be less dramatic and dangerously subtle. Lack of clarity about how donated assets are to be used is often the primary culprit in donor-intent violations. 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. 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 may assume that those who follow will be able to discern your wishes, following the observation of the late Judge Robert Bork in *Donor Intent: Interpreting the Founder's Vision*: “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.” In reality, too few successors

make this effort. The trail of breadcrumbs you leave will often be obscured by the winds of change.

Why donor intent matters

The roots of private giving in the United States go deep and have been continuously nourished by the generosity of individuals who voluntarily utilize their knowledge, creativity, and financial resources for the benefit of others. Philanthropy—large and small—has been a vital force throughout the American experience and reflects the nimble responsiveness of civil society to problems and needs in our smallest towns and around the world. It should be no surprise that a nation founded on individual rights and responsibilities should experience a growth of wondrously diverse independent institutions, important cultural entities that touch our lives every day.

In this context, fidelity to a donor's intent reflects both our respect for individual choice and our gratitude that personal wealth has been set aside to serve the public good. On the flip side, deviations from and deliberate violations of donor intent will inevitably dampen the generosity of donors, who become reluctant to give out of fear that their wealth will be used for causes not of their choosing. This affects philanthropy broadly, notes Tom Riley, president of the Connelly Foundation in Philadelphia: "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. That's not just bad for the person—that's bad for everybody."

Taking steps to protect your donor intent is thus an essential and deeply personal undertaking that will pay dividends now and in the future. "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." Donor intent—when well-articulated and faithfully observed—will establish the culture and effectiveness of your foundation. "It is the touchstone for how board and staff members ensure the foundation acts according to the right values," says Cheryl Taylor of the Foellinger Foundation. "It's where we start. It guides everything."

Planning ahead

The goal of this guidebook is to help you, and those you bring along on your philanthropy journey, achieve success in defining and protecting

your donor intent. Chapters 2 through 6 and chapters 8–9 focus on donor intent in its broadest terms; chapter 7 discusses the special challenges higher-education donors frequently confront in their grantmaking. We present a range of options and approaches, and suggest ways of defining, securing, and perpetuating your charitable intentions. Your final decisions are, of course, your own, and they should be undertaken with the guidance of expert legal counsel.

Without careful attention, your philanthropy may well deviate from your plans and 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 core guiding principles of your philanthropic endeavor. Protecting donor intent is not about denigrating change, nor does it require rigidity. A philanthropic mission may stay constant while the means to achieve that mission change—continuing to honor donor intent.



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For too many givers, however, donor intent is an afterthought. Your philanthropy can quite easily slip into a comfortable routine of present-oriented grantmaking, giving minimal thought to legal structure, mission statements, governance, and succession plans. It is understandable that donors are eager to put their money to good work as soon as possible and are consequently reluctant to tackle the more challenging topics: 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 careful consideration of a range of structures and strategies for securing your philanthropic intentions is a necessary first step for advancing your charitable legacy. 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.

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, or even in organizations, that work well without trust. So the implicit value of all the good that flows in philanthropic giving comes from donors knowing that their wishes, and that the original trust they placed in people, is going to be respected by those who come after them,” Gregg remarks. “One of the greatest privileges of working in philanthropy,” she adds, “is helping donors achieve their goals when they’ve worked so incredibly hard to create the resources that they then make available to society.”