Chapter 1: Introduction: A Brief History of Giving in Time

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All gifts are oriented in time, just as they are oriented in space. Just as any donor must specify *where* a gift will be given, so too the donor must decide *when* a gift will be given. And just as donors must consider their responsibilities to potential beneficiaries who are geographically proximate against those who are more distant, donors must also balance the moral imperatives issued by the past, present, and future—the pull of traditions and founding charters, of current exigencies and of future needs. Decisions over the pacing, timeframe, and duration of gifts represent some of the more consequential and complex decisions that donors face and that the public can assess. Yet there are certain moments when these temporal considerations become especially salient, in public, scholarly, and practice-based discourse.

As this introductory chapter will explain, we are now in the midst of such a moment. Questions surrounding the timing of gifts, the proper “timely” response to crises, the legitimacy and the social value of endowments and perpetuity, and the obligations of the donor to the present or to the future, are now some of the most fiercely debated within the philanthropic and nonprofit sectors. Moreover, these questions do much to frame how the public and policymakers understanding philanthropy—the good it can do, the challenges it confronts, and the dangers it poses.

This volume highlights some of the most exciting thinking on “giving in time” from a range of academic disciplines—history, political science, law, and philosophy. This chapter will offer a brief introduction to that thinking and will situate it within the broader history of how the temporal aspects of giving have been understood, with a particular emphasis on giving in the United States. It will also outline some the primary reasons why recent years have brought increased attention to this constellation of issues we call “Giving in Time.”

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The dominant time-based orientation of gift giving for much of human history was dictated by the immediacy of the tug of human sympathy and fellow-feeling. Men, women and children responded to pressing needs as they encountered them. But for millennia, individuals have also extended the scope of ethical responsibility into the future. “Even before the right to make wills and testaments developed,” scholar Marion Fremont-Smith has noted, “the practice of leaving property in perpetuity to other than paternal heirs was encouraged for religious purposes in both Egypt and Chaldea.” Scholars have pointed to the funding of the Oracle at Delphi and the Library of Alexandria as early precedents for endowments, which allowed individuals to contribute to future needs. The practice developed by early Romans of bequeathing money or property to individuals to maintain burial sites and memorial services in perpetuity ultimately encouraged the endowment of larger corporate bodies, such as neighborhood associations, guilds and *collegia* to perform these and similar functions. In many of these cases, ideas regarding the immortality of the soul, *sub specie aeternitatis*, promoted an orientation toward giving in which the needs of the future were granted an equal or greater weight than the needs of the present.[[1]](#endnote-1)

After the rule of Emperor Constantine, the Church became the primary means through which social needs of the Roman Empire were met, and a large proportion of its institutions were funded through endowments. In Europe, the Middle Ages brought a significant expansion of permanently endowed institutions, as the practice of dedicating land to ecclesiastical institutions in perpetuity became more widespread, as did late-in-life or deathbed contributions, under the guidance of a priest. A form of perpetual foundation, the *waqf*, was established in Islamic societies by the ninth century and soon became “the premier institutional mechanism for philanthropic activity” in the Islamic world, allowing for “ongoing charity,” even after the death of the donor. Some scholars have argued that waqfs served as the inspiration for some of the earliest European foundations.[[2]](#endnote-2)

In 1601, endowed charities in England were granted legal codification through the Elizabethan Statute of Charitable Uses, which among other policies established charity commissioners to review disputed trusts. Such legal sanction further encouraged the spread of charitable trusts. Yet as Rob Reich demonstrates in this volume, the growth of endowments provoked a strong critique from Enlightenment thinkers; the fear of “mortmain,” the “dead hand” of the past extending its grip into the present and future, which had shaped legal attitudes toward trusts in general since medieval times, spread to charitable trusts as well. For instance, in the 1736 Mortmain Act—spurred in part by anti-clerical sentiment—Parliament prohibited charitable bequests in land and interests in land as well as charitable giving within twelve months of the death of the donor.[[3]](#endnote-3)

Fears about the hold of the past on the present were in turn amplified by the emerging discipline of political economy, whose adherents reveled in tracing the unintended consequences of benevolent action. In the Victorian era, critics increasingly warned against the persistence of obsolete charitable trusts, designated by the donor to a purpose that had become outmoded or redundant with the passage of time, but which continued to grow nonetheless (funds dedicated to ransoming Christian captives from the Barbary pirates was one favorite example). The controversy prompted a wave of scholarship and essays on the dangers of endowments, which tended to affirm the estimation of one author in an 1880 prize-winning essay: “whilst charity tends to do good, perpetual Charities tend to do evil.” The concern became so acute that Parliament intervened and granted the Charity Commissioners even greater powers to redirect charitable funds away from outdated trusts. By the final decades of the century, temporality had become a central category of normative analysis for philanthropy critics.[[4]](#endnote-4)

These concerns took their own form in the early days of the United States. Principles of English law, including the statutes allowing perpetual charitable trusts, largely governed during the colonial period. However, post-Revolution charitable trusts fell under increased suspicion because of their association with the privileges, concentrated wealth, and corrupting influence of Crown and Church and the threat they posed to republican ideology. Courts were generally suspicious of allowing “every private citizen the right to create a perpetuity for such purposes as to him seem good,” and restrictive policies toward charitable trusts spread. States from New York to Virginia limited the amount of money that could be bequeathed to charitable institutions and the amount of property an incorporated charity could accumulate.[[5]](#endnote-5)

However, the intensity of debates regarding philanthropic temporality in the United States was muted by the fact that until the second half of the nineteenth century, the surplus wealth in the hands of the nation’s richest citizens was generally modest and most gifts were directed to current uses. However, the tremendous growth of industrial fortunes in the final decades of the nineteenth century spurred an increased engagement with the ethics of “giving in time.” These new fortunes swelled the endowments of charitable institutions across the nation. After a flurry of large donations in the preceding decade, by 1900, endowments in higher education had reached a value of somewhere between $165 million to $200 million. Moreover, in the early decades of the century, the legal definition attached to an endowment began to assume its current form, “a fund which shall be maintained inviolate, the income of which shall alone be used.” A growing endowment increasingly became a mechanism for elite educational institutions to signal exclusive status, which in turn both attracted increased philanthropic investment in endowments and helped to validate perpetuity more broadly as an institutional ethic.[[6]](#endnote-6)

But there were also counter-pressures that encouraged spending for current needs. During these years, Catholic leaders often defined their distinctive sectarian approach to charity against the establishment of large endowments and the sequestering of funds within them that otherwise could be applied to the human needs of the moment. Catholic charity appeals at the end of the century insisted that “Every penny raised will go toward the work which it should be given to, not to drawing large sums in interest.” Not only did the urgent social needs of Catholic communities make diverting charitable funds to endowments seem callous, but, as historian of Catholic charity Mary Oates has noted, Catholic leaders worried that “if charities were routinely endowed, parishioners might neglect to give and thus lose the spiritual merits that accompany benevolence.” In other words, it was not merely the needs of present-day beneficiaries that called for spending now, but also the spiritual needs of present-day benefactors. As Lila Corwin Berman relates in this volume, a similar model was also favored in the early decades of the 20th century by Jewish civic leaders, who endorsed a money-in, money-out approach to charitable institutions, in which funds collected were almost immediately distributed, while legacies and endowment-building were discouraged.[[7]](#endnote-7)

In the Gilded Age, the legal system faced increased pressure to loosen regulations of charitable trusts to allow for the newly created fortunes to be tapped to address pressing social problems. In 1893, after the New York Supreme Court invalidated a bequest to the New York City public library from former governor Samuel Tilden, because “New York law recognized as valid only those charitable trusts of which the beneficiaries were immediately ascertainable persons,” the state assembly passed a law which allowed for charitable bequests with indefinite ends, in part out of a recognition that these could be given more precise delineation by each subsequent generation of trustees. The ruling opened a greatly expanded temporal vista for organized philanthropy.[[8]](#endnote-8)

This does not mean that the fear of the “dead hand” had been banished at the turn of the twentieth century, when the institutions that would define the U.S. philanthropic landscape for the rest of the century began to take shape. As a Cleveland trust lawyer, Frederick Goff, who would establish the nation’s first community foundation in the city in 1914, witnessed numerous charitable trusts that had been committed to obsolete causes. He talked so frequently and menacingly about the perils of the “dead hand” that his daughter feared walking the halls of their own home at night, lest “the dead hand…reach out and grab her.” He designed the community foundation to allow a wider pool of the city’s residents, including donors large and small, to avoid the clutches of the “dead hand” and make use of a corps of respectable trustees, who could be relied on to direct philanthropic funds to worthy ends, now and in the future.[[9]](#endnote-9)

Yet for all the fear that it inspired in the Goff household, it’s clear that the “dead hand” was less a bogeyman among U.S. charitable leaders than it had been in Britain. It was neutralized by the main features that would come to define the grantmaking philanthropic foundation in the United States: the self-perpetuating board of trustees (bolstered by the above-mentioned Tilden Act) which could continually interpret donor intent in light of contemporary needs, and the general-purpose charter.

Both promoted with temporal considerations in mind. When John D. Rockefeller sought to secure a federal charter for his eponymous foundation, his lawyers highlighted both features as guarantors of a fit between the gift and the time in which it was made. “The charities of the fourteenth century are not the charities of the twentieth century,” Rockefeller lawyer Starr Murphy told a Senate committee. “The charities of the twentieth century will not be the charities of the twenty-first century.” It is “eminently desirable,” Murphy explained, “that the power to determine to what specific objects [charitable bequests] should be applied should be left in the hands of living men, who can judge of the necessities and of the needs in the light of the knowledge which they have as contemporaries….The wisdom of living men will always exceed the wisdom of any man, however wise, who has been long since dead.” The indefiniteness and the “elasticity” of the foundation’s purposes, far from being a legal liability, would allow it to be governed by living men (although it would also channel funds to charitable institutions which might outlive them) and to adapt to changing times.[[10]](#endnote-10)

The temporal considerations that would preoccupy philanthropic leaders and their critics in the coming decades hinged less on concerns about the hold of the past on the present and more on what Sears, Roebuck president Julius Rosenwald termed the issue of “timeliness”—that is, the question of the relative responsibilities of donors to their own day and to the future. If the fear of the “dead hand” was a largely admonitory ethic, timeliness, as Rosenwald understood it, was an affirmative one. Most often, it took shape as a focus on the appropriate payout or disbursement of philanthropic funds.[[11]](#endnote-11)

The first generation of modern philanthropic leaders demonstrated a range of attitudes toward “timeliness” and toward how those considerations should inform a foundation’s lifespan. At one end stood Andrew Carnegie, the Scots-born steel magnate and the leading devotee of perpetuity. Perpetuity was, as one early historian noted, a “characteristic basal to Mr. Carnegie’s concept of philanthropy” and a feature of all the philanthropic institutions he established. “My desire is that the work which I hav been carrying on…shall continue during this and future generations,” Carnegie wrote in his 1911 letter of gift to the Carnegie Corporation, using his distinctive phonetic spelling. “My chief happiness as I write these lines lies in the thot that even after I pass away the welth that came to me to administer as a sacred trust for the good of my fellow men is to continue to benefit humanity for generations untold.”[[12]](#endnote-12)

What principles supported Carnegie’s embrace of perpetuity? We cannot ignore the egoistic lure of immortality since Carnegie’s benevolent impulses were deeply intertwined with his compulsive self-promotion. But we must also consider his general liberal faith in human progress, captured in his personal motto: “All is well since all grows better.” A perpetual foundation would be carried along this gradual unspooling of human adaptability and perfectibility. So, in 1919, when Carnegie created the Carnegie Endowment for International Peace as a perpetual institution, he did so with a startlingly hopeful proviso, given the bloodshed that had just swept over the Western world. “When…war is discarded as disgraceful to civilized men…the trustees will please then consider what is the next most degrading remaining evil or evils whose banishment…would most advance the progress, elevation, and happiness of man, and so on from century to century without end.” In that “and so on” lies the kernel of this attitude toward foundation lifespan; unlike many of his contemporaries, he did not harbor millennial notions in which contemporary crises represented some distinctive and decisive epoch. He held the long, incremental—and progressive—view of human uplift.[[13]](#endnote-13)

Related to this faith in human progress was his faith in human reason—or at least, his faith in the good sense and perspicacity of the trustees who would lead his philanthropic institutions in the future. Carnegie’s understanding of time was dominated by both a sense of flux and of constancy. “Conditions upon the Erth inevitably change,” he insisted, but the decency and judiciousness of those who would lead his institutions in the future would not. As Henry Pritchett, the long-serving president of the Carnegie Foundation for the Advancement of Teaching, explained, Carnegie “decided in favor of the perpetual trust, influenced in large measure by his faith in his fellow men.” According to Pritchett, Carnegie “created permanent endowments in the promotion of various great causes not because he believed these agencies would always function at the maximum efficiency; all human organisms, he was wont to say, have their periods of activity and of commonplace performance. But taking the long view, looking to generation after generation, he had confidence that successive groups of trustees would deal wisely and justly with their responsibilities.”[[14]](#endnote-14)

At the other pole, there was Sears, Roebuck’s Rosenwald, who became the nation’s preeminent critic of endowments and leading champion of limited-life philanthropy. The Rosenwald Fund, established in 1917 and best known for its funding of thousands of elementary schools for African-Americans in the South, became in 1948 the first private foundation to spend all its funds and go out of existence in accordance with the expressed wishes of its founder. In a 1949 retrospective, the former director of the fund and a co-author explained some of the benefits of spending down the Fund:

“[The foundation’s] officers and trustees were not preoccupied with saving funds and conserving capital. They did not have time to grow stale nor to build themselves into a routinized bureaucracy. They were able to throw their full resources into the work that needed to be done. Most important of all, because its life was short, the Fund was constantly striving to build all its effort into the continuing forces of society. The educational programs were created from the very beginning as parts of the public systems of schools and colleges or as institutions with a constituency so wide as to assure continued support.”[[15]](#endnote-15)

Here we find an early articulation of the basic claims that would be made on behalf of limited-life philanthropy for the next half-century: that it promotes a more vital, flexible style of giving; that it directs additional funds toward urgent problems; that it prevents the development of bureaucracy; that it is better attuned to the importance of grantee self-sufficiency.

In a pair of 1929 articles for the *Atlantic Monthly* and *The Saturday Evening Post*, Rosenwald laid out an explicit defense of “timeliness” as his defining philanthropic ethic, what he called the “warp and woof” of his foundation. His advocacy of limited life philanthropy was rooted not only in the traditional cautionary rationale of the danger of the “dead hand,” the fear that extending the moral preferences and priorities of one generation into the next brought inefficiency and waste, but in an insistence on an affinity and a responsibility between a donor and the age in which he or she lived. On a practical—and epistemic—level, this was simply a function of a temporal orbit of familiarity and intelligibility that extended only a generation or two into the future. As Rosenwald wrote, “Contemporary needs are the only needs of which we can be certain, and it is those needs that we must seek to serve.”[[16]](#endnote-16)

But there was also a deeper, more organic bond that Rosenwald suggested connected the donor and his age. “The generation which has contributed to the making of a millionaire,” he wrote in the *Saturday Evening Post*, “should also be the one to profit by his generosity.” The giver should be driven by the crises of the present moment, confident that those to come would find their own benefactors. “[T]he crying demands of Negro schools and colleges are reasons for throwing all available resources into these present needs,” he wrote in the *Atlantic*, “and leaving to coming generations the meeting of future requirements, which are certain to be different from those of to-day.” Indeed, Rosenwald insisted that philanthropy should be extended to its beneficiaries like biblical manna, which fell to the Children of Israel to sate their hunger, and then “melted at the close of each day.”[[17]](#endnote-17)

Rosenwald could regard philanthropy’s evanescence as a virtue because of his faith in its regeneration. If Carnegie’s progressive orientation toward the future bolstered his commitment to perpetuity, for Rosenwald it did the opposite. He remained confident, as he argued, “that the generations that will follow us will be every bit as humane and enlightened, energetic and able, as we are, and that the needs of the future can safely be left to be met by the generations of the future.” This belief translated as well to a reluctance to give to charitable endowments. So, when he attached a condition to a significant gift to the University of Chicago that every year all of the interest and some of the principal be spent until the full amount was exhausted, he admitted that “money disbursed now will not yield income to the University fifty years hence,” but added reassuringly that “fifty years hence other contributors can be found to supply the current needs of that generation.”[[18]](#endnote-18)

If Carnegie promoted perpetuity and Rosenwald championed limited-life philanthropy, somewhere in the middle sat John D. Rockefeller, whose various philanthropic boards, and the leaders that directed them, exhibited a range of attitudes toward philanthropic lifespans and corresponding payout practices, as opposed to a single uniform position on one or the other pole. In 1909, Rockefeller, for instance, released the trustees of the General Education Board, the first of the foundations he created, from any commitment to maintaining perpetual life, and the foundation closed its doors in 1964. As a final report issued by the GEB on its dissolution states, “the Trustees deliberately chose to meet the challenge of worthy causes rather than preserve the funds at their disposal for some indefinite future.” In doing so, they balanced “the needs and uncertainties of the years ahead…against the concrete opportunities afforded by the first half of the twentieth century.”[[19]](#endnote-19)

Rockefeller did not insist on the spend-down model, though he was willing to accept a life-time limit of 100 years for the Rockefeller Foundation as a concession to receive a federal charter (the offer was ultimately rejected).[[20]](#endnote-20) Instead, he left decisions on lifespan and payout up to the trustees of the foundations he established. There was in fact an indeterminateness toward the question of foundation lifespan that governed much of the first half century of Rockefeller philanthropy. At any given moment, the urgency of a particular crisis or opportunity—the aftermath of the First World War, for instance—might goad foundation leaders into spending from principal. But they continued to put off a decisive resolution to the question of philanthropic timeframe.

That does not mean they ignored the question; to the contrary, it loomed large over much of their work. They just never settled it. In 1946, when the Rockefeller Foundation board was polled, a majority expressed support for terminating the Foundation within the next quarter-century, and all the trustees were willing to tap the principal fund “if opportunities develop for meeting needs and wants of importance and urgency.” In the next decades, the board continued discussing the issue, pushing aside the possibility of a total spend-down but remaining open to the spending of principal. The matter of lifespan, they stated in 1964, “should be reviewed frequently in the light of changing financial conditions and world needs.”[[21]](#endnote-21)

The Rockefeller Foundation’s open-ended approach to the question of lifespan reflected broader trends among foundations at midcentury. A 1952 Congressional investigation of foundations determined that a majority of the larger foundations it probed had charters featuring “optional” or “discretionary” perpetuity. A survey conducted in the early 1960s by the Foundation Library Center confirmed this finding. Of the 32 responses it received from foundations regarding lifespan decisions, 13 reported a commitment to perpetual life, while another 17 reported a status of some version of discretionary perpetuity (8 of which wrote that a substantial amount of capital had already been expended). Only one foundation reported an explicit commitment to limited life, with an actual date of termination set by the donor.[[22]](#endnote-22)

The prominence of “discretionary” perpetuities and their open-ended temporal status ensured that questions about timeliness, and particularly about lifespan, remained at the forefront of discussions about philanthropic practice. As McGeorge Bundy declared in his first annual report as Ford Foundation president in 1966, “A foundation should regularly ask itself if it could do more good dead than alive.” The significance of these questions was reinforced in the 1950s and 1960s by a series of Congressional investigations of philanthropic foundations that culminated in the Tax Reform Act of 1969, which set the terms of the foundation regulatory regime for the next half century (including mandatory payout rates).[[23]](#endnote-23)

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By the 1950s, and throughout the 1960s, as concerns about a host of foundation abuses mounted, the betrayal of an ethic of philanthropic “timeliness” served as one framework through which Congressional critics could express their belief that foundations had abrogated their responsibilities to the public. Calls for foundation time limits, which had risen during the Progressive era, did so again at mid-century. The special committee led by Tennessee congressman B. Carroll Reece to investigate foundation practice recommended a 25-year limit, for instance. When Texas congressman Wright Patman took up the cudgel and began his investigation of foundations in 1962, he also advocated for a lifetime limit of 25 years.[[24]](#endnote-24)

Patman’s investigation into foundation abuses compelled the Treasury Department to begin one of its own, the culmination of which was a report on private foundations published in 1965. Treasury considered the question of foundation time limits but decided against endorsing them. It did identify, among the various critiques that had fueled the push for time limits, the one that seemed to be both most legitimate and amenable to specific remedy. “It has been contended that the interposition of the foundation between the donor and active charitable pursuits entails undue delay in the transmission of the benefits which society should derive from charitable contributions,” the report stated.[[25]](#endnote-25)

This was, of course, an articulation of a violated ethic of timeliness, highlighting the “undue delay” between the donation and the operationalized charitable benefits. Yet another way in which this delay was understood during this period was through a fiscal framework—between the conferral of a tax benefit to the donor and the benefits that accrued to the public that had, in effect, subsidized the donation, through charitable dollars reaching operating charities. This fiscalized understanding of timeliness grew in prominence during the 1960s as concerns about philanthropic abuses became increasingly entwined with the issues of tax avoidance and evasion.

After the publication of the Treasury Report, the momentum toward philanthropic reform stalled. But it picked up in the decade’s final years, through a convergence of reports of foundation abuse, real and imagined, and as Congress began to consider tax reform. Once again, the ethic of philanthropic timeliness emerged as central to the effort. Foundation time limits did not make it into the House bill that would ultimately become the Tax Reform Act of 1969, and which borrowed heavily from the Treasury report. But the issue was raised in the Senate, where an amendment was added by Sen. Al Gore, Sr. that would impose a 40-year limit on the tax-exemption on income, estate, and gift tax for private foundations (Gore had originally proposed a straight-up 25-year life-limit). Debate about the proposal represented one of the most direct legislative engagements with questions surrounding “giving in time.”[[26]](#endnote-26)

To justify the time limit, Gore and his allies raised both the specter of the “dead hand,” as well as the troubling temporal distance between when donors who gave to foundations took their tax breaks and when those funds actually reached charities. Gore’s allies cited research that the majority of nonprofits at the time were facing budgetary crises and that increased foundation payout was one of the best means of guaranteeing them more fiscal security. Yet opponents of time-limits, led by Sens. Walter Mondale (D-MN) and Charles Percy (R-IL), had ready answers to these challenges, based on an alternative theory of “giving in time.”[[27]](#endnote-27)

The time-limit provision, a “wholesale and indiscriminate 40-year death sentence,” as Mondale termed it, would “destroy” foundations, which were “one of the most creative and dynamic and unique institutions in American life.” On the Senate floor, Mondale and his allies dismissed fears of the “dead hand,” insisting that foundations, especially the vast majority that had been endowed with an expansive general charter, were in fact exceptionally responsive to the times (and Mondale added that courts’ willingness to utilize the doctrine of *cy pres* made fears about funds restricted to serve an outmoded purpose outmoded themselves). The record of foundations, he argued, demonstrated that the vast majority “are run by vital, modern, responsive, living, continuously changing trustees, who reflect the guiding interests of the founding donors only to the extent that they were truly visionary or wise enough to foster evolution in the foundation’s activities and purposes.” In other words, most foundations, he asserted, followed an ethic of “timeliness.”

But Mondale offered another argument that reframed such an ethic. He reminded his colleagues that they were not merely citizens of the current moment, but were the future generation and legatees that had previously been imagined by Carnegie and Rockefeller at the time of the founding of their foundations, just as other citizens to come would be the future beneficiaries of foundations established in the current moment. If the Rockefeller Foundation had been granted only 40 years of tax-exempt life and had been forced to shut its doors in 1952, Mondale pointed out, it would not have been able to spark the Green Revolution. And if the Carnegie Corporation had closed after 40 years, in 1951, it would not have had the opportunity to fund its work on preschool education and public television programming for children.[[28]](#endnote-28)

These arguments carried the day, and the time limit provision was defeated handily on the Senate floor, 69-15.[[29]](#endnote-29) One factor that likely helped to guarantee its failure was another provision of the Tax Reform Act, a minimum annual distribution rate imposed on foundation assets (initially set at 6 percent, then, in 1975, lowered to 5 percent), that effectively addressed many of the concerns raised by perpetuity’s congressional adversaries. (As Lila Corwin Berman details in this volume, the disparity thereby established between private foundations that carried a payout requirement and public charities, which did not, provided the opening for the growth of donor-advised funds). As a privately funded commission that initially proposed the policy noted, a reasonable payout percentage that would allow a well-managed foundation portfolio to maintain its size, while making productive contributions to society, represented “a balancing of priorities between the present and the future.”[[30]](#endnote-30)

That balance ultimately quelled some of the intensity of the discussions and debates surrounding “giving in time.” The payout rate translated many of those discussions into more technical, administrative and legalistic terms. Indeed, the foundation regulations passed as part of the Tax Reform Act of 1969 empowered tax lawyers and accountants—foundations’ legal and accounting expenses nearly doubled between 1968 and 1970—who often regarded the prudent stewardship of philanthropic resources as their chief professional responsibility and deferred to an unspoken presumption of perpetuity, often without an elaboration of a strong theory of timeliness. Of course, this presumption of perpetuity served some private interests as fees for trustees and financial managers were typically based on endowment size.[[31]](#endnote-31)

This is not to suggest that “giving in time” disappeared as a theme in philanthropic discourse. In the following decades, occasional efforts to reform the payout requirements led to renewed defenses of perpetuity and reminders of the importance of foundations as “island[s] of long-term thinking in a turbulent sea of short-term culture,” in the words of one advocate. Economic downturns, which cut into the assets of many foundations, led to both internal and external reconsiderations of responsibilities to the present and to the future. A rising corps of conservative donors who worried that, over the decades, foundations tended to drift away from the intent of their founders—almost always in a progressive direction—led to an elevation of issues of timeliness among some donors and organizations, and even a commitment from some of them to spend down their foundations.[[32]](#endnote-32)

Yet in the final decades of the century, temporal considerations were no longer as prominent and contentious topics of analysis and debate as they were during the deliberations over the Tax Reform Act of 1969. It was not until the opening decades of the new millennium that they would begin to approach, and perhaps even to surpass, that level.

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Given the ways in which the salience of time-based considerations has ebbed and flowed over the course of the last half century, we can speak now of two definitions of “timeliness,” both of which have grown more pronounced in contemporary philanthropic discourse and practice over the last decade.[[33]](#endnote-33) First, timeliness can denote the elevation of temporality as a mode of analysis with respect to philanthropy, without favoring any one particular relationship between giving and time. High-profile debates about philanthropy increasingly center around the legitimacy and purpose of endowments; the benefits of spending down or embracing a commitment to perpetuity; the merits of disbursing philanthropic funds now or later; and the tug of intergenerational ethics, including the proper weight to assign to our responsibility to the near and distant future. In its second definition, timeliness can designate a particular relation between giving and time, one which insists upon the giver’s responsibilities to their particular moment, an imperative that stakes donors more closely to contemporary needs and exigencies.

What explains the increased prominence of timeliness, both as a category of analysis and as a particular temporal orientation? There are several overlapping and likely mutually reinforcing reasons. Below we outline several of them.

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The Sense of Crisis

One important booster of philanthropic timeliness is a pervasive sense of urgent social crisis, which has been building for several decades, fueled by real-world dangers but also stoked by media outlets incentivized to raise constant alarm. This sense of crisis has attached especially to the existential peril posed by climate change but extends more broadly to cover a host of other harms and has most recently been amplified by the coronavirus pandemic and by protests over police brutality toward African Americans.

The experience of crisis often demands a reweighting of attention and resources toward the present. Such a temporal reorientation is recognizable in the charitable giving that surges in response to natural disasters, military conflicts, epidemics, and political upheavals. It has also been characteristic of many funders dedicated to addressing climate change. “Given the state of the environment and global warming coming at us like a freight train,” the founder of the Beldon Fund explained regarding his decision to spend down his foundation, “it was unethical to retain money for the future when who knows what the future might look like.” Even climate funders who appreciate philanthropy’s need to maintain a broad time horizon often invoke an ethic of timeliness when developing a response to climate change. Larry Kramer, president of the Hewlett Foundation, has sought to galvanize giving to the cause by invoking the “problem” of time. Although he has defended the merits of perpetuity, he also insists that time is running out to prevent irreversible damage and avoid a doom loop that would undermine nearly all the good work that philanthropy hopes to achieve. “It’s time to stop fiddling and help put out the fire,” he has insisted to other philanthropies, urging them to dramatically increase their funding to address climate change.[[34]](#endnote-34)

How philanthropy has defined and delimited what constitutes an actionable crisis has also come under increased scrutiny. Looking beyond a temporally circumscribed calamity or disaster, some funders have begun to understand the consequences of longer-lasting, more general systems of oppression or domination as crises that demand immediate attention. The recent increased focus of some philanthropies on economic precarity and racial injustice has prompted a reconsideration of time-based philanthropic norms, challenging a high valuation on deliberateness and patience in favor of distributive immediacy.[[35]](#endnote-35) This imperative does not merely give greater weight to the present but regards as its highest priority getting money into the hands of beneficiaries as quickly as possible.

The dictate of an ethic of distributive immediacy has led some major donors, such as MacKenzie Scott, former wife of Amazon founder Jeff Bezos, to increase giving rates to unprecedented levels (although these so far have largely failed to keep pace with the even more explosive rates at which their wealth is growing). “I have no doubt that tremendous value comes when people act quickly on the impulse to give,” Scott has declared. A similar attitude has also led to the spread of rapid response funds, constructed with minimal bureaucratic processes for grantmaking, whose aim is to get money in the hands of charities and individuals as quickly as possible, and to the increased prominence of direct cash transfers, which also hold out the possibility of speedy disbursement and immediate assistance.[[36]](#endnote-36)

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The Rise of the Engaged Living Major Donor

Another factor that has heightened the salience of timeliness has been the rise of the engaged living major donor, and, as Benjamin Soskis outlines in his chapter in this volume, a concomitant rise in an ethic of Giving While Living.

For much of the twentieth century, the nation’s wealthiest citizens often turned to philanthropy late in life. In the 1990s, however, attitudes toward the timing of major donors’ giving began to shift, as they began to engage in philanthropy more systematically, and earlier in their careers. Yet as late as 1999, a notable philanthropy scholar could write in the *Washington Post*, with a hint of surprise, “Philanthropy has become a controversial matter these days, particularly when donors make their own decisions about how and when to spend their money rather than leaving those details to professionals in the foundations they have set up.”[[37]](#endnote-37)

That trend continued in the new millennium, as those who made enormous fortunes in the tech and finance industries at relatively young ages gave away significant parts of those fortunes in the non-twilight portion of their lives—in what one commentator termed a repudiation of the “earn now, figure out the giving later” approach.[[38]](#endnote-38) These living mega-donors began to rival, and in many respects dominate, the nonprofit landscape, where legacy foundations once presided. Of course, legacy foundations also “give in time.” But individuals operate with a different temporal framework than do institutions and so their rise has brought a shift in—and often increased attention to—temporality.

Most significantly, the living donor has boosted the significance of timeframes associated with a lifetime. In this context, deliberations over the wisdom of spending now versus spending later translate into decisions about when in a donor’s life they should initiate or intensify a philanthropic program, with the bounds of human mortality establishing an assumed temporal terminal point. Additionally, given that major donors are now encouraged to begin their philanthropic careers earlier in their lives, their giving intersects with a novel constellation of major life events; Mark Zuckerberg and Priscilla Chan, for instance, pledged to spend 99 percent of their fortune on philanthropy after their first daughter was born, while MacKenzie Scott developed her distinctive approach to giving in the aftermath of her divorce from Jeff Bezos.[[39]](#endnote-39)

Starting earlier in their lives means that large-scale philanthropists face much longer horizons of giving, offering more room for deliberate experimentation and risk-taking. Indeed, when Zuckerberg and Chan pledged to spend the vast majority of Zuckerberg’s Facebook fortune on philanthropy “during our lives,” they also made clear that their giving would be done over decades, stressing the importance of maintaining “long time horizons” and highlighting the dangers of “short term thinking.”[[40]](#endnote-40)

This wider temporal vista means that the giving of engaged living major donors often combines some of the virtues associated with perpetuity (such as patience) within a delimited timeframe. It also ensures continued debate over the means of fulfilling the dictates of timeliness, since a commitment to give during one’s lifetime leaves open a range of possible opportunities for fulfilment and does not necessarily entail a close tethering of philanthropic response to the exigencies of the particular moment. Indeed, when Bill and Melinda Gates and Warren Buffett were debating the terms of the Giving Pledge, the campaign they led to convince the world’s billionaires to make a public commitment to direct half their wealth to philanthropy in their lifetimes, they discussed whether one of its founding principles should be the imperative to “Give Now.” The suggestion, however, was ultimately dismissed. The Pledge would not insist on a strong weighting of the present over the future, at least as defined within an individual lifetime.[[41]](#endnote-41)

The origins of the wealth of many engaged living donors in finance and technology has also fueled a more “strategic” approach to philanthropy which has sought to determine donations’ “return on investment.” Such an ROI framing has underscored temporal dimensions of philanthropy by directing attention to the “ripple effects” that current grants can have over time (as Tony Proscio discusses in his chapter), such that a gift today can produce compounding social value over future years.[[42]](#endnote-42)

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Challenges to Perpetuity

The rise of the engaged living mega-donor has coincided with a surge in challenges to the perpetual foundation, another development which has increased the attention directed to time-based philanthropic considerations. As Joel Fleishman, Director of Duke University’s Center for Strategy Philanthropy and Civil Society and former president of Atlantic Philanthropies, has noted, “[T]he single most important change that has taken place since 1990” is that “prospective donors appear to be favoring either the creation of a time-limited foundation with a lifespan roughly concurrent with their own or the direct disposition of substantial gifts during their lifetimes without the involvement of a foundation at all. That is a seismic shift in philanthropic practice.”[[43]](#endnote-43)

It is important to note that a commitment to Giving While Living does not necessarily entail a concomitant commitment to limited life philanthropy; in fact, the two can sometime be in tension, since an imperative to give during one’s lifetime can lead donors to channel funds to foundations with perpetual life, and the drive to spend down a foundation can require the enlargement of a philanthropic bureaucracy that can potentially sideline an engaged living donor.[[44]](#endnote-44) And yet, as Fleishman suggests, there is an unmistakable consonance between the two, and it should not be surprising that support for an ethic of Giving While Living and for limited-life philanthropy have grown in tandem.

Since at least the late 1990s, philanthropy analysts had claimed they detected the stirrings of increased support for limited-life philanthropy, yet a wholesale transformation in giving norms never materialized and perpetuity continued to be the dominant temporal orientation among those who led existing private foundations. In the 2010s, the presumption of perpetuity was increasingly challenged, as major donors such as Bill and Melinda Gates and Mark Zuckerberg and Priscilla Chan expressed support for limited-life philanthropy. The rationales offered for such support often were grounded in the more exacting definition of philanthropic timeliness, which insisted on the responsibility of the donor to their own age. Chuck Feeney, whose Atlantic Philanthropies became the largest limited-life foundation to close its doors in September 2020 and who became a vocal opponent of perpetuity, explained that his decision to “spend-down during my lifetime” was based on his recognition that “today’s needs are pressing,” and on his confidence that “the future will bring a new generation of philanthropists” to address future needs.[[45]](#endnote-45)

By the second decade of the twenty-first century, the dominance of perpetuity as a model of temporality had eroded even further, such that it was impossible to consider it any longer the default for philanthropic institutions. A 2020 report analyzing a survey of private foundations from Rockefeller Philanthropy Advisors and NORC at the University of Chicago noted that “nearly half of the organizations established in the 2010s were founded as time-limited vehicles,” whereas for foundations established in the 1980s, the proportion was closer to 20 percent.[[46]](#endnote-46)

The report also noted that more attention is being paid to timeliness, regardless of the decisions about timeframes philanthropic institutions end up making. Whereas foundation leaders in the final decades of the 20th century rarely “intentionally discussed or planned their institutional philanthropic timeframes,” its authors note, in recent years, “in part due to innovations driven by shifting social norms and the rise of strategic philanthropy, organizations are considering the length of time over which they want to operate as a core component of their strategy.” Yet whereas limited-life philanthropy has been publicly championed as an alternative philanthropic norm by some of the wealthiest, most prominent living donors (those likeliest to draw the most attention to discussions of timeliness), few living donors have defended the model of perpetuity. What defenses have been made have most often come from the heads of legacy foundations, who often have less power to shape public discourse outside the bounds of the philanthropic sector.[[47]](#endnote-47)

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Rise of Donor-Advised Funds

The astronomical growth of donor-advised funds (DAFs) must also be counted as a reason for increased attention toward considerations of “timeliness.” Much as the expansion of private foundations in the 1940s and 1950s sparked Congressional investigation of foundation abuses and prompted inquiries into foundation timespans and spending rates, the growth of donor-advised funds, private philanthropic accounts held at sponsoring charities that (unlike private foundations) carry no mandated payout rate but allow donors to claim an immediate tax deduction, have renewed debates about the responsibility of donors to the present moment and the need for public policies which incentivize the disbursement of philanthropic funds into the hands of operating charities.

Propelled by the explosion of DAFs at commercial sponsoring organizations (first authorized in 1991) the growth of DAFs has been astronomical, vastly outpacing the rate of growth of charitable giving more generally. Donations to DAFs increased from $7.1 billion in 2008 to $47.9 billion in 2020. In fact, between 2010 and 2020 the share of giving to DAFs as a percentage of total individual giving in the United States more than tripled from 4.4 percent to 14.8 percent. In 2016, for the first time in the quarter of a century since the *Chronicle of Philanthropy* began tracking the charities that received the most donations each year, a DAF sponsoring organization, the Fidelity Charitable Gift Fund, occupied the top spot of the rankings, pushing aside United Way. The following year, 6 of the top 10 charities in the *Chronicle*’s rankings were DAF sponsors. Commercial DAF sponsoring organizations have in recent years also ranked as some of the nation’s largest grantmakers measured by dollars out-the-door.[[48]](#endnote-48)

The regulation of DAFs has become one of the most contentious policy issues relating to charitable giving. Debates surrounding DAFs have elevated timeliness as a dominant theme within the public discourse surrounding philanthropic practice. Those advocating for regulatory reform accuse DAFs of facilitating the irresponsible warehousing of funds and point to the gap between when DAF holders receive a tax break for giving to them, subsidized by the public, and when the public actually benefits from those funds, when donations reach nonprofit grantees. Particularly concerning for those advocating reform is the fact that DAFs also effectively negate the 5 percent payout rule applicable to private foundations since (as discussed by Galle and Madoff in this volume), private foundations are able to meet the letter if not the spirit of the payout rule by making distributions to DAFs. Defenders of the status quo focus on the fact that the overall payout rates of DAFs are higher than the 5 percent required payout rate imposed on private foundations and argue that they allow donors and private foundations to take their time in determining how they want to disburse the funds they have allocated toward philanthropy. In June 2021, bipartisan legislation was introduced in Congress that would generally require DAFs to disburse funds within fifteen years to receive an immediate tax deduction and which would incentivize even faster disbursement. Supporters of the legislation promoted it as a means of challenging “the slow-moving philanthropic status-quo” and of guaranteeing that “today’s dollars [are] being used to confront today’s challenges.”[[49]](#endnote-49)

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This is by no means an exhaustive accounting of all the factors that have led to increased attention to questions of “giving in time.” Among the additional developments that have contributed is the growth of the effective altruism movement, an approach toward philanthropy which seeks to apply strict rationality to questions involving how to do the most good. Effective altruism has promoted the ethical imperative of “long-termism,” which advocates for time horizons extending into future centuries, and even millennia, and directs attention to contemporary donors’ responsibility to the billions, even trillions of humans yet born.[[50]](#endnote-50)

The heightened attention given to issues of economic inequality has intensified journalistic and legislative scrutiny of large nonprofit endowments and amplified the charge that they are warehousing funds that should be disbursed to address current needs.[[51]](#endnote-51) The increased focus many funders have given issues surrounding racial justice and racial equity has also cast a light on the racialized politics of philanthropic time frames, raising important questions about who has the power to make time-based decisions. Additionally, demands over reparations for slavery and other forms of injustice and dispossession have confronted philanthropy with questions surrounding “giving in time” that involve donors’ responsibilities to the past.[[52]](#endnote-52)

The Covid-19 crisis, and the protests over racial violence that erupted in the summer of 2020, stoked pre-existing debates around the issue of philanthropic timeliness. In the first months of the pandemic, a host of funders adopted rapid response grantmaking, prioritizing the need to get money out the door to grantees and recipients as quickly as possible.[[53]](#endnote-53) Advocates within the philanthropic sector called for foundations to increase payout rates, insisting that the urgency of present-day needs trumped the imperatives of endowment preservation. In this context, advocates sought to reframe the desire to save for future crises as a socially irresponsible form of resource hoarding. “The strength of a funder’s grantees at the end of this crisis will be a much better measure of the significance of a foundation than the size of its endowment,” a consortium of philanthropy-serving organizations declared. (According to a June 2021 survey from Candid, 43 percent of private foundations, and 59 percent of those awarding $50 million or more, did increase payout). But the prominence of these exhortations also prompted renewed defenses of perpetuity, an explicit engagement with the ethical underpinnings of what had often been treated as an unspoken default. Ultimately, the pandemic called forth more deliberate and sustained discussions of philanthropic temporality than any other moment in last several decades.[[54]](#endnote-54)

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The experience of the COVID-19 pandemic affirmed and amplified a conviction that had been mounting among many philanthropy analysts for the previous decade: that temporality is one of the most important vectors along which philanthropic giving must be analyzed and assessed. That conviction had been the impetus for a meeting of scholars and practitioners at Stanford University in May 2016, on “Giving in Time: Perpetuities, Limited Life, and the Responsibility of Philanthropy to the Present and the Future” and then for a follow-up conference of scholars at Boston College Law School four months later. Those conferences planted the seeds for this volume; much of the material published here was first presented at the scholars’ conference.

Those gatherings made clear the vibrancy of the work currently being done on questions related to “Giving in Time,” as well as the value of approaching that work from a variety of disciplinary perspectives. Those perspectives are organized in the chapters that follow around the axes of history, theory, and practice.

In his chapter, historian *Benjamin Soskis*, provides an historical perspective on the notion of “giving while living.” Although it has roots that go back as far as the teachings of medieval Christian moralists, the idea that philanthropy should not begin at the death of the donor, or indeed, even be deferred until old age, reached an early peak with the emergence of scientific philanthropy, more than a century ago. As mentioned earlier, Julius Rosenwald was the best known, but by no means the only, advocate for the idea that those who accumulated great wealth should actively engage in distributing their wealth while they could use the talents and proclivities that had generated the wealth in the first place.

Soskisargues that the idea of Giving While Living emerged from the convergence of three imperatives: the duty to commit one’s wealth to charity before death; the duty of the donor actively to oversee the distribution of charitable funds; and the duty of the donor to perform charity publicly in order to create a model for others. Versions of these ideas emerged throughout Europe in the wake of the Reformation, as charity’s focus shifted from salvation to repair of the terrestrial world, and capitalism provided means for donors to do so. But a variety of traditional legal mechanisms for creating perpetuities created barriers to *in vivos* charitable wealth distribution by the nineteenth century, and these outmoded legal forms had to be transformed in order to free up donors to act at the time, late in the century, when truly massive fortunes enabled potential donors to think about making large charitable gifts for expansive purposes during their lifetimes.

Andrew Carnegie was the best known of the early philanthropists to articulate what Giving While Living might mean. In his 1889 *Gospel of Wealth*, Carnegie invoked all three charitable imperatives for the wealthy to take an active role in distributing their resources while they were still in command of the talents that had enabled them to create such extraordinary wealth. Carnegie’s essay, and his personal example, have reemerged as a leading exemplar of how today’s mega-wealthy should behave, inspiring some of our biggest contemporary fortune-creators to become philanthropists at ages much younger than Carnegie himself. Carnegie has become, Soskis contends, the “archetype of the engaged, living donor” at a time when, until recently, such a philanthropic stance was a rarity. Philanthropy has become a much-admired behavior for young capitalist accumulators at the peak of their powers rather than the capstone of a long career of accumulation.

The political philosopher *Rob Reich* sets out a theoretical case against the use of perpetuity as a philanthropic strategy. Reich frames the issue of “a perpetual time horizon” by reference to the experience of the Rockefeller family more than a century ago. John D. Rockefeller, Sr. very badly wanted a Congressional charter for his proposed foundation, and his representatives offered a number of concessions to Congress in the hope of securing one. The most important concession was to forgo perpetuity for the proposed philanthropic foundation, and instead to agree to spend down the assets of the foundation within one hundred years. But Congress was unmoved and refused to grant the charter, so the Rockefeller family quickly obtained a charter from New York state – creating a foundation without limit of time. And indeed, by the early twentieth century, the majority of foundations created under state law were incorporated as perpetuities. This meant that their donors (and the trustees who succeeded to the control of donors) were under no time pressure to distribute the corpus of the foundation, and for the most part trustees managed the assets of their foundations so as to limit their annual expenditures so that they did not decrease the net value of the foundation endowment over time.

Reich considers this a bad practice and explains why he disapproves of the perpetuity of philanthropic foundations by going back even further into the history of philanthropic thought, explicating the case against perpetuity made by the English utilitarian philosopher John Stuart Mill, the most famous opponent of perpetuity in the nineteenth century. Mill was following in the footsteps of the eighteenth-century French Enlightenment thinker, Anne-Robert Turgot and the German philosopher Immanuel Kant, both of whom condemned what they considered the objectionable control of the “dead hand” over concentrations of wealth. Mill was not opposed in principle to foundations, but he saw no reason for the state to permit perpetual foundations and he felt very strongly that the state should reserve the right to intervene in defense of the public interest in the expenditure of foundation assets. Mill believed it appropriate for the donor of endowed funds to be able to designate the purpose of his gift during his lifetime, but no longer, since the donor should not be allowed to control resources from his grave. Mill did not believe a prohibition on perpetuities violated the property rights of the donor, since in his view the endowed funds were really the property of the intended beneficiaries of the endowment – and in the long run the only acceptable rationale for the distribution of endowed funds was that they were socially useful.

Reich accepts Mill’s argument and contends that perpetuity serves no useful social function in a democratic society, and he argues that social utility is the only acceptable rationale for the existence of endowments. At this point, Reich summarizes the argument he has made so strongly that the best reasons for philanthropy he poses are that it decentralizes the production of public goods, that it facilitates the power of minority opinion in a democracy, and that it incentivizes innovation in public life. Foundations, Reich asserts, would not exist without the privileges created for them by law, and those privileges can only be justified by the use of philanthropic funds to create public goods. Perpetuity, hence, has no appropriate role in the governance of philanthropic foundations.

Historian *Lila Corwin Berman* addresses the question of how the American Jewish community dealt with the problem of temporality in its philanthropic policies. She analyzes the historical development of what she terms the “contest between perpetual philanthropic accumulation and timely philanthropic distribution” for American Jews. This was an important and longstanding contest in a community with a very long history of both religious commitment to charity and social commitment to community. Philanthropy is where those two commitments intersect, and Berman’s topic is the emergence of a long-term American Jewish shift from preferences for “timely distribution” to perpetual philanthropic accumulation.

By the twentieth century the American Jewish community had become larger, wealthier, and better established in this country. The principal organizational device for modern philanthropy had become the Jewish federation system, which provided a central collection and distribution system for charitable funds to support Jewish community organizations. The federation was really a sort of ethnically-defined community chest structure, which in theory relieved individual charitable organization of the burden of raising their own funds through its annual appeals to the entire Jewish community. By mid-century, every town of any size in the United States had its local Jewish federation, which generally proved effective in soliciting Jewish residents for charitable contributions and distributing them to local Jewish charities.

The Jewish federations were explicitly opposed to the creation of endowments to support their work, since they were committed to the redistribution of charitable contributions just as soon as they were received. They bragged to potential donors that they were not “charity trusts” accumulating capital in order to amass philanthropic power, unlike the large national philanthropic foundations that jealously guarded their endowments. While this was probably a sensible and understandable strategy in the early twentieth century, the animus toward perpetual endowments made less sense as the Jewish community grew wealthier, especially following World War II. By then, Jewish charity seemed less necessary for the provision of basic community needs and more important “as a purveyor of [Jewish] culture or identity.” This coincided with the professionalization of Jewish charity and led to the idea that endowment building was an appropriate mechanism for leveraging the size and effectiveness of Jewish philanthropy.

Berman explains that, largely thanks to the ingenuity of the Cleveland lawyer Norman Sugarman, Jewish federations avoided being characterized as private foundations—a classification which would have subjected them to payout requirements, as well as greater oversight and reporting obligations—and took advantage of the freedom and tax benefits of the “public charity” form to attract donations (including funds that had previously been set aside in private foundations), enlarge their assets and expand their philanthropic mandate. They thus created what amounted to a Jewish community foundation, engaged in using private gifts to fund public goods for the Jewish community. A variety of charitable entities of this type were formed, New York’s Jewish Communal Fund being the largest. Like other community foundations, the Jewish charities created donor-advised funds to attract philanthropic investment by wealthy Jews, and in the process built hugely endowed institutions.

*Theodore Lechterman*, a political theorist, addresses the problem of charitable trusts. He points out that intergenerational charitable transfers (ICTs) are part of a very long tradition in philanthropy, but they pose the problem of the “dead hand” (*mortmain*, in English law), or the control of charitable property beyond the lifetime of a donor. Is it appropriate for a charitable donor to control the use of his donation from the grave, as it were, by establishing a perpetual trust to carry out his wishes in perpetuity?

Lechterman asks if this is, in principle, a good thing for a liberal democratic society to permit. Is it fair to future generations? To current ones? Thomas Jefferson, writing to James Madison in 1789, remarked that no law of nature permits persons to control property after death, since it is “self-evident ‘that the earth belongs in usufruct to the living;’ that the dead have neither powers nor rights over it.” This is a powerful statement, and yet American law, within a century after Jefferson’s death, came to accept and even encourage perpetual charitable trusts. That means, observes Lechterman, that intergenerational charitable transfers “unilaterally impose past persons’ conceptions of the public benefit upon future generations.”

How can a democratic polity accept (indeed, encourage) such a facially undemocratic process? There are several theoretical possibilities, but they all have problems, Lechterman argues. The first is that while there is no natural right to testation, the state has found it convenient to establish the universal capacity to transfer property through bequest. Second, ICTs seem contrary to the democratic notion of equality of opportunity. This would not be so if they were a mode of democratic redistribution of wealth, but that is seldom how ICTs are used. Finally, ICTs seem in tension with the Rawlsian principle of “just savings,” which compels generations to share the burden of just institutions over time. So there are difficulties, but it is possible for a democratic society to structure ICTs in such a way that they benefit both current and future generations.

Lechterman then explores ways in which future generations can have a stake in the continued existence of ICTs – so that current generations are not prevented from exercising control over the distribution of ICT property. The need is to screen out ICTs whose philanthropic purposes have become obsolete and ensure that ICTs continue to act over time in ways that conduce to the public benefit. Lechterman would support the right of donors to specify the general uses for which their ICT funds would be distributed, subject to periodic review by public authorities. The doctrine of *cy pres* has traditionally been used by Anglo-American law to ensure that outmoded trust purposes do not prevent the charitable use of endowed funds, but Lechterman thinks that all trusts should undergo periodic review (“audit and adjustment”) as a regulatory mechanism for ensuring that ICTs are benefitting the public as well as carrying out the wishes of donors. This sort of trust regulation can eliminate obsolescence “while also leveraging the unique wisdom of the past.”

The legal scholar *Miranda Perry Fleischer* offers a philosophical analysis of charitable giving and intergenerational justice from a libertarian point of view. She argues that most commentators on charity base their views on either welfarist or egalitarian principles; Fleischer, on the other hand, pushes for those concerned with philanthropy to take a more rights-based approach, that focuses on the interests and rights of donors. The welfarist thinker asks who should benefit from charity, current or future generations? This often leads to a preference for current benefits, on the assumption that future generations will be better off than the present, so spending current dollars will be more efficient than deferring charitable expenditures. This, of course, is a powerful argument against the employment of endowments established to facilitate future charitable giving.

Alternatively, Fleischer suggests, we should employ libertarianism, a rights-based theory of justice, to inform our views of charity. Libertarians believe, following John Locke, that the right to property is the basic social right, and in general that the state should not interfere with a person’s right to use her property. The state therefore should not prohibit a person from considering the needs of future generations, since such a decision is integral to property rights. Thus libertarians do not believe that the state should prohibit the creation of perpetuities or endowments for specific purposes.

Nevertheless, most libertarians consider that some minimal interference with the right to control one’s property, and thus some minimal degree of redistributive taxation, is compatible with justice. Such interference can be justified for purposes of rectification or for providing a minimal safety net. Accordingly, tax law can provide limited subsidies to incentivize charitable giving. Fleischer is concerned to characterize charitable preference in taxation as what lawyers call “tax expenditures” so that the charitable deductions can be analyzed similarly to other forms of state spending. Tax benefits for social purposes result from state coercion, and redistribute property from some taxpayers to others, so they must be limited just as all state spending is limited.

Fleischer explains that, for the libertarian, property rights are not absolute, but subject to the “Lockean proviso,” that one may accumulate natural resources only if “enough and as good” is left for others. The state should not interfere with the freedom of the person to do what he wishes with his property, except that it can tax individuals to protect their property (establishment of courts and police) and to ensure that the Lockean proviso can be met (rectification).

There is room for disagreement amongst libertarians as to limitations on charitable giving, since the right to property is not absolute, and since the state has a clear but limited power to tax property-owning individuals. In principle there is no libertarian objection to perpetual endowments, although some libertarians object to intergenerational control over property. Whether the usage of endowed funds to provide for the welfare needs of future generations can be justified is a difficult question for libertarians, so questions of temporality in philanthropic practice remain controversial.

Philosopher *Will MacAskill* addresses the concerns of the newly emerging group of philanthropists who describe themselves as “effective altruists.” The group has been deeply influenced by the utilitarian philosopher Peter Singer who has outlined the analysis of consequentialist thinking for philanthropy. Following Singer, MacAskill defines effective altruism as “the use of evidence and careful reasoning to work out how to maximize positive impact on others with a given unit of resources, and the taking of action on that basis.”

As MacAskill explains, the issue of timing is critical for effective philanthropists. Although they are committed to change in the present, they recognize that there may be circumstances in which immediate charitable investment might not be the most cost-effective approach. MacAskill outlines the considerations the effective altruist needs to evaluate with respect to the timing of charitable giving. Some considerations, he thinks, are minor. These include tax considerations, future weakness of will (you might spend on yourself if you wait), uncertainty, and self-interest. Major considerations include valuing the present generation more highly, changing opportunities, getting better knowledge, values changes and investment returns.

All of the major considerations require deep analysis. For instance, we all place at least some extra weight on the interests of those with whom we have special relationships – so we might want to give to them now. It is also the case that the world is getting richer, and so delay makes giving more expensive in the future and possibly less necessary. On the other hand, if we wait there may be new philanthropic opportunities available to us, and new charitable organizations may come into existence. And there is bound to be more and better information available if we delay giving until later. The general approach to effective altruism is empirical and susceptible to quantitative analysis, but MacAskill also outlines a complex framework for evaluating qualitative approaches to effective altruism. He provides a matrix to assign values to evaluate special relationships, changing opportunities, knowledge, values, movement growth and the amount of money to donate.

Scholar *Lucy Bernholz* broadens the understanding of the problem of perpetuity for philanthropic foundations beyond the distribution of monetary funds. She contends that while historically financial resources were the basis for foundation philanthropy, in the twenty-first century digital resources have moved to the fore. One of the major problems for foundations is to manage (and preserve) their digital resources in ways consistent with their missions. Digital resources come in many different forms, among them records of foundation activity, publications and communications records. Utilizing and managing these resources is now a major task for every foundation. Bernholz suggests that there now exists the possibility of new philanthropic institutions “purpose-built for managing digital resources for public benefit,” “the 21st century, digitally-assumptive equivalent of the 20th century modern foundation.”

Bernholz believes that foundations must come to terms with the ways in which digitized information opens up new philanthropic opportunities. She highlights the nonrival character of digitized network data – using the economist’s conception of a resource that can be used by anyone without limiting anyone else’s access to it. Digital data inevitably has multiple creators who possess multiple claims to ownership of the data. These attributes bring both new opportunities and new limitations for foundations – not least of the limitations being the quickly evolving nature of the law of intellectual property. Digital data also bring with their opportunities important obligations on foundations for management and preservation.

One of the most significant impacts of digital resources has been their broadening of access for the range of potential data users. This has created great opportunity, especially in an era dominated by notions of open access, but it also creates problems for control, privacy, and ownership (in the domain of intellectual property). Digital data has, for one thing, made it possible for the public to learn much more about foundations themselves, and so has had the effect of increasing the transparency (up to a point) of foundation management. The big question, however, is how philanthropic digital resources can be managed so as to enhance foundation mission. Open access and open data are possible program strategies for foundations, but contemporary philanthropy is only just beginning to explore their potential.

Bernholz’s conclusion is that the foundations have both an opportunity and a responsibility to manage data responsibly. She imagines data trusts, “virtual libraries of data, [protected by foundations] and making [data] available into the future.” Her larger vision is one of creating the digital infrastructure for civil society, based on a “digital infrastructure for philanthropy.” This would enable foundations to extend the life of data resources beyond particular funded programs, thus working for long-term public benefit, and creating a new and more productive form of philanthropic perpetuity.

Sociologist *Helmut Anheier* and Researcher *Sandra Rau* provide an internationally comparative context for thinking about time-limited philanthropy in their survey of European practices and attitudes. Anheier and Rau make the point that both U.S. and European philanthropic institutions are responding to similar recent pressures, especially the historically low interest rates in all countries following the 2008–2009 global financial crisis. But the institutional situations of philanthropy are quite different in Europe than in the U.S. Only the United States requires philanthropic foundations to comply with a payout rule; a majority of European foundations are operating (rather than grantmaking) institutions; strategic philanthropy has made a major impact on U.S. foundation behavior, and encouraged spending down endowed assets, but “strategic” ideas have not had much impact in Europe, in part because there are fewer large grantmaking foundations and in part because of the lower degree of professionalization in European philanthropy. Anheier and Rau argue that the institutional differences between European and American foundations have prevented European institutions from experiencing the pressures toward time limitation that American philanthropy is currently experiencing.

Anheier and Rau also explain how the very different historical experiences of Europe and the United States have produced very different philanthropic institutions, although there were and are significant differences across the national experiences in Europe as well. The result, however, has been that while general purpose, grant-making foundations have emerged as an independent force in America, their European counterparts have remained predominantly in the business of service delivery. The differences in the legal environment for philanthropy have also made a significant impact on the types of philanthropic institutions and philanthropic behaviors in the two regions – most significantly for limitations of time, the general European legal preference for the principle of asset protection came to imply that European foundations should be established in perpetuity.

Anheier and Rau conclude that there are no general European trends in the direction of time limitation for foundations, although the situation varies widely across Europe, and there are different situations in different countries across the continent. The policy environment for time-limitation in philanthropy varies according to the economic size and the degree of politicization in each country. Europeans have by now accepted the institutional form of the philanthropic foundation, and current reforms, rather than imposing more rigorous state control of foundations, seem aimed at enabling rather than restricting philanthropy. For the moment, perpetuity is the norm for philanthropy in Europe.

*Francie Ostrower*, a sociologist, brings the research tools of social science to bear on the question of the importance of lifespan to foundations. Her chapter is based on three different research projects she has undertaken, each of which involved collecting information from the managers of philanthropic foundations. She asks a fundamental question with respect to giving in time: “How salient is lifespan to foundation attitudes and practice?” Ostrower contends that the importance of lifespan is an empirical as well as a theoretical problem, and her research provides much of the available evidence on the question.

Ostrower starts with the speculation that lifespan is not likely to be the most important factor in assessing the effectiveness of philanthropic foundations – asset size is likely to be more useful. But lifespan may well be an important reflection of the values and norms of the foundation managers who make decisions about lifespan. In fact, a recent survey indicates that lifespan was not considered by professionals in the field to be highly correlated with foundation effectiveness or as a factor in formulating grantmaking goals or styles. Ostrower notes, however, that “sunsetting foundations” (those which have already made a decision to spend down their assets and terminate their grantmaking at a date certain in the future) may well perform differently than time-limited foundations, especially in their attentiveness to donor intention.

And Ostrower finds that donor control is the crux of the debate over perpetuity, since limited-life foundations are more donor-centric. But even here, the donor’s intent matters only up to a point, although the normal reason for sunsetting is to preserve donor intent. The fear is that perpetuity mitigates against donor intent insofar as over time the influence of a no-longer-living donor dissipates. But preservation of donor intent is not the only argument for sunsetting or spending down, since many foundation managers fear the philanthropic institutionalization they assume perpetuity encourages. That is to say that a perpetual foundation tends to take on a life of its own, quite apart from the wishes of its founder. The preservation of the organization for its own sake is the logic of perpetuity. Managers of limited life foundations “regard philanthropy in a more personalistic way and have an antipathy toward institutionalized philanthropy.”

In sum, Ostrower finds that limitations on life are factors in the ongoing considerations that foundation managers take into account as they make decisions as to foundation policy. The impact of decisions regarding lifespan is not automatic but depends upon other values and strategies that managers employ. That means that longevity plans are not the best indicator of foundation practice, but only one factor in grantmaking decisions.

*Tony Proscio* has an unusual position from which to consider the value of time-limited philanthropy. Proscio is a long-time philanthropic consultant who recently spent a decade analyzing Atlantic Philanthropies during its dramatic and well-publicized spend-down. Proscio relates the reasoning behind the decision to terminate the foundation, by far the largest spend-down to date, and provides two case studies of Atlantic philanthropic investment in order to illustrate the actual impact of the spend-down on particular grantees.

Chuck Feeney, a billionaire who became wealthy through the creation and management of duty-free shops around the world, became an advocate of “giving now” after he began to experience the problems and opportunities of philanthropic investing. His theory was simple: the social benefit of a foundation grant of a dollar today is greater than what can be generated by the same dollar (and investment returns on that dollar over time) in a few years. Proscio describes this as “a concentrated burst of near-term giving,” which enables the donor to produce very large impacts if his timing is good and his investment objectives well-chosen. The analysis is a simple cost-benefit calculation, assuming that we can calculate social value, and the return on our social investments compounds at a higher rate than financial assets would. It is a rational calculation that limited-life philanthropy can generate greater returns by paying out now than it could by preserving its assets indefinitely and spending more gradually. The assumption is that such big investments will have ripple effects over time, compounding the benefits of the original philanthropic investment.

Proscio points out that if Mr. Feeney’s assumptions are correct, the challenge for a time-limited foundation is to choose the right intervention in the right field. He gives two examples of how this worked for Atlantic. The first is a project to improve youth services in Ireland, through a campaign to change the way that Irish public agencies chose to fund assistance for youth in poor or troubled families. The second was a project for increasing the supply of nurses in South Africa. In both cases, but especially in South Africa, the early returns are encouraging, although in both countries it will take years before it is clear whether and how the programs have succeeded. But it is already apparent that these two “big bets” by Atlantic have produced favorable responses by the governments of Ireland and South Africa and have had a major impact on related investments by other philanthropic foundations.

Proscio admits that “not everything that counts can be counted” but he argues that the Atlantic experience suggests some of the relevant questions to be asked about time-limited mega-philanthropy. Perhaps the most interesting of these for readers of this volume is that “the decision about how and when to set a time limit on a philanthropic initiative is not a challenge exclusive to limited-life institutions.” Timing, that is to say, is crucial to all philanthropic investment, and we need to learn more about it.

*Brian Galle* and *Ray Madoff*, both scholars of U.S. tax law, address the need to reform payout rules. The “payout” rule for private philanthropic foundations first entered American law as part of the Tax Reform Act of 1969, which also created the distinction between “public charities” (supported by many donors) and “private” (supported by one or a few donors) foundations, and which, as discussed above, contained a 6 percent payout requirement (later reduced to 5 percent).

The 5 percent payout rule has become widely accepted and widely touted (by the foundation world, among others) as a reasonable compromise that allows private foundations to exist in perpetuity while ensuring that a portion of their funds be put to current charitable use. Even more importantly, the 5 percent payout rule has served to legitimate private foundations to the public by giving foundations a readily recognized role of providing steady sources of capital to charitable organizations. All of these rationales make it seem that the 5 percent payout rule is well established as both a practical and theoretical matter.

However, despite the apparently robust nature of the 5 percent payout rule, Galle and Madoff contend that the 5 percent payout rule operates more as a fig leaf than as a meaningful control on private foundation spending because: 1) unlimited administrative expenses can be counted as part of the payout; 2) unlimited contributions to donor advised funds qualify toward the payout requirement, and 3) certain investments in for-profit companies can also qualify. These permitted practices allow foundation trustees and managers to circumvent the intention of Congress with the passage of the Tax Reform Act to get money to operating charities, and Galle and Madoff argue that these are loopholes in the law that need to be closed.

The authors consider the arguments for eliminating the payout rule altogether, but find them unsupported and conclude that a payout rule is a necessary corrective to what they call the “natural tendencies” of foundation managers to hoard rather than spend. Congress, after all, created tax incentives for charitable contributions in the expectation that charity would enhance the public welfare, and in so doing relieve the public fisc of some portion of welfare cost. The loopholes in the payout requirement work against this basic purpose of charitable tax law, especially with respect to donor-advised funds, which permit donors to take a full charitable deduction at the time of gift without imposing any legal obligation to payout (make charitable gifts) within a definite period of time.

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The scholars and researchers in this volume address fundamental questions relating to “giving in time.” What is the responsibility of donors to the present relative to the future? When in one’s lifetime should one give? How should donors balance speed and responsiveness with reflection and deliberation? The volume does not make any claim to reaching conclusive answers to any of these questions, nor to representing a comprehensive survey of the current work being done these issues. The gaps and absences are themselves worthy of scrutiny and will hopefully draw attention to current scholarship and scholarship that has not yet been initiated but should be. Taken as a whole, however, these chapters establish how essential temporality is as a category of analysis with respect to philanthropy, such that any work that does not engage with it is, by definition, inadequate to the times.

Notes

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