

WHEN PHILANTHROPY COMES UNDER ATTACK:

What the Resurgence of Populism Means for
Charitable Organizations

BY ELIZABETH MCGUIGAN

EXECUTIVE SUMMARY

- ◆ **POPULISM MAY SERVE AS A HEALTHY CHECK ON THE POWER OF INSTITUTIONS AND GOVERNMENT. UNFORTUNATELY, RATHER THAN BEING CHanneled INTO POSITIVE CHANGES FOR SOCIETY, IT IS INCREASINGLY USED AS AN ARGUMENT FOR PUNISHING CHARITABLE INSTITUTIONS.**
- ◆ **GOVERNMENT POWER OR POLICY SHOULD NEVER BE WIELDED AS A WEAPON TO TARGET ORGANIZATIONS OR INDIVIDUALS WITH WHOM ONE DISAGREES.**
- ◆ **SILENCING FOUNDATIONS WITH WHOM ONE DISAGREES IS NOT A SOLUTION AND WILL HAVE UNDESIRABLE CONSEQUENCES, INCLUDING FEWER RESOURCES GETTING TO THE MOST VULNERABLE IN OUR SOCIETY.**
- ◆ **CIVIL SOCIETY MUST BE PROTECTED AND FOSTERED TO ENSURE A VOICE FOR ALL, INCLUDING FOR THOSE WHO BELIEVE IN FREEDOM, OPPORTUNITY AND PERSONAL RESPONSIBILITY.**

The rise in populism among conservatives is calling into question many of our cultural and social institutions, including philanthropy. Author and Senator-elect J.D. Vance of Ohio argues that “we should eliminate all special privileges that exist for our nonprofit and foundation class.” And he is not alone in this sentiment.

Philanthropy Roundtable believes that vilifying private foundations or other charitable entities is misguided. Using the government to punish America’s charities and those who support them will not help advance conservative principles; rather, it will make us all less well off by shrinking the charitable sector and civil society more broadly.

For the purposes of this brief, we generally think of populism as an anti-institutional sentiment that describes society as controlled by elites who are out of touch with the average American. Many agree that it may be healthy for our democracy to ensure power is not heavily concentrated in a large, centralized government or among few individuals or institutions. However, trouble arises when this recurring sentiment fuels policy proposals that are anti-wealth creation, anti-capitalism, anti-intellectual and anti-entrepreneurship. When populists argue that government policy must be wielded as a weapon to punish the ideas and individuals with whom one disagrees, we all lose.

In recent years, this flavor of populism has gained a foothold within conservative circles. Whereas conservatives typically align on America’s founding principles of liberty, personal responsibility and limited government, there is a growing call to use the power of the government to silence those within philanthropy who do not share our values. In this respect, populism on the right is not a fundamental part of conservatism, rather it is a symptom of social discontent.

It is a real problem that large segments of the population consider themselves marginalized and disenfranchised. Specifically of concern today is the sentiment that philanthropy is ruled by elites who have lost touch with the communities

they seek to support. Some people argue that philanthropy is not involved in helping the “little guys.” We hear the term “big philanthropy” slapped on larger entities as a pejorative and a pitch to limit philanthropic freedom.

ECHOES OF HISTORY



There have been waves of populism throughout history.

While the goal of this paper is

not to recount these trends in detail, the constant theme is that government has been taken over by elites and is not listening to the people.¹

Depicting society as a struggle between the “big guy” and the “little guy” or the “haves” versus the “have-nots,” is not new. In an 1832 veto message, President Andrew Jackson declared a sentiment that sounds familiar today: “It is to be regretted that the rich and powerful too often bend the acts of government to their selfish purposes.”²

Nor is this the first populist critique of the charitable sector. In the early 20th century, John D. Rockefeller faced backlash as he was attempting to get his foundation charter in 1910. The Rockefeller Foundation describes the struggle as a notable part of its history:

“In 1910, John D. Rockefeller wanted to create the largest, richest private foundation in the world. The work of the foundation would not be confined to one state; it would be national and international in scope — America’s first global foundation — so his representatives asked the U.S. Congress for a federal charter. Some members of Congress were adamantly opposed to the idea. They feared that this great concentration of private money, directed toward public policy issues and not subject to the will of the people, would undermine the foundations of American democracy.”³

The concerns voiced in *The Washington Post* at the time could have been printed today. The paper worried the foundation would “be a good thing to those who handle the funds — that much is certain. There will be life positions, easy work, and big pay.”⁴ Of course, Rockefeller failed to obtain a charter through Congress and instead incorporated in New York in 1913.

Beginning with the Industrial Relations Commission’s investigation of Rockefeller and whether his foundation represented an inappropriate concentration of power, and continuing through to the 1950s and 1960s, when U.S. Reps. Eugene E. Cox, B. Carroll Reece and Wright Patman investigated philanthropy, there has historically been scrutiny about the power of American philanthropists in society and the value of philanthropic freedom for foundations.

At a 1969 House Ways and Means Committee hearing, Rep. Patman of Texas provided colorful examples illustrating his criticisms of foundations such as the Mellon family’s Bollingen Foundation: “If the Mellons are more interested in medieval tombstones than in Pittsburgh poverty, and care to spend their money studying 12th and 13th century church construction, that is the Mellons’ affair. However, there is no obligation upon either the Congress or the American citizenry to give the Mellons’ tax-free dollars to finance their exotic interests. In sum: The foundation programs contain ample fat that could and should be trimmed, and the federal government can find better uses for the money than studies of medieval tombstones.”⁵

The rules regulating private foundations today are rooted in historical concerns that such foundations would hold too much unfettered power as well as criticisms like Rep. Patman’s that we are hearing again today.⁶

CURRENT CRITICISMS

There are over 140,000 private foundations in the



United States.⁷ They gave a combined \$90.88 billion to charity in 2021, the 11th consecutive year-over-year increase, according to Giving USA’s annual report.⁸ These dollars supported everything from health-related charities to the environment, to arts and humanities.

Rather than cheering the voluntary giving by Americans to a varied slate of causes and communities, populists on the right are challenging the very concept of philanthropic freedom. Some argue the large foundations are too progressive or “woke,” too out of touch with those in need, too political, unfairly privileged by the tax code, and too connected to the government. Below, we examine some of these arguments and how they will lead to devastating consequences if lawmakers react with proposed reforms.

FOUNDATIONS ARE TOO ‘WOKE’

One of the primary criticisms is that many of the largest foundations in the country today are left-leaning entities. Michael Hartmann, senior fellow and director of the Center for Strategic Giving at the Capital Research Center, sums up the populist right’s critique of large foundations this way: “Ideologically, the largest foundations’ policy-oriented grantmaking is lopsidedly liberal and getting more so — or, in the current jargon, it is ‘woke’ and getting ‘woker.’”⁹

For those of us dissatisfied with the direction of society and the threats posed by cancel culture, this is an understandable concern. Yet, protecting our freedom of speech is a core conservative principle. Philanthropic freedom means the right to direct resources to the causes and communities that meet the donor’s mission. There is a slippery slope that arises from calls to restrict grantmaking to only the ideals backed by the majority or the government. Allowing for such restriction would hurt the numerous foundations doing work on causes we all value. It is short-sighted to throw out all foundations because some large, visible foundations engage in “woke” grantmaking.

FOUNDATIONS ARE NOT CONNECTED TO REAL NEEDS

Fox News host Tucker Carlson has expressed the populist sentiment that givers are not focusing on the actual needs of our communities: “Those very same affluent married people, the ones making virtually all the decisions in our society, are doing pretty much nothing to help the people below them get and stay married. Rich people are happy to fight malaria in Congo. But working to raise men’s wages in Dayton or Detroit? That’s crazy.”¹⁰ This criticism is what political commentator David French calls, “a populism of resentment.”¹¹

Vibrant diversity is the defining characteristic of America’s civil society. Alexis de Tocqueville, a French historian and political writer from the 19th century, recognized this with his observations, “Americans of all ages, all conditions, all minds constantly unite. Not only do they have commercial and industrial associations in which all take part, but they also have a thousand other kinds: religious, moral, grave, futile, very general and very particular, immense and very small; Americans use associations to give

fêtes, to found seminaries, to build inns, to raise churches, to distribute books, to send missionaries to the antipodes; in this manner they create hospitals, prisons, schools. Finally, if it is a question of bringing to light a truth or developing a sentiment with the support of a great example, they associate.”¹² So yes, Carlson may disagree with the priorities of some givers or the associations they support. But it is the right to choose what one supports that yields the interconnected network of civil society.

FOUNDATIONS ARE TOO POLITICAL

In a 2016 op-ed in *The Chronicle of Philanthropy*, professor Roger Colinvaux declares, “Charities are supposed to be, and traditionally have been, outside of politics. Given the toxic political environment (and even without it), that is a good thing. Do we really want ‘red’ and ‘blue’ charities? Do we want to tinge Americans’ generosity with political taint? And what about the private foundations and the large pots of money sitting in donor advised funds?”¹³

Missing from this criticism is clarification on the valid, widespread policy activities of foundations and nonprofits and how this is distinct from the prohibited political activities. There is a legitimate role for policy-related philanthropy, which deserves its own discussion.¹⁴ In short, tax-exempt activity for foundations and the nonprofits they support often encompasses both humanitarian and policy-oriented goals. These activities, in and of themselves, do not run afoul of the prohibitions on expressly political activity. Our legal system should support the right of foundations to support these nonprofits, and donors should not face reprisal for doing so.¹⁵





FOUNDATIONS RECEIVE TAX BENEFITS

Coupled with the disagreement about the activities and focus of some large, progressive foundations is the broader discontent with the tax treatment of foundations. This is reflected in Vance's comments that "the Ford Foundation, the Gates Foundation, the Harvard University endowment, these are fundamentally cancers on American society, but they pretend to be charities, so they benefit from preferential tax treatment."¹⁶

It is true that foundations receive tax benefits for giving away money to charitable causes, and it is true that we do not all agree with the causes some givers may value. The problem arises when critics assert that the tax benefits -- rightly given to those no longer able to consume their assets for personal benefit -- somehow convert private funds into public assets that should be distributed or at least micromanaged by the government. This is exactly what Vance calls for in his proposed rules for large foundations. Under his regime, foundations would be forced to pay out 20 percent of their endowments each year if they have endowments over \$100 million.¹⁷

What Vance and others get fundamentally wrong is that donating private money to charity does not

make that money property of the government or the taxpayer. The tax code provides preferences for charitable giving because as a society, we are more than a government and its taxpayers. Throughout our history, individuals have voluntarily come together to solve our problems and organize for causes in which we believe. This civil society is so crucial to our freedoms that the tax code has been designed to foster private giving and association. As tax attorney Alexander Reid explains in his far more in-depth discussion of this argument, "[t]he individual deduction for donations to these civic organizations, and the income-tax exemption for charitable operations, are more than just tax rules. They form a vital legal boundary between the state and civil society. They are not subsidies for civil society, but rather fences that keep government from interfering in a sector that is vital to our national freedom."¹⁸

The tax benefits associated with donating money to charities is tied to an obligation for the charities to use the funds to further charitable purposes rather than for private benefit. That is why there is a tax preference. The funds are used for private citizens to organize and seek the betterment of communities and causes that Americans value.

The argument that the tax preferences convert the funds into government or taxpayer property

is like arguing that a family claiming a mortgage interest deduction cedes ownership of their house to the government in exchange for the tax benefit. Further, claiming a mortgage interest deduction does not entitle the government or taxpayers to impose restrictions on the uses of the house. That would be unconstitutional. There are simply no grounds for the argument that a tax benefit transforms private, charitable assets into government or public property.¹⁹

The consequences of proposals based on this argument, such as the ideas Vance puts forward, would be to discourage giving and voluntary association, to the detriment of the communities most in need. Taxing this activity would cede more control over civil society to the government. We may not agree with some of the ideas that arise in civil society, but on net, we all benefit from having the freedom to organize and advance ideas and solutions we believe in.

FOUNDATIONS ARE INDISTINGUISHABLE FROM BIG GOVERNMENT

There are also valid arguments that charitable entities are becoming too closely tied to government through funding and the strings attached to government dollars. As Hudson Institute Senior Fellow William Schambra declares, “Foundations and charities today are becoming ever more enthusiastic about working with and mimicking big government. Indeed, many major nonprofit groups today are already virtually indistinguishable from agencies of big government because they are so beholden to government for money. And they are anxious to become even more so.”²⁰

The criticisms here are understandably noxious for conservatives. But it is important to remember that philanthropy is not government, even in its largest institutional forms. There are arguably charitable institutions that are bureaucratic and slow to act, but overall, philanthropy is better suited to addressing social problems than is government. It is more nimble, flexible and creative than government is or will likely

ever be. Rather than focusing on consistently and evenly applying rules and one-size-fits-all solutions across communities as the government must do, philanthropy can tailor approaches to fit the needs at hand. As American Enterprise Institute scholar Howard Husock argues, “The more individualized attention a problem calls for, the less well-suited government is to dealing with it—and the more likely independent, charitably-supported groups are.”²¹

Of course, there are dangers associated with nonprofits relying on government funding. The Roundtable shares the concerns that the strings attached to government funds may change the very nature of the charitable sector due to the observation that the government “gradually influences the behavior of independent nonprofit contractors to accept its practices and preferred policies”²² This concern is further reason to strongly support philanthropic freedom. When private individuals have the freedom to give how, when and where they choose, charities win without becoming dependent on government funding.

Here again, rather than limiting freedom, conservatives should proactively create new institutions and build on existing frameworks to steer the charitable sector back toward the private, voluntary institutions that act as pillars of our society.

DEPARTURE FROM CONSERVATIVE PRINCIPLES



Criticisms of philanthropy are not without merit. These critics are rightly concerned with the cultural dominance of well-funded, progressive elites. But the overarching problem is that the arguments against philanthropic institutions enumerated above are inconsistent in their own terms. Rather than promoting the common good, conservative values and resisting the overwhelming cultural

shifts of our time, they propose disempowering large, progressive foundations and endowments. These proposals turn away from the underpinnings of conservatism: freedom, liberty and limited government traditions. Expanding the size and reach of government regulation of the charitable sector will limit the ability to promote the values of conservatives today.

Smarick describes this trend: “Over the last number of years, parts of America’s political right seem to have forgotten, pushed aside or just given up on many of the governing principles that defined American conservatism for generations... Compared to those on the right a decade ago, they are more open to a more managerial, muscular, free-spending Uncle Sam and less energized about distributing authority to states, localities and nongovernmental bodies.”²³

The model for this approach would arguably be the IRS under President Barack Obama, where former IRS official Lois Lerner, then acting director of exempt organizations, inappropriately targeted conservative nonprofits. Merely copying this approach will hurt both sides of a divided America, depending on the individual in the White House at a given moment in time.



Understandable as their arguments may be, this path will backfire and be turned against conservative causes and organizations when political winds shift. It is impossible to only handcuff the work of the institutions with which one disagrees. Restrictions on philanthropy will hurt those institutions that work for conservative ideas and solutions to social and economic challenges. Pursuing onerous changes to how philanthropy is treated, taxed and regulated will undermine the goals of conservative critics and leave our society more fully in the hands of those who control the government.

Growing the federal government to use as a weapon to fight and punish those on the left, including large foundations, is a dramatic departure from the path of shrinking the government to allow civil society to flourish and better address the problems of our times.

In his call for a return to America’s founding principles, Manhattan Institute scholar Andy



Tempting though it may be to triumph over those we disagree with by using the government as a bludgeon to silence them, the end result will only be mutually assured destruction. Punishing the big guys will inevitably hurt the little guys as well, and it will be our communities that suffer.

Imposing new restrictions on foundations may hurt large, liberal institutions, but will also inevitably impact smaller foundations and conservative institutions. For example, forcing increased payout rates will limit the ability of

foundations to work toward solutions to long-term, multi-generational problems. Imposing new taxes on foundations will leave fewer resources for the charitable causes and communities they serve. Removing tax benefits will discourage the formation of charitable giving vehicles and dampen voluntary giving to all causes. Forcing more donor disclosure in cases where givers may wish to remain out of the spotlight will similarly chill charitable giving – all at a detriment to the most vulnerable in our society.

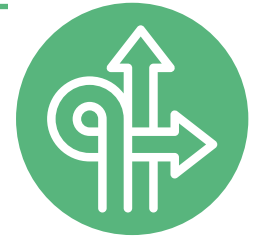
Beyond the practical implications, it is important to remember that foundations and civil society more broadly have the power to act as a check on the power of a strong centralized government and a dominant progressive elite. Destroying the framework that allows foundations to thrive, simply because one disagrees with some of them, undermines the ability for conservatives to foster institutions that may act as a safeguard to liberty and conservative principles.

Joanne Florino, Philanthropy Roundtable’s Adam Meyerson Distinguished Fellow in Philanthropic Excellence, knows firsthand the real, negative impact that attacks on large foundations have on their smaller brethren. In a recent article, she shares examples of the good work that some of these smaller foundations do:

“In Beloit, Wisconsin, the Hendricks Family Foundation focuses on building a strong and vibrant community by supporting local needs such as education, career pathways and veterans and veteran families. In Houston, the Hackett Family Foundation — with less than \$1 million in assets — dedicates itself to family, faith, health and education and describes itself as focusing ‘on ‘making some noise’ and providing the resources needed to support efforts that have sustainable impact.’”²⁴

We are fortunate to live in a country where anyone can be a donor, not just large foundations or social elites. The unintended consequences of hampering charitable entities would be less philanthropic freedom for all givers, even those smaller foundations dedicated to advancing conservative principles of liberty, opportunity and personal responsibility.

THE PATH FORWARD



We are not deaf to the critiques of populists.

There are many large, powerful foundations with strategies and missions with which we may disagree.

There certainly is a role for public debate of philanthropic activities. We can all voice concerns with various approaches to addressing the problems in our communities.

The problem is when the proposed solution to the concentrated pockets of powerful elites in philanthropy is to shut them down. Philanthropic freedom does not mean freedom from criticism. An ongoing, vigorous discourse will only make civil society stronger.

As American Enterprise Institute scholar Yuval Levin argues, civil society would benefit from an enhancement of our institutions, not a destruction of them.²⁵ The path forward to such “enhancement” includes constructive criticism of charitable entities. Philanthropic freedom includes the freedom to question philanthropic strategies, causes and goals and the freedom to point out where the bad ideas fail.

Civil society is an interconnected ecosystem. Just as planned economies fail, allowing the government to pick winners and losers in philanthropy and restrain foundations simply because of their size or effectiveness will lead to less philanthropy and less support for the most vulnerable in our society. Those who disagree with the dominant social elite, those who are concerned about the state of the family



or the ability of all Americans to flourish cannot afford to dismantle civil society. Punishing givers will chill charitable activities altogether and weaken civil society, precisely at a time when we need the charitable sector as a check on a powerful centralized government.

Our shared goals as conservatives are more important now than ever. A vision of a free society, based on promoting liberty, opportunity and personal responsibility, is our common mission. Yet, to meet this mission, we need a

vibrant charitable sector, not one hamstrung by new government restrictions or burdens. Civil society is what will help us accomplish these goals. Institutions are what will give a voice to individuals seeking change. If we legislate these institutions into weak, quiet entities, we lose the opportunity to advance what we believe in.

ENDNOTES

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ABOUT PHILANTHROPY ROUNDTABLE

Philanthropy Roundtable is a nonprofit organization dedicated to building and sustaining a vibrant American philanthropic movement that strengthens our free society. To achieve this vision, the Roundtable pursues a mission to foster excellence in philanthropy, protect philanthropic freedom and help donors to advance liberty, opportunity and personal responsibility.



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