Repugnant to the Very Idea of Democracy?
On the Role of Foundations[1]

Rob Reich
Dept of Political Science
Stanford University

NOTE TO BERKELEY POLITICAL THEORY WORKSHOP

This is a draft chapter from a manuscript provisionally titled "Just Giving: Toward a Political Theory of Philanthropy." One of the main aspirations of the manuscript is to make philanthropy a compelling topic of inquiry for political philosophers. To the extent that philosophers have addressed questions about philanthropy, it has been the preserve of moral philosophers, such as Peter Singer, who seek to understand the personal morality of giving. Circumscribed within the domain of personal morality, the questions that arise include asking whether giving is supererogatory or obligatory, to whom and how much should one give, and whether motive or only consequences matter in philanthropy. From the perspective of political philosophy, different questions emerge. What attitude should the state have toward the preference of individuals to give money away for a public purpose? What role, if any, should philanthropy have in the funding or distribution of essential goods and services? When is philanthropy an exercise of power deserving of democratic scrutiny? Is philanthropy always remedial or second-best to the pursuit of justice? How and when should the state structure, shape, subsidize, limit, or block individual preferences to give money away?

Cast in this manner, the phenomenon of philanthropy presents unavoidable and fundamental questions of public morality. But there is a second reason to focus attention on philanthropy. It may seem that philanthropy is just voluntary activity, a result of the exercise of individual liberty. A moment's reflection suggests otherwise. Contemporary philanthropy in most democratic societies is embedded

[1] This chapter draws upon my "What are Foundations For?" *Boston Review* 2013 and "On the Role of Foundations in Democracies," in *Philanthropy in Democratic Societies: Origins, Institutions*, *Values*, Reich, Bernholz, Reich, eds. (University of Chicago Press), forthcoming.

within a set of legal rules that structure and encourage it. Philanthropy is not an invention of the state but can be viewed as an artifact of the state. Whether, when, to whom, and how much people give is partly a product of laws that govern the creation of foundations and nonprofit organizations and spell out the rules under which these may operate; that set up special tax exemptions for philanthropic and nonprofit organizations, and that frequently permit tax exemptions for individual and corporate donations of money and property; that enforce donor intent, often beyond the grave, creating philanthropic projects and entities that can exist, in principle, in perpetuity. What, if anything, might justify such policies?

In this chapter, I focus attention on a peculiar philanthropic entity: the private foundation. Analogues of the contemporary philanthropic foundation can be found in antiquity, where endowments funded the creation and sustenance of public monuments and educational institutions, including Plato's Academy. But the modern grant-making foundation in which private assets are set aside in a perpetual, donor-directed, tax-advantaged endowment with a fraction of the assets annually to be distributed for a public purpose is a recent institutional form, distinctly American, no older than the early 20th Century. It is by definition a plutocratic entity, representing the legal permission, indeed tax-subsidized invitation, for large wealth to play a consequential role in public life. What, if anything, could confer legitimacy on such an entity in a democratic society?

Abstract
Foundations represent the institutional codification and promotion of plutocratic voices in democratic societies. With low accountability, donor-directed preferences in perpetuity, and generous tax subsidies, they are institutional oddities. What, if anything, confers democratic legitimacy on foundations? I first show why foundations might be a threat to democratic governance and then defend a particular mode of operation that offers qualified redemption. I argue that foundations can play an important *discovery* role in democracy, a mechanism for experimentation in social policy over a long time horizon.

Shortly after the turn of the 19th Century, John D. Rockefeller's philanthropic adviser Frederick Gates wrote to him with alarm. "Your fortune is rolling up, rolling up like an avalanche! You must keep up with it! You must distribute it faster than it grows!"[2] Acting on Gates's advice, Rockefeller soon devised a plan for a general purpose philanthropic foundation whose mission would be nothing less, and nothing more specific, than to benefit mankind. Specifically, the proposed mission was "to promote the well-being and advance the civilization of the people of the United States and its territories and possession and of foreign lands in the acquisition and dissemination of knowledge; in the prevention and relief of suffering and in the promotion of any and all of the elements of human progress".[3] So stated, the mission would permit Rockefeller and his hand-picked trustees to undertake anything they deemed worthy. Although it likely would have easy to obtain a state charter in New York, Rockefeller and his advisers were concerned that obtaining a state charter for such a foundation would impose limits on its size and purpose. State legislatures frequently capped the size of philanthropic endowments at $3 million and insisted upon narrowly defined purposes. Hoping for greater autonomy, Rockefeller sought to obtain a federal charter from the United Status Congress to authorize the creation of the Rockefeller Foundation.

In 1909, soon after the election of William Taft, Rockefeller conferred more than seventy thousands shares, worth more than $50 million, from his company, Standard Oil, to a new entity, the Rockefeller Foundation, and appointed three trustees, his son, his son-in-law, and Frederick Gates. Together, they then sought Congressional approval of a bill to incorporate the foundation and sanction its size, open-ended purpose, and local, national, and international scope of activity.

Rockefeller immediately encountered fierce criticism in Washington D.C.. Some of the opposition stemmed from resistance to Rockefeller's extraordinary

[2] Quoted in Ron Chernow, *Titan: The Life of John D. Rockefeller, Sr.* Vintage 2004, 563.
[3] Eric Abrahamson, Sam Hurst and Barbara Shubinski, *Democracy and Philanthropy: The Rockefeller Foundation and the American Experiment.* New York: The Rockefeller Foundation, 2013: 35.

wealth, obtained from the monopolistic business practices of Standard Oil and stubborn resistance to labor unions, and animus against the man himself. "No amount of charities in spending such fortunes," observed former President Theodore Roosevelt, "can compensate in any way for the misconduct in acquiring them." President Taft called on Congress to oppose the creation of the foundation, describing the effort as "a bill to incorporate Mr. Rockefeller." American Federation of Labor President Samuel Gompers growled, "The one thing that the world would gratefully accept from Mr. Rockefeller now would be the establishment of a great endowment of research and education to help other people see in time how they can keep from being like him."[4]

Other critics resisted not Rockefeller the man and his business practices but the very idea of an enormous foundation. Testifying before the Commission on Industrial Relations in 1912, the Reverend John Haynes Holmes, a well known Unitarian minister who served for many years as the board chair of the American Civil Liberties Union, said,

> I take it for granted that the men who are now directing these foundations – for example, the men who are representing the Rockefeller foundation – are men of wisdom, men of insight, of vision, and are also animated by the very best motives. . . [M]y standpoint is the whole thought of democracy. . . From this standpoint it seems to me that this foundation, the very character, must be repugnant to the whole idea of a democratic society."[5]

The chairman of the Industrial Relations Commission, Senator Frank Walsh from Missouri, opposed not merely Rockefeller's foundation, but all large foundations. Writing in 1915, Walsh challenged "the wisdom of giving public sanction and approval to the spending of a huge fortune thru such philanthropies as that of the Rockefeller Foundation. My object here is to state, as clearly and briefly as possible, why the huge philanthropic trusts, known as foundations, appear to be a menace to the welfare of society."[6]

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[4] Quoted in Peter Dobkin Hall, "Philanthropy, the Nonprofit Sector, and the Democratic Dilemma," *Daedalus* Vol. 2 (2013): 8.
[5] Report of the Commission on Industrial Relations: Final Report and Testimony Submitted to Congress by the Commission on Industrial Relations created by the Act of August 23, 1912: 7916-7917.
[6] Frank P. Walsh, "Perilous Philanthropy." *The Independent* 83 (1915): 262-264.

The concerns expressed by Holmes and Walsh were hardly eccentric. Foundations were not troubling because they represented the wealth, potentially ill-gotten, of Gilded Age robber barons. They were troubling because they were considered a deeply and fundamentally *anti-democratic* institution, an entity that would undermine political equality, affect public policies, could exist in perpetuity, and that was unaccountable except to a hand-picked assemblage of trustees.

Over the course of several years, Rockefeller and his advisers lobbied friends and allies in Congress. Political opposition was stiffer than they had anticipated and arrived from some whom they had expected to be supporters rather than critics, such as Harvard President Emeritus Charles Eliot, who publicly spoke out against the federal charter. Rockefeller's family attorney, Starr Murphy, who had drafted the initial federal charter bill, met with critics and, working closely with several Senators and with Rockefeller's full endorsement, eventually re-drafted the bill to incorporate a host of provisions that would allow for significant public oversight of the proposed foundation.

The new bill had four main amendments. First, a cap of $100 million would be placed on the assets of the Rockefeller Foundation. Second, in order to prevent the endowment from growing over time and to ensure the production of public benefits, all income earned from the endowment would be required to be spent annually. Third, the duration of the foundation's activities would be limited; it would be required to spend down its entire principal after fifty years (with permission to extend to one hundred years if both two-thirds of the trustees and the U.S. Congress so approved). Fourth, governance of the foundation would be subject to partial public oversight. Members of the board of trustees would be subject to a veto by a majority of a Congressionally appointed board consisting, in the initial proposal, of the President of the United States, the President of the Senate, Speaker of the House, Chief Justice of the U.S. Supreme Court, and the Presidents of Harvard, Yale, Columbia, Johns Hopkins, and the University of

Chicago.[7] Anxiety about the corrupting influence of a large and unaccountable private foundation was to be allayed by creating a legal template that limited the size and lifespan of the foundation and imposed a form of public governance on its operation.

Rockefeller scheduled a private and clandestine meeting with President Taft to ask for his support, and Rockefeller's advisers redoubled their efforts to win allies in Congress. In 1913, the House of Representatives passed a bill to charter the Rockefeller Foundation, yet opposition in the Senate remained firm. Despite efforts lasting several years and the offer of significant concessions to concerned lawmakers, the federal charter failed. In short order, Rockefeller turned later in 1913 to the New York state legislature, removing each of the four amendments offered in the U.S. Congress. The bill was approved and signed into law in May 1913, and the Rockefeller Foundation was officially chartered and open for philanthropic business.

The episode reveals a counterfactual history of the general purpose, grant-making private foundation. Had the U.S. Senate passed the House bill to charter the Rockefeller Foundation, it would have created a template for the institutional design of foundations with limits on size and time and provisions for clear public oversight. The balance between plutocratic voice and democratic voice in the operation of foundations would have been struck much differently. And of course, the Rockefeller Foundation would have closed shop, by spending down its endowment, in either 1963 or 2013. Though one can never be certain with counterfactual histories, it seems plausible that the failure to obtain a federal charter and the decision to incorporate in New York State set in motion an institutional path-dependence that leads directly to the widespread organization of private foundation activity today with none of the amendments suggested by Rockefeller one hundred years ago.

Is the operation of such foundations compatible with democracy?

[7] Discussion of the revised charter bill found in Eric Abrahamson, Sam Hurst and Barbara Shubinski, *Democracy and Philanthropy: The Rockefeller Foundation and the American Experiment.* New York: The Rockefeller Foundation, 2013: 35ff; and Dobkin Hall 2013.

What is a Foundation For?

In an important sense, foundations have a long history. Analogues of the contemporary philanthropic foundation can be found in antiquity, where endowments funded the creation and sustenance of public monuments and educational institutions, including Plato's Academy. And as we saw in the opening chapter, they are not limited to the Judaeo-Christian world. The Islamic waqf is a clear institutional precursor of the modern private foundation, an arrangement designed to structure and elicit private resources to produce public benefits. *Waqfs*, from as early as the 7th Century A.D., funded mosques, schools, hospitals, and soup kitchens, much as private foundations undertake similar projects today..

Though rooted in historical traditions, the modern private foundation in the United States is a creation of the age of the Rockefeller controversy. As we have just observed, here were birthed novel features not found in historical antecedents. The idea behind the Rockefeller Foundation and the Carnegie Corporation was to establish an entity with broad and general purposes, intended to support other institutions and indeed to create and fund new organizations (e.g., research institutes), seeking to address root causes of social problems rather than deliver direct services (work "wholesale" rather than "retail"), and designed to be administered by private, self-governing trustees, with paid professional staff, who would act on behalf of a public mission. One other aspect of these foundations was new: their vast resources enabled them to operate on a scale unlike other more ordinary endowments.

As the remarks by Rev. Holmes and Sen. Walsh illustrate, the prospect that such foundations might be brought into existence was viewed as a threat to democracy. For most of the 19th Century, creating a grant-making foundation at one's private initiative with one's private wealth was not possible; authorization and incorporation by a democratic body was necessary.

We have come a long way in one hundred years. Philanthropists are today widely admired, and the creation of foundations by the wealthy meets not with public or political skepticism but with civic gratitude. The permission to create a foundation, moreover, is both free-standing – not requiring approval by a democratically elected body – and, as with ordinary charitable donations, subsidized with tax advantages.

It is no exaggeration to say that we live today in the second golden age of American philanthropy. In 1930 approximately two hundred private foundations possessed aggregate assets of less than $1 billion. In 1959 there were more than two thousand, in 1985 just over thirty thousand private foundations. The number ballooned to seventy-six thousand in 2004 and as of 2013 the number exceeded one hundred thousand with total capitalization of $800 billion.[8]

Growth in inequality might be a foe to civic comity, but it is a friend to private philanthropy. What Carnegie and Rockefeller were to the early 20th Century, Gates and Buffett (and their fellow Giving Pledge signatories) are to the 21st Century. The last decade of the 20th Century witnessed the creation of unprecedentedly large foundations like the Gates Foundation. The combined assets of the Gates Foundation and a separate Gates Trust, which holds donations from Bill and Melinda Gates and contributions from Warren Buffett, totals more than $65B in 2013, placing the Foundation at roughly 65th in the world on a list of total GDP, ahead of most countries in Africa. And it's not just billionaires and their mega-foundations that command attention. The last decade of the 20th and first decade of the 21st centuries also witnessed a boom in millionaires that fueled unprecedented growth in small foundations, both in number and in assets. Foundations are no longer controversial, they are mundane and commonplace.

<Data on growth here. See Appendices A and B>

Is this a healthy development? In order to know, we need to ask what philanthropic foundations are for. What role, if any, *ought* foundations play in a democratic society? If they are repugnant to the idea of democracy, as thought Rev. Holmes, or a menace to the welfare of society, as thought Sen. Walsh, then

[8] Keppel 1930 for the 1930 figure; other figures from author calculations of IRS data.

perhaps democratic societies ought to abolish them, as Turgot argued or to constrain them to align with democratic purposes, as Mill argued.

One obvious reply is to view these as impertinent questions. Andrew Carnegie thought that the man who dies rich, dies disgraced, and the person who opts to distribute private wealth for public purposes should be thanked as an object of civic gratitude. Conspicuous consumption by the wealthy is hard to see as preferable to the establishment of a philanthropic foundation. But we should resist this view for two reasons. First, it is to compare philanthropy to the alternative of private consumption, which will nearly always render philanthropy praiseworthy. Instead, we should view philanthropy, especially big philanthropy in the form of private foundations, as an exercise of power and plutocratic voice that warrants democratic scrutiny. Second, it is to assume that the current laws that define how foundations may be created and structure how they operate are optimal and publicly justifiable. Perhaps foundations could play important roles in democratic societies, despite being an exercise of power and articulation of plutocratic voice, if they were subject to different legal arrangements.

Therefore, asking about the purpose of a foundation in a democracy is not an impertinent but an important question. For while foundations of some sort or another have existed for millennia, the modern grant-making foundation in which private assets are set aside in a permanent, donor-directed, tax-advantaged endowment with a fraction of the assets annually to be distributed for a public purpose is, as I have just described, a relatively recent phenomenon, no older than the early 20th Century. Philanthropic foundations in this form are institutional oddities in a democracy, oddities that have considerable power in virtue of their assets.

In this chapter, I examine the peculiar institutional form that is the modern American philanthropic foundation, and I explore its fit with democracy. I conclude that despite many anti-democratic features the modern foundation is not incompatible with democracy. In fact, when foundations function in support of what I will call Pluralism and Discovery, they can be important contributors to democratic societies. Private wealth can be domesticated to serve democratic purposes.

<u>Foundations as Institutional Oddities</u>

In democratic societies, wrote one twentieth century observer, “there is no more strange or improbable creature than the private foundation.”[9] Why are foundations institutional oddities? To start, foundations represent, virtually by definition, plutocratic voices in a democratic society committed, at least in principle, to the political equality of citizens. But strangeness of the foundation form goes far beyond this.

The modern philanthropic foundation is perhaps the most unaccountable, non-transparent, peculiar institutional form we have in a democratic society.

Foundations lack accountability

In the commercial marketplace, if a company fails to make a profit, because consumers opt not to purchase the goods it sells, the company goes out of business. Companies are driven to please consumers: if consumers don’t like or want what a company produces, then they don’t buy from it, and if most consumers think this way, the company disappears. This is the accountability logic internal to the marketplace: meeting consumer demand.

In the public institutions of a democratic state, officials responsible for allocating tax dollars must stand for election; if citizens do not approve of the spending decisions of their representatives, they can un-elect them and replace them with others. When citizens don’t approve of their representatives’ preferences on public policy and spending, they can vote against them in the next election. This is the accountability logic internal to democracy: responsiveness to citizens.

Foundations, in contrast, have no market accountability; they neither have goods for sale where consumer behavior can put a foundation out of business, nor marketplace competitors whose superior performance can push them out of

[9] Waldemar Nielsen, *The Big Foundations*, 1972: 3.

business. No consumers or competitors, only supplicants. Instead of selling anything, foundations give money away to other organizations, organizations whose own livelihood frequently depends on continuing support from foundations. If citizens don't like the grant making decisions of a foundation, what is there to be done? There's nothing to buy and no investors to hold them accountable. And foundations have no electoral accountability; no one in a foundation stands for election, regardless of what the public thinks about the distribution of its grants. Suppose a group of people disapprove of what the Gates Foundation, or any other foundation, is doing. What then? There's no mechanism to un-elect Bill and Melinda Gates. Thinking of the foundation's education grant making, critic Diane Ravitch has called Bill Gates the nation's unelected school superintendent.

Foundations do have certain minimal obligations of procedural accountability. In the United States, a "payout" rule instituted in 1969 requires that foundations disburse at least five percent of their assets every year (though administrative costs of running a foundation count toward this payout). There is also a requirement to file an annual tax form with some basic data about foundation trustees, employees and their salaries, and assets. But this is far from substantive accountability. Without constituents, consumers, or competitors, wealthy persons are free to set up foundations for whatever purpose they please, with whatever money they wish, and to continue to hew to this purpose, regardless of the outcome of the foundation's grant-making.

To be sure, foundations must direct their grants to public charities or, in American tax lingo, 501(c)(3) nonprofit organizations. But in the United States, virtually any organization can be structured as a nonprofit so long as it promises not to distribute profits to its owners. Moreover, U.S. foundations can distribute grants and fulfill their payout rule by giving to a somewhat arcane but recently popular vehicle called a donor-advised fund, a charitable investment account that creates no immediate public benefit whatsoever and instead serves to warehouse wealth until the donor decides to distribute it to a public charity.[10] So the public charity requirement is no accountability structure at all.

The lack of any internal accountability is compounded by the difficulty any foundation has in developing mechanisms to generate honest feedback from grantees. As a general matter, people who interact with foundations are supplicants, seeking a grant or seeking the next grant; there is little incentive for a potential grantee or actual grantee to offer critical feedback to a foundation. Every person who works in a foundation understands what comes with the territory: they are transformed overnight into the smartest and best-looking people in a room.[11]

Foundations lack transparency

Apart from a legal requirement that foundations pay out five percent of their assets every year and file an annual tax form with some basic data, foundations can, and frequently do, act secretly. They need not have a website, an office, a telephone number, need not publish an annual or quarterly report, or articulate any grant-making strategy. They need not evaluate their grant making; if they do, they need not make such evaluations public. They need not report on trustee decision making.

Foundations sometimes do act transparently, providing all of the above information and more. But this is a function of the idiosyncratic preference of a

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[10] See Ray Madoff, "The Thing That Ate Philanthropy" in *Philanthropy in Democratic Societies*, Reich, Bernholz, Cordelli, eds.

[11] In the annual report of the William T. Grant Foundation, its President, Robert Granger, writes: "Paul LeMahieu, senior vice president at the Carnegie Foundation for the Advancement of Teaching, once joked to me, "Foundations don't have any natural predators." He's right. Like most foundation presidents, I spent my career on the other side of my current desk, where many people were willing to tell me when my bad ideas were bad. But, when I joined the Foundation in 2000 as senior vice president for program, I seemed to get a bit smarter." The political theorist Harold Laski identified the phenomenon as early as 1930, writing about the *deleterious* effect of foundation grants to universities. "Usually the director gives the impression of considerable complacency and a keen sense of the power at his disposal. He has not often himself been engaged in the serious business of research. He has dipped into an immense number of subjects; he is usually captivated by the latest fashion in each. He travels luxuriously, is amply entertained wherever he goes (he has so much to give), and he speaks always to hearers keenly alert to sense the direction of his own interests in order that they may explain that this is the one thing they are anxious to develop in their own university" in "Foundations, Universities, and Research," in *The Dangers of Obedience & Other Essays*, Harper and Brothers, 1930: 169-70.

particular foundation, not a legal framework or professional norm. Thus foundations are often black boxes, stewarding and distributing private assets for public purposes, as identified and defined by the donor, about which the public knows very little and can find out very little.

Donor-directed purpose in perpetuity

And that donor's intent may hold sway *forever*. Foundations are legally designed to enshrine donor intent and protect philanthropic assets in perpetuity.[12] The dead hand of the donor extends from the grave across generations. Laws defining a foundation permit the donor to control the governance and purpose of a foundation, and this beyond the donor's death. Foundations must be governed by a board of trustees, but the donor and her family or trusted associates can serve in this role; there is no requirement of community or public governance. The Gates Foundation's board, for example, is Bill and Melinda Gates, Bill Gates Sr., and Warren Buffett. The governance arrangements of countless smaller family foundations look similar. Financial advisers routinely market their services in setting up a family foundation as vehicles for the intergeneration transmission and sustenance of family values.

Of such arrangements Richard Posner has observed, "A perpetual charitable foundation . . . is a completely irresponsible institution, answerable to nobody. It competes neither in capital markets nor in product markets . . . and, unlike a hereditary monarch whom such a foundation otherwise resembles, it is subject to no political controls either." He wondered, "the puzzle for economics is why these foundations are not total scandals."[13]

Finally, foundations are generously tax-subsidized

All of the foregoing might be understandable, if not necessarily justifiable, if foundations were simply one way for the wealthy to exercise their liberty: some

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[12] Protecting donor intent in perpetuity was not always given robust legal recognition. See Ray Madoff, *Immortality and the Law: The Rising Power of the American Dead* (Yale University Press, 2010), 91ff.

[13] Richard Posner, "Charitable Foundations", Becker-Posner Blog, January 1, 2007. http://www.becker-posner-blog.com/2007/01/charitable-foun.html

choose to consume their wealth; some choose to provide gifts and bequests for heirs; others choose to give their money away for a philanthropic purpose. Why demand accountability for the philanthropists?

Because foundations – at least in their contemporary incarnation – are not simply exercises of personal liberty.

In his 2002 book *American Foundations*, Mark Dowie relates an amusing and instructive anecdote about the Open Society Institute, one of several foundations set up by financier George Soros. During a meeting to resolve a disagreement about grant-making priorities, Soros is alleged to have announced, "This is my money. We will do it my way." At which point a junior staff member interjected that roughly half of the money in the foundation was not his money, but the public's money, explaining, "If you hadn't placed that money in OSI . . . about half of it would be in the Treasury."[14] Dowie reports that the junior staffer was soon fired.

Philanthropy in the United States is not just the voluntary activity of a donor, the result of people exercising a freedom to do what they wish with their private property. Philanthropy in general, including the creation of foundations, is generously tax-subsidized. The assets transferred to a foundation by a donor are left untaxed, and this in two respects: the donor makes the donation (more or less) tax-free, diminishing the tax burden she would face in the absence of the donation; and the assets that constitute a foundation's endowment, invested in the marketplace, are also (more or less) tax free.[15] The precise details of the subsidy have varied over time, but philanthropy in the United States has long involved the subsidizing of individual liberty.

It is worth remembering it was not always thus. Philanthropic activity dates back to antiquity, but tax deduction for donors (as opposed to tax exemptions for asset or property endowments, such as the waqfs explored in chapter 1) date back only to 1917 and the creation of a federal income tax. Carnegie,

[14] Mark Dowie, *American Foundations* (MIT Press, 2002), 247.
[15] I say "more or less" in each case because there are sometimes modest limits on tax-free donations to foundations and modest limits on tax-free investment returns on a foundation's endowment.

Rockefeller, Sage and their many philanthropic predecessors, practiced philanthropy without any federal or state tax incentive for the donation of assets to establish a philanthropic endowment.

Why provide a subsidy for the exercise of a liberty that people already possess, namely to give their money away for a philanthropic purpose? One can imagine various possible justifications for a subsidy, most prominently the idea that a tax incentive will stimulate more philanthropy, more and larger foundations, and therefore more public benefits, than would occur without the subsidy. Supposing the public benefits are of sufficient magnitude and value, the lost treasury revenue might nevertheless be an efficient means of producing these public benefits.

Whether this is so is an empirical question; if it is so, whether this constitutes a good justification for providing a subsidy is a normative question. I explored the efficiency of the subsidy in the previous chapter and wish here only to emphasize that, today, the existence of foundations is not correctly seen as the product of the exercise of people's liberty to establish a foundation. Foundations *are* created voluntarily and yet they are also the product of public subsidies, the loss of funds that would otherwise be tax revenue, to subsidize their creation.[16] So foundations do not simply express the individual liberty of wealthy people. Citizens pay, in lost tax revenue, for foundations, and, by extension, for giving public expression to the preferences of rich people. Private foundations are not merely plutocratic voices, an observation that would follow from the simple fact that foundations are created by the wealthy. The plutocratic voices of the wealthy are amplified, as it were, by the loss of treasury revenue that would otherwise be expended by democratically elected and accountable representatives.

In short, with little or no formal accountability mechanisms, practically no transparency obligations, a legal framework designed to honor donor intent in perpetuity, and generous tax breaks to subsidize the creation of a foundation,

[16] In 2012, tax subsidies for charitable giving cost the U.S. Treasury more than $50B.

what gives foundations their legitimacy in a democratic society? Why have this institutional form in a democratic society?

As we observed in earlier chapters, we can quickly dismiss one common and intuitive thought: that foundations exist because they are redistributive, responsive to the needs of the poor or disadvantaged. Foundation giving for basic needs represents a surprisingly small percentage of foundation activity, on the order of ten percent. And the greater the size of assets in a foundation, the smaller the percentage of grants that go to meet basic needs.[17]

In any case, conceiving of foundations as mechanisms for alms-giving implies that a more just world – a world in which, say, desperate poverty did not exist or in which the basic needs of individuals were met and did not depend on philanthropic giving – would not need philanthropic foundations. This raises the question whether the justification of and need for philanthropy would disappear if desperate poverty were to be eliminated. I shall argue that the answer is no. Philanthropy in general and foundations in particular are not just remedial, second-best efforts in democratic societies.

One way of posing the question is to ask whether foundations would be a welcome institutional arrangement, contributory to democratic purposes, if we were starting a democratic society from scratch. Would we want, as a matter of first best institutional design, foundations in something like the legal form in which they exist today: more or less unaccountable, non-transparent, donor-directed, and permitted to exist in perpetuity or at least to operate for many years beyond the donor's death?

The catalogue of the oddities of the foundation form suggests a strong case against. Foundations appear at odds with democracy, for they represent, by definition and by law, the expression of plutocratic voices directed toward the public good. But why, in a democracy, should the size of one's wallet give a person a greater say in the public good; why should this plutocratic say be subsidized by the public; and why should democracy allow this say to extend

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[17] See chapter 2; see also Rob Reich, "Philanthropy and Caring for the Needs of Strangers," *Social Research*, Vol. 80, No. 2 (2013).

across generations in the form of tax-protected assets? It would seem that foundations are a misplaced plutocratic, and powerful, element in a democratic society.

Moreover, one can easily identify other arguments that lay bare the tensions between philanthropy and democracy and call into doubt several of the institutional arrangements, and ultimately the very legitimacy, of private foundations. Some attack donor discretion and argue that philanthropy is better conceived as reparative justice.[18] Others argue that certain kinds of public good production should not be outsourced to private parties and must be produced and funded collectively, by citizens, if the goods are to possess the stamp of democratic legitimacy they are said to need.[19] Still others see in the evolution of philanthropy the emergence of a particular kind of high profile philanthropist, such as Bill Gates, Mark Zuckerberg, and Michael Bloomberg, whose activity supplants the state, subverts public policy processes, and in so doing diminishes democracy.[20]

I find many points of agreement, especially when considering the actual grant making practices of foundations today. Yet despite all this I think the role of foundations in democracy can be defended. Against these critics, and against the early skeptics who claimed that foundations are repugnant to democracy or inimical to social utility, I argue that foundations can have important roles to play in democratic societies. We can mount a principled defense of foundations that establishes at the same time a normative standard by which to assess their activity.

The Case for Foundations

[18] See for instance Chiara Cordelli, "Reparative Justice and the Limits of Discretionary Philanthropy," *Philanthropy in Democratic Societies*, Reich, Bernholz, Cordelli, eds.

[19] See for instance Eric Beerbohm, "The Free Provider Problem: Private Provision of Public Responsibilities" *Philanthropy in Democratic Societies*, Bernholz, Cordelli, and Reich, eds.; [also Kieran Oberman paper?]

[20] Aaron Horvath and Walter Powell, "Contributory or Disruptive: Do New Forms of Philanthropy Erode Democracy?" *Philanthropy in Democratic Societies*, Reich, Bernholz, Cordelli, eds.; [see also Diane Ravitch, Sarah Reckhow, etc.]

Foundations can be not merely consistent with democracy but supportive of it. The argument that foundations can enhance democracy is twofold. First, following the claims made in the previous chapter with respect to charitable giving of any kind, foundations can help to overcome problems in public good production by diminishing government orthodoxy and decentralizing the definition and distribution of public goods. Call this the *pluralism argument*. There is a second argument particular to foundations, setting them apart from ordinary charitable giving. Because of their size and longevity, foundations can operate on a different and longer time horizon than can businesses in the marketplace and elected officials in public institutions, taking risks in social policy experimentation and innovation that we should not routinely expect to see in the commercial firms or state agencies or institutions. The idea is that foundations can serve as a potent mechanism for democratic experimentalism: a discovery vehicle for innovative social policy. Call this the *discovery argument*. On this basis, we can build the outline of a first-best argument for the existence of foundations that is not at odds with, but supportive of democracy.

The argument I offer is not intended to justify the full range of legal permissions currently afforded to foundations. I am in particular skeptical that perpetuity is a defensible time horizon for the existence of a corporate entity and its donor's wishes. What I wish to indicate is the general cast of an argument on behalf of foundations that deflects the criticism that they are misplaced in democratic societies and that confers on them a high degree of autonomy, a relative lack of accountability, and offers a case for subsidy of some kind.

To understand what a foundation is for, we cannot and should not, as is commonplace today, ask how foundations can be more effective, have greater impact, be more outcome oriented. The relevant question is not, "how can philanthropic private foundations act more strategically?"[21] Of course foundations should be effective and strategic. But at what? To understand what foundations should be effective at, we first must understand foundations in relation to the

[21] A small library of books and reports have been written over the past decade about so-called "strategic giving." See Paul Brest, Peter Frumkin, etc.

market and the state. Only in this manner can we identify the pluralism and discovery arguments.

Pluralism Argument

It has long been understood that the commercial marketplace does not do well at providing public goods – goods that economists define as non-rival and non-excludable. These are goods that, like a well-lit harbor, are available to everyone if they are available to anyone; and that, like clean air, do not cost more when they are consumed by more people. The standard examples of public goods include national defense, education, and basic science. The essential point about public goods is that it is difficult or undesirable to block anyone from consuming them, even if they do not pay. Because private businesses prefer paying customers, public goods are under-produced in the commercial marketplace.

In practice, there are few if any goods that are purely public in the economist's strict non-rival, non-excludable sense. But we needn't rely on a strict definition to see the core idea: goods with a public character will be under-produced by the marketplace, for businesses will not be able to get consumers to pay for goods they cannot be excluded from accessing.

Instead, the state can provide public goods, and this is commonly thought to be one of the basic functions of a state and its use of tax dollars. In a democratic state, one simple way to predict what public goods will be produced is to recognize that elected representatives will vote for the funding of public goods that are favored by a majority of citizens. If a majority of citizens prefer police protection and a minority prefers arts funding, then politicians will vote to fund the police and not the arts. Further, standard models of political behavior in a democracy predict that politicians will fund the public goods preferred by majorities at a level that satisfies the median voter. Public good production by the state is subject to what might be called a majoritarian constraint and limited by the preference of the median voter, who sits in the middle of the political spectrum. Public goods preferred only by a minority, or levels of public good production above the level preferred the median voter, democratically elected politicians will not (have an incentive structure to) support. For example, public funding of the arts may generate plenty of Norman Rockwell, but probably not avant-garde or radical art.

Here enters the pluralism argument on behalf of foundations. A foundation is a corporate structure designed to deploy private assets for public benefit, where what is funded is subject to donor intent. Because donor preferences can be idiosyncratic, foundations can deliver idiosyncratic results. Foundations are thus well, if not uniquely, placed, to fund public goods that are under-produced, or not produced at all, by the marketplace or the state. Because donors will have diverse preferences about what goods they wish to fund philanthropically, foundations can be a source of funding for what we can call minority public goods or controversial public goods, things a democratic state will not or cannot fund, whether because majorities have not expressed a preference for the good or any other reason.

Expressing the idea less as a corrective to market and state failures, we can say that one core argument for foundations sees them as an important vehicle for partially decentralizing the process of producing public goods and diminishing government orthodoxy in the definition of public goods. In a diverse democracy, there will be heterogeneous preferences about what kinds of goods to supply through the direct expenditure of tax dollars. Foundations, powered by the idiosyncratic preferences of their donors and free from the accountability logic of the market and democratic state, can help to provide, in the aggregate, a welcome pluralism that helps to create an ever evolving, contestatory, and diverse arena of civil society. Such decentralization tempers government orthodoxy in a democracy.

This idea is not novel. It can been seen, for example, in an opinion of U.S. Supreme Court Justice Lewis Powell's, rejecting the idea that the primary function of a tax exempt organization is to enact only government-approved policies. For Powell, the provision of tax subsidies for nonprofits, including presumably foundations, “is one indispensable means of limiting the influence of government orthodoxy on important areas of community life.”[22]

The argument from pluralism turns foundations’ autonomy and lack of marketplace and electoral accountability from a defect into an important virtue. Foundations are free, unlike commercial entities, to fund public goods because they need not compete with other firms or exclude people from consuming the goods they fund. And they are free, unlike politicians who face future elections, to fund minority, experimental, or controversial public goods that are not favored by majorities or at levels above the median voter.

Do we need the specific institutional form of the foundation, with the attendant legal privileges that currently attach to it, in order to accomplish the desirable decentralization and curtailing of government orthodoxy? Perhaps not, and certainly not as a logical necessity. Perhaps the charitable behavior of individuals in the simpler form of making donations to favored nonprofit organizations would supply a good portion of the decentralization. Setting up a foundation to carry out this function, especially one that can exist in perpetuity and with minimal payout requirements may be unnecessary.

I find little to celebrate, for instance, in the massive boom in small foundations over the past generation. The number of foundations with less than $1 million in assets nearly doubled from 1993 to 2010, from 32,000 to 60,000, and these foundations rarely have a paid staff, almost never give away more than $50,000 in a year, and function more or less as a tax shelter and charitable checkbook for wealthy families. These families could accomplish the same outcome, the same public benefit, by simply writing a check, making a donation, rather than setting up a foundation as the vehicle for their philanthropy, avoiding in the process the overhead expenses that foundations require and that cannot

[22] 461 US 574 *Bob Jones University v. United States* (1983). A version of the argument can also be seen in remarks made by an early President of the Carnegie Corporation, Frederick Keppel, who wrote in 1930, “Clearly, there is the greatest variety alike in the size, the purpose, the organization, the program, and the geographical range of American foundations; we are far from agreement as to the most useful form or organization or as to the most fruitful type of program. But all this is, of course, as it should be, since the ultimate basis of the utility of the foundation as an instrument of progress will probably rest upon this very diversity” (Keppel, The Foundation: Its Place in American Life [MacMillan, 1930], 12).

be counted as public benefits. And taxpayers would no longer be subsidizing enormous sums of money that have been committed to a foundation but have not yet been granted to charitable organizations. In 2013, total assets reached more than $800 billion, stretched across nearly 100,000 independent private foundations. More than one quarter of these assets are held by just the fifty largest foundations. What loss to public benefit would there be were there to be a minimum asset threshold to create a foundation, say $10 million or $50 million? I think very little, and quite possibly there would be some gain, for wealthy individuals under the minimum asset threshold might be inclined to donate more of their money to public charities rather than to create their own family foundations.[23]

Even supposing that foundations of all endowment sizes do partially decentralize the definition and provision of public goods, the resulting pluralism of philanthropic voices will have a plutocratic not fully democratic cast. The minority, experimental, or controversial public goods funded by foundations will represent the diverse preferences of the wealthy, not of the citizenry. There is no good reason to believe that the diversity of preferences among the wealthy mirrors the diversity of preferences among all citizens. Indeed, there is empirical evidence to suggest that, at least in the United States, the very wealthy (both the top quarter and the top one percent of wealth holders, the latter of which account for a large share of private foundations) have significantly more conservative preferences than average citizens.[24] Thus, the activity of foundations, even when it decentralizes the production of public goods, retains a plutocratic character. I see no way to avoid this conclusion, for while wealthy and poor people tend to give the same percentage of their incomes to charity, in absolute terms, the wealthy have much more to give. Does this mean that we should eliminate foundations? I do not think so. What follows, I believe, tells not against foundations as such but

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[23] Donor advised funds have also experienced a boom over the past generation, are sometimes called private foundations for regular people. See Ray Madoff for arguments against DAFs.

[24] See Benjamin Page, Larry Bartels, and Jason Seawright, “Democracy and the Policy Preferences of Wealthy Americans,” *Perspectives on Politics*, Vol. 11, No. 1, 2013: 51-73; Martin Gilens, *Affluence and Influence: Economic Inequality and Political Power in America*, Princeton University Press, 2014.

against the tax-subsidized aspect of foundation activity. If foundations create a plutocratic pluralism, public subsidies that stimulate more such activity, are harder to justify. But a plutocratic tempering of government orthodoxy is better than no tempering at all. And if this is true, then perhaps some tax subsidy for foundations could still be justified if it turned out that subsidies were essential to stimulate the creation of foundations. History, however, suggests otherwise.

I conclude that the decentralization argument provides a plausible but not definitive case for foundations, a case that foundations are a democracy-supporting institutional feature of a democratic society.

Discovery Argument

As with the pluralism argument on behalf of foundations, an understanding of foundations in relation to the market and the state is also core to the discovery argument. Here the idea is that foundations serve as a democratic society's "risk capital," a potent discovery mechanism for experimentation and innovation in social policy over a long time horizon with uncertain results.[25]

Begin with an uncontroversial supposition: a democratic state wishes to advance general welfare or to pursue the aims of justice, however understood. But democratic representatives do not know the best means for achieving such aims, either at any given moment or, especially, with the uncertainties that obtain as social conditions change over time. What kinds of policies and programs, for instance, will best promote educational opportunity and achievement? Some believe universal pre-school is the answer, others a better school finance system, others better and more pervasive opportunities for online learning. Examples easily multiply. What kinds of policies will best reduce recidivism rates in prisons or in substance abuse programs? Or consider environmental policy: what kinds of changes will reduce carbon emissions with the lowest cost to economic growth?

[25] To the best of my knowledge, the first use of the phrase "foundations are society's risk capital" is in Arnold J. Zurcher's "Foundations: How They Operate as Society's Risk Capital", *Challenge*, Vol. 4, No. 1, 1955: 16-19.

A democratic society, recognizing that neither its leaders nor its technocratic experts are all-knowing, that reasonable disagreement on the best means to pursue just ends is likely, and that social conditions are always evolving, might wish to stimulate and decentralize innovation and experimentation in social policy so that better and more effective policies at realizing democratically agreed upon aims can be identified and adopted. Moreover, this need for experimentation is never ending. In light of constant change in economic, cultural, technological, and generational conditions, the discovery process is, in good circumstances, cumulative, in contributing to society a storehouse of best, or simply very effective, practices for different contexts and shifting priorities.

To be sure, the government can stimulate some measure of experimentation and risk-taking innovation on its own. It can, for example, invest in basic research with uncertain outcomes. It can develop federal structures of government that treat jurisdictional sub-units as laboratories of policy experimentation. Hence Justice Louis Brandeis' famous description of American states as laboratories of democracy. Democratic government has good reason to be experimentalist, to approach policy and institutional design as a form of problem solving.[26] Such approaches notwithstanding, political leaders would also be right to harbor some skepticism that government would be ideally suited to carry out such experimentation itself. For one thing, citizens in a system of democratic governance tend to expect and prize tested and reliable outcomes in public policy. Elected representatives who allocate public funds to highly risky strategies to social problems, in the sense that the selected policy may fail in delivering any benefits at all, also run the risk of being punished at the ballot box. For another, wasteful government spending tends to be deplored, and yet experimentation requires that some experiments fail if the approach is to deserve the label experimentation in the first place.

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[26] Insert Brandeis reference; cites to democratic experimentalism literature (Dewey; Christopher Ansell's pragmatist approach to democracy 2011; Charles Sabel, Experimentalist Governance, Michael Dorf and Charles Sabel, Constitution of Democratic Experimentalism 1998).

What extra-governmental mechanisms, then, could be designed to carry out decentralized innovation and experimentation? My claim is that foundations can be one mechanism among others, such as federalism, for this discovery procedure.

And foundations have a structural advantage over market and state institutions in this discovery effort: a longer time horizon. An essential feature of the discovery argument focuses on the *time horizons* involved with innovation and risk-taking in the marketplace and public institutions of the democratic state. Unlike profit-driven businesses, foundations are not subject to quarterly or annual earnings reports, the bottom-line balance sheet, or impatient investors or stockholders. Commercial entities in the marketplace do not have an incentive structure that systematically rewards high-risk, long time horizon experimentation; they need to show results in order to stay in business. Similarly, public officials in a democracy do not have an incentive structure that rewards high-risk, long time horizon experimentation; they need to show results quickly from the expenditure of public dollars in order to get re-elected.

Dennis Thompson casts the issue a bit differently by identifying one of the built-in problems of democratic societies as "presentism": democracy's systematic and pervasive bias in favor of the present.[27] Democratic government is ill-suited, in his view, to tackle long-term problems and to represent the interests of future generations. (In chapter five, I examine the case for philanthropy as a mechanism to provide for the interests of future generations.) Thompson identifies several sources of this presentist bias. These include the fact that studies show that humans tend to favor the present and short term over the distant and long term. And democratic governments are meant to be responsive to citizens' preferences, so we can expect government policies in democratic societies to favor the present and short term. In the face of undeniable problems, such as climate change, that will confront future generations, democracy's presentism is a major liability. Thompson's preferred

[27] Dennis Thompson, "Representing Future Generations: political presentism and democratic trusteeship" *Critical Review of International and Political Philosophy*, Vol. 13 (1) (2010), 17-37.

solution to combat democracy's presentism is democratic trusteeship, the idea that present generations can represent the interests of future generations by acting to protect the democratic process itself over time. I agree with Thompson's diagnosis of presentism, and have no strong argument against democratic trusteeship. I think Thompson neglects other institutional solutions, however. I propose that the private philanthropic foundation is also a worthy institutional design to combat presentism. Foundations, precisely because of their lack of ordinary democratic accountability and legal permission to persist for decades, can fund experiments and innovation where the payoff, if it comes, is over the long haul, benefitting future rather than present generations. Moreover, because the universe of private foundations is diverse and donor-driven, different foundations are likely to experiment with different approaches, improving the chance that effective or simply better social policies or solutions to social problems will be found.

In sum, foundations, free of both marketplace or electoral accountability regimes, answerable to the diverse preferences and ideas of their donors, with a protected endowment designed to exist across generations, even in perpetuity, are perhaps uniquely situated to engage in the sort of high-risk, long run policy innovation and experimentation that is healthy in a democratic society and that addresses the interests of future generations.

How are philanthropic experiments evaluated? And what is the uptake mechanism that could disseminate or bring to scale successful experiments and proven policy innovations? Failed innovations and experiments die, though society has presumably learned something from the failure. Other foundations may take up and modify the experiment and later generate positive results. Still other foundation projects succeed in showing positive effects. Ideally, foundation-funded experiments would be subject to demanding social science review, not anecdotal reports from the field. What's essential to recognize, however, is that from the perspective of a foundation, success in its philanthropic giving consists not in funding innovative and risky social policy experiments and then sustaining the most successful of them forever. Because the assets of even the largest foundations are dwarfed by the assets of the marketplace and the state, success consists in seeing the successful or proven policy innovations “scaled up” by the commercial marketplace or by the state. That is to say, successful policy innovations reach a broader population not because the foundation that funded the initial experiment now pays for its distribution or adoption across a much larger group of people. The hoped-for outcome is that the marketplace or the government plays this role. In the case of the marketplace, foundation-funded projects can be demonstrations that a revenue-generating, if not profit-maximizing, market for some kind of social good exists. At which point, it is reasonable to expect that capital investments and the ordinary operation of a capitalist economy will kick in. In the case of the government, the foundation’s social policy innovation can be presented, as it were, to citizens for incorporation as a public undertaking or responsibility. Foundations, in this model, provide funding for policy experiments that, to use Eric Beerbohm’s apt term, “audition” for the stamp of approval by a democratic public.[28] A foundation project that was initially privately-funded and democratically unaccountable auditions for adoption as a publicly-funded and democratically accountable government responsibility.

Some of the greatest accomplishments of American foundations fit this model. Consider the paradigmatic example of successful foundation activity, Andrew Carnegie’s promotion of public libraries. Carnegie provided significant funding for the construction of libraries, but conditioned his grants to municipalities on modest matching public dollars (usually ten percent annually). Between 1911 and 1917, Carnegie’s philanthropy contributed to the creation of more than 1,500 public libraries. The library grant program was discontinued shortly thereafter, yet citizens found the libraries important enough that they demanded that they become the full responsibility of the local municipality. The privately-financed public libraries successfully auditioned for inclusion in public budgets. Similar accounts could be given for other foundation successes, such as the Green Revolution, the development of Pell Grants in higher education, the

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[28] Eric Beerbohm, “The Free Provider Problem: Private Provision of Public Responsibilities,” in *Philanthropy in Democratic Societies*, Reich, Bernholz, Cordelli, eds.

coordination of a national 911 emergency response system, and the emergence of micro-lending – all the result of foundation-funded innovations brought to scale by either the marketplace or the state.

The institutional design of foundations permits them to operate on a different time horizon than the marketplace and the government. Because their endowments are designed to be enduring, and the foundation is permitted to exist in perpetuity, foundations can fund higher-risk social policy experiments. Foundations can use their resources to identify and address potential social problems decades away or innovations whose success might be apparent only a longer time horizon. In short, unlike business and the state, foundations can "go long." They can be the seed capital behind one important discovery procedure for innovations in effective social policy in a democratic society. This, I believe, is the stronger argument on behalf of foundations.

Notice, however, that the foundations capable of providing sufficient risk capital for discovery have significant assets, and likely have a professional staff able to manage and disseminate its learning. The small family foundation that gives away less than $50,000 a year is not in a strong position to carry out such a task. Here is another reason for concern about the growth in small foundations and another reason for considering a high floor of assets before being permitted to set up a foundation.

This is an argument, of course, not in favor of mass philanthropy but of professionalized and elite philanthropy. It is an argument not that philanthropy supplants or supplements what government does but that identifies a distinct role for foundations. It is an argument not that plutocratic voices stand in ineliminable tension with democracy but that such voices can be domesticated, or rendered supportive of democracy.

Need the endowments that fuel foundation grant making be perpetual? If so, need the founder's intent be honored in perpetuity? On this matter, I side with Mill in believing that perpetuity is unnecessary and even potentially injurious to the social utility of a foundation. The famous dictum of Thomas Jefferson expresses the principle well: "That our creator made the earth for the use of the living, and not of the dead; that those who exist not can have no use nor rights in it, no authority or power over it."[29] No principle could specify the ideal lifespan of a foundation; the relevant consideration here is that a foundation have an incentive structure that permits, or indeed encourages, work on a longer time horizon than other social institutions. What Rockefeller's advisers proposed to Congress in 1911, that the lifespan of a foundation be capped at 100 years, or five generations, seems an adequately long-time horizon in which to engage in the important, democracy-supporting work of Discovery.

Conclusion

With this argument in hand, one wants to know, of course, how well foundations perform in the United States or elsewhere when measured against the vision articulated and defended here. Are foundations fulfilling the specified role in a democratic society I have outlined here? Are they good at fostering pluralism and discovery? A rigorous assessment is beyond the scope of my argument, but it is worth noting in conclusion that skepticism is certainly warranted.

Many prominent foundation observers, including many who are friends of foundations, believe that foundations are underperforming when measured on almost any yardstick of success.[30] And certainly underperforming if measured by the standard of pluralism and discovery. In 1949, a prominent foundation leader, Edwin Embree, wrote an article called "Timid Billions," concluding that despite obvious social problems and ample philanthropic assets there was "an ominous absence of that social pioneering that is the essential business of foundations."[31] More recently, Gara LaMarche, who spent more than fifteen years at two of the world's largest foundations, concluded that foundations tend to be risk-averse rather than risk-taking. "Courageous risk-taking is not what most people

[29] Insert Jefferson citation.

[30] Foundations leaders and observers have long invoked experimentalism as one of their chief responsibilities even if the record of living up to this responsibility is spotty. Consider David Owen's 1965 discussion of private foundations in Britain. "Foundation executives think of their greatest single function as that of operating a 'first-run experiment station'" (Owen, *English Philanthropy: 1660-1960* [Harvard University Press, 1964]: 557).

[31] Edwin Embree, "Timid Billions: Are the Foundations Doing Their Job?" *Harpers Magazine* 1949: 28-37.

associate with foundations," he writes, "whose boards and senior leadership are often dominated by establishment types. If tax preference is meant primarily to encourage boldness, it doesn't seem to be working."[32] Joel Fleishman, the former director of Atlantic Philanthropies, and author of *The Foundation: A Great American Secret*, thinks that foundations would do their work better if they were more transparent and risk-taking. Others, such as Waldemar Nielsen, a prominent author on the subject of philanthropy, have challenged foundations' support for innovation, arguing that foundations are more frequently on the "trailing edge, not the cutting edge, of change." Peter Frumkin, Paul Brest, and Hal Harvey have argued that foundations operate too often without a strategy or theory of social change, and are more commonly used as vehicles to express the preferences and fancies of their endowers.

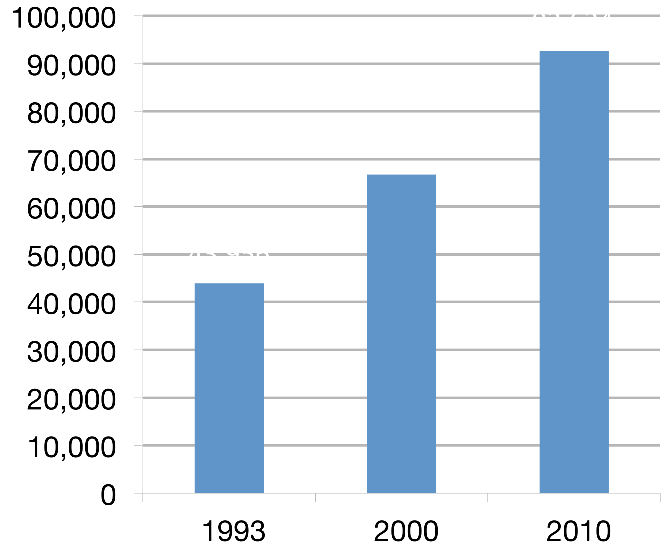
Perhaps these critics are correct. If so, then so much the worse for foundations, and so much the worse for the distinctive institutional privileges that currently attach to them. My aim here is not to defend the existing behavior and performance of foundations but to identify the right standard by which to assess their performance and confer a certain amount of legitimacy on their distinctive and considerable institutional privileges. I have sought to provide an argument about what foundations are for in a democratic society, about why a democracy would opt to create something as odd as the institutional form of a foundation. I have sought to counter the idea that foundations are essentially repugnant to democracy. My point is that in spite of their plutocratic power the peculiar institutional form of the foundation can have an important role in a democracy.

Are foundations democratically required? I am not prepared to answer this question affirmatively, for a democratic government has multiple mechanisms to cultivate pluralism and foster discovery. But I do hope to have shown that foundations are certainly democratically permissible, and that it is possible to defend a role for foundations, in something like the form they exist today, that makes them supportive of rather than injurious to democracy.

[32] Gara LaMarche, "Democracy and the Donor Class," *Democracy: A Journal of Ideas*, 2014, 55.

APPENDIX A

Growth in Number of Private Foundations, 1993-2010



APPENDIX B

Growth in Number of Private Foundations, by Asset Size, 1993-2010