Philanthropy and the Business Corporation

PHILANTHROPY and the BUSINESS CORPORATION

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M.R.F-S.

INTRODUCTION

Attempts to study corporation philanthropy inevitably prove frustrating, for it is a subject surrounded by rhetoric, almost entirely devoid of hard facts. There are the legal cases; the Internal Revenue Service's statistics; a handful of surveys culling information primarily from the larger "enlightened" corporations; and beyond that, little but guesses. The majority of corporations do not want the public to know how much they are giving, and to whom.

For one who is dedicated to the growth and improvement of the private philanthropic sector, it would be distressing if the negative conclusions drawn in this study were used as an argument for discontinuing or curtailing corporation philanthropy. On the other hand, in view of the dimensions of the current debate over the social role of the corporation, assumptions that increasing philanthropic contributions will answer the new demands for corporate responsibility appear naïve.

What legitimately can be asked is that in attempting to meet these new demands, corporations will reappraise their donative policies and, simultaneously, improve their methods for giving. The new demand for public accountability, no matter how ultimately it is resolved, will assist in achieving both of these goals. If business corporations are forced to consider their natural and social environments before making business decisions, their philanthropic programs will, perforce, be improved. It is also to be hoped that more donations will be directed to those areas in which individual corporations have unique expertise not available in the voluntary, nonprofit sector. The corporation can also play a positive role in assisting that sector by demanding high levels of performance, and proper financial accounting. If, at the same time, philanthropic policy-making is removed from the pocket of the company's president, or the files of its public relations department, and treated as an integral part of the total planning of the corporation, order may be brought to an area where pressure and emotion now have too much weight. There is no dearth of precedent for any of these actions. However, the few enlightened programs of corporation philanthropy must not be used to blur the fact that they are rare indeed, and that despite the efforts of dedicated, informed members of the academic, the philanthropic, and the business community, they have not been widely copied.

1 / THE LEGAL AND HISTORICAL SETTING

Philanthropy, as practiced by business corporations, has traditionally meant making gifts to nonprofit, community organizations providing health and welfare services and to privately endowed colleges and universities. In more recent years civic and cultural causes and, in the late sixties, minority groups and the urban poor have been added to the list of beneficiaries of company support.

This recent expansion of the field of traditional philanthropy has been accompanied by a shift in public attitude toward the responsibility of business corporations, going far beyond the mere question of how much cash support should be given to charitable activities. Direct involvement in the solution of the nation's problems of poverty, race relations, urban renewal, pollution, education, and housing has come to be considered a proper role for the modern, "forward-thinking" business enterprise. As might be expected, this new attitude has brought with it a reappraisal of the philosophical and legal bases for corporate action in the social sphere. It has also lead, at a pragmatic level, to a reappraisal of direct giving, particularly as the search for funds for new programs infringes on the traditional corporate budget for donations.

The reappraisal is now wide-spread, not confined to the *Wall Street Journal*, *Fortune*, and *Business Week*, but encompassing legal and sociological literature on the one hand and the daily press on the other. It has now become fashionable for a corporation to advertise its programs of social benefit, whether they are but a continuation of the older tradition of direct philanthropy or they represent innovative, experimental programs.

During this same period, traditional areas of private philanthropy have gradually changed, particularly as the government has expanded its programs in the fields of welfare, health, and education. The demand for contributions from the private sector has not decreased, but rather the search has been for those areas in which government support is either inappropriate or insufficient. Finally, passage of the Tax Reform Act of 1969 has given further impetus to change by partly removing the incentive to use foundations as the vehicle for channeling contributions and by increasing the percentage of contributions that can be deducted by individuals for gifts to organizations other than foundations. Although the full effect of the Act will not be known for another decade at least, it has added a new factor to an already fluctuating situation.

A review of traditional corporation giving—its rationale as well as its results—may thus provide a basis from which decisions as to its future growth and direction can be made. It may also provide part of the necessary background for the new debate over the role of the business corporation in what is commonly referred to as the social crisis of the 1970s.

Legal Nature of the Corporation

The legal history of the philanthropic activities of business corporations presents a classic example of the law adapting itself to changing attitudes. Corporations are artificial, legally-created entities that owe their existence to a specific grant from the state permitting them to take title to property and act with respect thereto. Although the corporate entity has roots in ecclesiastical law, the prototype of the modern business corporation was developed in England in the fifteenth and sixteenth centuries. Originally, the grant from the state was made to secure a specific purpose of the state, whether the general welfare of the public or the advancement of religion or of commerce. The most significant aspects of these early corporations were that they enjoyed perpetual succession and had an identity separate and apart from the persons who comprised and governed them, thereby insulating these individuals from the corporation's debts.

Continuous existence, however, presupposed legal activity. Infraction of the law, violation of the will of a majority of those who ruled the corporation, or exercise of powers not expressly conferred upon it could lead to forfeiture of existence. Furthermore, the charter was considered a contract with the shareholders, so that the exercise of powers not granted was also a breach of contract that they could enforce.

These concepts remained unchanged throughout the nineteenth century. In the United States, as in England, the first corporations were chartered primarily for charitable and religious purposes. The only business corporations were those with public overtones such as banks, insurance companies, and enterprises devoted to the development of transportation, water supplies, or fire fighting. In 1800 there were 335 corporations chartered in the states, almost all of which were of this nature. Although accurate figures on the number of corporations formed in the early years of the nineteenth century are not available there was rapid expansion. Thus, by 1830, in New England, then the principal center of business activity of the country, there were 1,900 corporations of which 600 operated in the fields of mining and manufacturing.[1] During the next decade this number doubled. All of these early corporations were created by special acts of the state legislatures. With the growth in number, it became apparent that an easier method of incorporation was required. Starting in New York in 1911, statutes permitting self-incorporation were passed in each state and, at the same time, in some of these states, incorporation by special act was specifically prohibited. By 1870 the constitutions of all but four states set forth a policy in favor of free incorporation under a general act of the legislature. In the four remaining states, the practice was followed without constitutional fiat.

With this shift to free incorporation there was a corresponding deemphasis of the concept that the right to create a corporation was a grant from the state. The early special acts had all contained restrictions on the purposes, powers, size, and method

[1] Abram Chayes, "Introduction" to John P. Davis, *Corporations*. Capricorn, New York, 1961, pp. vii–xii.

of management of the corporations. The general acts of incorporation, on the other hand, based on the concept of freedom of association, contained basic minimal requirements for creation and conferred broad powers to act. However, these broad powers were not unlimited: they remained restricted by the nature and purpose of the corporation. In the case of the modern business corporation, this means a restriction on the application of its capital to the production of profit. It precludes altruism. On the specific question of the power of a business corporation to make philanthropic contributions, it is this limitation on a corporation's powers that is crucial. The well-known language of Lord Justice Bowen that "charity has no business sitting at the board of directors, qua charity," epitomizes this view.[2]

Early History of Corporation Philanthropy

The history of the business corporation in the middle and late nineteenth century is primarily the history of the railroads, and it is here that the broader history of the business corporation intersects with the development of corporation philanthropy, for it was the railroads, looking for housing for their employees, who first supported a charitable organization on a large scale.[3] The beneficiary of this support was the YMCA, which started in North America in 1851. By 1890, associations were reported at eighty-two divisions and terminal points across the country, in every instance supported financially by railroad companies. Andrews indicates that the usual practice was for the railroad to pay 60 percent of the operating budget for the buildings, with the employees paying the balance. By 1911 it was reported that 113 buildings had been erected at a cost of $1,800,000, with the railroad companies paying more than half. The YMCAs expanded further in the early 1900s, gathering support from other industries

[2] *Hutton* v. *West Cork Rwy Co.*, 23 Ch. D. 654, 673 (1883).

[3] The following discussion of the early history of corporate philanthropy is taken from F. Emerson Andrews, *Corporation Giving*. Russell Sage Foundation, New York, 1952, pp. 23–26; see also, P. Williams, and F. E. Croxton, *Corporation Contributions to Organized Community Welfare Services*. National Bureau of Economic Research, New York, 1930; Morrell, Heald, *The Social Responsibilities of Business*. The Press of Case Western Reserve University, Cleveland, Ohio, 1970.

and community-wide drives where solicitation of business corporations was a common and accepted practice, in each case rationalized by the donors as a necessary concomitant of corporate policy.

The welfare needs created by World War I gave further impetus to the fund-raising activities of the YMCA and at the same time saw the emergence of the Red Cross as a major fund-raiser. Even with the limited information available on these drives and the subsequently organized local War Chest and Community Chest campaigns, it is evident that corporation contributions were a major factor in their success.

However, legal restrictions on contributions were not wholly ignored, as can be seen in the adoption by the Red Cross in 1917 of a device called the "Red Cross Dividend." Corporations that doubted their power to make direct contributions were urged to adopt a resolution in a form supplied by the Red Cross. It declared an extra dividend and directed management to notify stockholders of this action with a request to execute an enclosed dividend order authorizing payment of the amount of the dividend directly to the Red Cross War Fund. It is known that at least 148 corporations declared such dividends, collecting $17,948,969.[4] Based on the reports of this campaign, Andrews cites 1917 as the year in which corporation contributions first reached a substantial total in the history of American philanthropy. It is also from that year that one can date the gradual broadening of the law, primarily through the passage of legislation, so that today there is virtually no legal restraint on the causes to which a corporation may make charitable contributions.[5]

Permissive Legislation in the States

The first permissive legislation was passed in Texas in 1917, although the approach of the statute has been properly described as back-handed.[6] A proviso was added to the list of "Acts Prohibited" to all corporations doing business in Texas stating that "nothing in this Article shall be held to inhibit corporations from

[4] Andrews, *Corporation Giving.* p. 28.
[5] *Ibid.*
[6] *Ibid.*, p. 233.

contributing to any bona fide association, incorporated or unincorporated, organized for and actively engaged for one year prior to such contribution in purely religious, charitable or eleemosynary activities. . . ."[7] The New York legislature passed an act prior to the Second American National Red Cross Conference in May, 1918, authorizing corporate contributions annually not in excess of 1 percent of the capital stock outstanding for as long as World War I continued. Additional contributions were also authorized, but only after ten days' notice to stockholders, and subject to the further condition that if objections were made by holders of 25 percent of outstanding stock, authorization at a stockholders' meeting was required.[8] In that same year Congress authorized contributions to the Red Cross by national banks from money available from dividends.[9]

By 1935, five additional states had enacted similar permissive legislation, including Illinois in 1919, Ohio in 1920, and Tennessee in 1925. Then, in 1935, the Internal Revenue Code was amended for the year 1936 and thereafter to permit deductions of charitable contributions from federal corporate taxes in "an amount which does not exceed 5 percentum of the taxpayer's net income as computed without the benefit of this subsection."[10]

By 1948, the number of states with specific permissive legislation had only increased to fifteen.[11] Ten years later, however, the number was forty-two and by 1971 forty-eight states as well as the District of Columbia, Puerto Rico, and the Virgin Islands had permissive legislation. It was only Arizona and Idaho in which such enabling acts were lacking. A majority of the existing statutes were directly modeled after sec. 4(m) of the Model Business Corporation Act. This section of the Act was first suggested in 1949 by the American Bar Association Committee on Business Corporations as an addition to the traditional recitation of general corporate powers found in the enabling acts of every state. It presently provides that every corporation shall have power "to make donations for the public welfare or for charitable, scientific or

[7] Tex. Gen. Laws, 1917, ch. 15, p. 25.

[8] Laws of N.Y., 1918, ch. 240 (effective April 16, 1918).

[9] Act of May 22, 1918, ch. 80, 40 Stat. 558.

[10] Revenue Act of 1936, ch. 690, sec. 23(q), 49 Stat. 1661.

[11] Andrews, *Corporation Giving*, pp. 233–235.

educational purposes,"[12] although the version in existence prior to a 1969 revision contained an additional authorization—"in time of war to make donations in aid of war activities."[13]

The impetus for adoption of the Model Act has been attributed primarily to Community Chest and Councils of America which joined with the legal profession, as they had in New York before World War I, to lobby actively for passage of enabling legislation.[14]

During the period in which many states were enacting the Model Act, the language of many of the earlier enabling statutes was broadened or revised to follow its language. Nevertheless, today, there is great disparity among the lists of purposes for which donations may be made in each state. A recent survey of legislation in the fifty states, the District of Columbia, and four United States territories found that the "lexicon" of the statutes contained authorization for seventeen enumerated purposes not found in the Model Act,[15] although in actuality they do not expand the range of purposes considered under the substantive law of trusts and the federal tax laws to be "charitable."[16]

Early Judicial Interpretations

The importance of the statutes, however, lies more in their psychological importance than in their legal basis for, as Prunty stated in 1960, "As purely a legal matter, the validity of doubt as to the corporation's common law power to give is open to question, as is the belief that the wave of legislation has substantially changed substantive law."[17] A review of the judicial decisions on

[12] ABA–ALI Model Business Corporation Act, sec. 4(m) (revised 1969).

[13] 3 ABF Model Business Corporation Act Annotated, sec. 4(m), 1960.

[14] Andrews, *Corporation Giving*, p. 235.

[15] Phillip I. Blumberg, "Corporate Responsibility and the Social Crisis," *Boston University Law Review*, vol. 50, 1970, pp. 157, 192–202.

[16] The statutes in seven states do contain minor limitations on either the amounts that may be donated or the sources from which contributions may be paid, but none of these seriously restrict the ability to make contributions. See Appendix.

[17] Bert Prunty, Jr., "Love and the Business Corporation," *Virginia Law Review*, vol. 46, 1960, pp. 467, 471.

this subject, starting with the earliest cases, confirms this opinion. The statement of Judge Bowen in the *Hutton* case referred to earlier was merely dictum: the holding of the case itself was that under the circumstances of a corporation undergoing dissolution it was improper for the stockholders to authorize payment of gratuities to retiring directors because they were not "reasonably incidental to the carrying on of the company's business for the company's benefit."[18]

However read, the case received wide attention and undoubtedly influenced not only the English courts but those in many American jurisdictions. The requirement of a showing of "direct benefit" to a donor-corporation, emphatically recited therein, found a firm place in the common law, one that has not been entirely dislodged in England and was only overturned in the United States in 1953 with the decision of the New Jersey Supreme Court in the case of *A. P. Smith Mfg. Co.* v. *Barlow*.[19]

This requirement of "direct benefit" was developed, of course, at a time when the older concept of the corporation as an entity with limited power was gradually giving way. The question of power to make donations was fairly easily settled when the only powers a corporation could exercise were those granted specifically by the legislature. With the passage of general enabling legislation, however, there were no easily applied standards with which to test any given action of a corporation's directors. The concept of "direct benefit" provided a workable substitute for testing business judgment and was used in a series of cases as the basis for permitting a wide variety of corporate actions involving donations. However, these cases have been classified, quite rightly, as "commercial contribution" cases, because, as Blumberg points out:

> The remarkable fact is that until 1924, every reported American so-called charitable contribution decision did not involve charitable contributions at all, but was instead concerned with employee relations. These decisions involved not acts of philanthropic generosity for the benefit of charitable or educational institutions but business judgments concerning the conduct of the corporations' labor relations programs. The philanthropic aspects, if any, were treated as secondary and the

[18] 23 Ch. D. at 672.

[19] 13 N.J. 145, 98 A.2d 581, appeal dismissed, 346 U.S. 861 (1953).

> expenditures held to be valid, notwithstanding the donative form of the activity, in view of the relationship of the corporation to its employees. The courts spoke, in the language of the commercial contribution cases, in terms of benefit to the donor.[20]

Nor is Blumberg alone in this opinion. Garrett, Andrews, Eells, Prunty, all reached similar conclusions.[21] But apparently the natural conservatism of the business community and their legal counsel operated to reinforce the misconception. It is only within this context that the attempts to secure enabling legislation are understandable and that the decision in the *Smith* case looms as the turning point, albeit a late one, in the judicial history of the subject.

A. P. Smith Mfg. Co. v. *Barlow* involved the validity of a donation of $1,000 to Princeton University by a New Jersey corporation. Protests raised by stockholders as to the validity of this action led the directors to seek a declaratory judgment that the donation was permissible. In an opinion that quoted widely from the general literature on corporation contributions, the court upheld the action as a lawful exercise of the corporation's implied and incidental powers under common law principles, as well as within the express authority of pertinent state legislation. The "direct benefit" rule was clearly swept aside. A second question raised in this case was whether enabling legislation passed after the corporation's charter had been granted could be applied retroactively. Although finding that there was no constitutional impairment of contract rights in the retroactive application of the statute, the court stated:

> And since in our view the corporate power to make reasonable charitable contributions exists under modern conditions, even apart from express statutory provision, its enactments simply constitute helpful and confirmatory declarations of such power, accompanied by limiting safeguards.[22]

[20] Blumberg, "Corporate Responsibility," p. 170.

[21] Ray Garrett, "Corporate Donations," *Business Lawyer*, vol. 22 (1967), p. 297; Andrews, *Corporation Giving*, pp. 231–233; Richard Eells, *Corporation Giving in a Free Society*. Harper & Row, New York, 1956, pp. 6–8. Prunty, "Love and the Business Corporation," pp. 471–474.

[22] 13 N.J. at 160, 98A.2d at 590.

Two cases decided since 1953 in which the question of philanthropic donations was specifically raised expanded on the holding in the *Smith* case that donations were permissible because of the social responsibility of corporations as members of the community in which they operate. Thus, in *Union Pacific RR* v. *Trustees, Inc.*, decided in 1958, the court upheld a donation of $5,000 to the company's own charitable foundation without benefit of statutory authority in the state.[23] More recently, the Delaware Court, in *Theodora Holding Co.* v. *Henderson*, declared that a gift of $528,000 to the company's foundation in a year in which the company's gross income was approximately $20 million was valid as to both amount and purpose.[24] The court referred in its decision to language in the *Smith* case implying that a gift to a "private charity" in furtherance of personal, rather than corporate, ends might be improper, but rejected this as a rationale. It used instead a test of reasonableness as to amount and purpose, "a test in which the provisions of the Internal Revenue Code pertaining to charitable gifts by corporations furnishes a helpful guide."[25]

Only two other reported state court decisions purportedly involving charitable donations have been decided since 1953. In 1955 a California court upheld a contribution to the only hospital in the community in which the corporation's plant was located, but discussed the validity of the gift in terms of direct benefit and the fulfillment of company objectives.[26] In *Kelly* v. *Bell*, payments of $5 million per year by United States Steel Corporation to Allegheny County, Pennsylvania, in lieu of taxes were characterized by the court as donations made in recognition of the corporation's interest as well as that of the communities in which it was operating.[27]

Andrews, writing in 1952, challenged statements that the early restrictive decisions were obsolete on the basis that recent

[23] *Union Pacific Railroad* v. *Trustees, Inc.*, 8 Utah 101, 329 P.2d 398 (1958).

[24] *Theodora Holding Co.* v. *Henderson*, Del. Ch., 257 A.2d 398 (Ch. 1969).

[25] Del. Ch., 257 A.2d at 405.

[26] *Memorial Hospital Association* v. *Pacific Grape Products Co.*, 45 Cal. 2d 634, 290 P.2d 481 (1955).

[27] *Kelly* v. *Bell*, Del. Ch., 254 A.2d 62 (Ch. 1969).

decisions were too few in number to support such a generalization.[28] He attributed the scarcity to the growth of permissive legislation which, however, at that time existed in only twenty-six states and Hawaii. The five cases just discussed are the only reported ones decided since 1952, but they appear to have clarified in great part the issues Andrews regarded as unsolved at that time, particularly the question of whether a statute could apply to corporations chartered before its enactment, and whether the early "direct benefit" cases were really obsolete.

Certain industries that are subject to state or federal governmental rate-making are subject to further limitations on the charitable contributions they may legally make and there is a large volume of judicial and administrative precedents on this subject. In these situations, however, the issue has been whether donations are to be considered an expense and therefore charged by the managers to the consumers or whether they must be disregarded in determining rates and therefore charged to the shareholders. As might be expected, both the judiciary and the administrative agencies have been more reluctant to permit donations by regulated industries than they have been when dealing with industries not subject to governmental control. A recent review of these cases, however, indicates that in the judicial decisions there has been a perceptible transformation from the requirement of direct benefit to the use of a more general standard based on the presence of valid business objectives. However, the decisions of the regulatory agencies, particularly those in the states, have remained almost uniformly consistent in disallowing philanthropic donations as valid expenses.[29]

The Five Percent Deduction

The discussion thus far has dealt primarily with judicial decisions relating to the power of corporations to make donations under state law. Reference was made earlier to passage of federal legislation in 1935 permitting corporations to make deductions for charitable purposes not in excess of 5 percent of their net in-

[28] Andrews, *Corporation Giving*, pp. 233–235.

[29] Blumberg, "Corporate Responsibility," pp. 181–186, includes a complete compilation of these decisions as well as the results of a survey of state administrative practices.

come.[30] There was a large body of cases decided in the federal courts prior to this enactment that dealt with the allowance of deductions as "ordinary and necessary business expense," made under authority of Treasury Regulations first promulgated in 1921 under the Revenue Act of that year. These Regulations permitted deductions for donations to charitable organizations, hospitals, or educational institutions conducted for the benefit of the donor corporation's employees, as well as donations that legitimately represented a consideration for a benefit flowing directly to the corporation as an incident of its business. The standards applied in these tax cases was, therefore, more stringent than the old "direct benefit" rule which was, even in 1921, gradually being broadened in some jurisdictions.

The political background of the 5 percent deduction provision again reveals Community Chests and Councils of America as the prime mover in securing permissive legislation, here acting against publicly stated presidential disapproval and strong opposition from Democratic senators.[31] It was the case of *Old Mission Portland Cement Co.* v. *Helvering*, decided by the United States Supreme Court in 1934, that gave rise to the Chests' lobbying activities.[32] Contributions to the San Francisco Community Chest were disallowed despite a finding that they were made in the belief that they resulted in good will toward the petitioner and increased its business, because there was no demonstration of benefit beyond a statement of the direct benefit flowing to the company.

After the passage of the Revenue Act of 1936, the nature of litigation in the federal courts was inevitably altered. The cases since that date have involved either questions of fact as to the valuation of a particular donation, or whether a legal gift had been made.

The 5 percent limitation has not been changed since 1936. It now appears in sec. 170 (b) of the Internal Revenue Code of 1954. It is applied to taxable income before the contribution is

[30] Rev. Act of 1921, Treasury Reg. 62, Art. 562.

[31] Scott M. Cutlip, *Fund Raising in the United States*. Rutgers University Press, New Brunswick, N.J., 1965, pp. 324–326; Heald, "Social Responsibilities," pp. 148–173.

[32] *Old Mission Portland Cement Co.* v. *Helvering*, 293 U.S. 289 (1934); affirming 69 F.2d 676 (9th Cir., 1934).

made. In addition, certain corporate deductions and any net operating loss carryback are disregarded. For corporations on the accrual basis, special provisions permit the computation of income and business deductions after the close of the taxable year. The corporation may then make contributions up to the 5 percent limit which will be considered as made in the prior year.[33]

In 1962 corporations were permitted to carry forward deductions in excess of the 5 percent limit to the next two succeeding years and, with passage of the Revenue Act of 1964, the carry-forward period was extended to five succeeding years.[34]

With a current tax rate of 22 percent on the first $25,000 of corporate income and of 48 percent on income in excess of that amount, the deduction for corporate charitable gifts can be translated into a "cost" that is not insubstantial. For example, a corporation with income of $100,000 saves $480 in taxes for each $1,000 in contributions: its "cost" for the contribution is $520.

Section 168(b)

In 1938 Congress enacted an important concomitant to sec. 170(b). This was a provision prohibiting corporations from deducting any amounts as business expenses that would also qualify as charitable contributions under sec. 170. The purpose of the enactment was to prohibit corporations from exceeding the 5 percent limitation of sec. 170. This provision now appears in sec. 162(b). In 1954 it was expanded to apply to all taxpayers. The Regulations state that the limitation applies only to payments that are in fact contributions or gifts to tax-exempt charitable organizations. Although they give as an example of a permissible deduction a payment to a local charitable hospital in consideration of a binding obligation on the part of the hospital to provide services and facilities to the company's employees, the Tax Court held in a 1971 decision that the existence of a binding obligation was not a necessary precondition to allowance of a deduction.[35]

[33] Internal Revenue Code of 1954, sec. 170(a)(2).

[34] Internal Revenue Code of 1954, sec. 170(d)(2). (Formerly sec. 170(b)(3).

[35] Estate of Sarah Marquis, 49 T.C. 695 (1971). Comm'r Acq., Internal Revenue Bulletin, 1971-48, 6.

Boris Bittker has concluded that if Congress had not intervened in 1936 and 1938 to limit the deductibility of contributions, judge-made law undoubtedly would have kept pace with changing conceptions of the role of the corporation so that corporate charitable contributions would be recognized routinely as legitimate business expenses. He favors repeal of the percentage limitation in sec. 170, but as an alternative has suggested repeal of sec. 162(b) so that corporations would not "arbitrarily be deprived of the right to establish that their gifts have a business motivation, comparable to advertising and public relations expenses."[36]

Tax Aspects of Foundations

An important development in corporation philanthropy, namely the use of a tax-exempt foundation to channel corporation gifts, can be traced in large part to the impact of the tax laws. The generic term "foundation" refers to certain corporations and trusts organized under state law for charitable, educational, or religious purposes that have qualified for tax exemption under sec. 501(c)(3) of the Internal Revenue Code and contributions to which may be deducted for income, gift, and estate tax purposes. A foundation is usually distinguishable from other charitable organizations by the fact that it makes grants rather than operates a charitable facility. Sec. 501(c)(3) requires that to be tax-exempt the entity must have been organized and be operated exclusively for one or more philanthropic purposes, and that "no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."[37]

[36] Boris Bittker, "The Propriety and Vitality of a Federal Income Tax Deduction for Private Philanthropy." Unpublished manuscript based on remarks made at Tax Institute Symposium on Impact of Taxes on Philanthropy, Washington, D.C., December 2–3, 1971, p. 38.

[37] Internal Revenue Code of 1954, sec. 501(c)(3).

The requirement of exclusiveness of operation and organization appeared in the first income tax law passed in 1894.[38] Although this statute was subsequently declared unconstitutional, later enactments have all used its wording.[39] The private inurement provision first appeared in the Corporation Excise Act of 1909 and has likewise been retained in subsequent enactments.[40]

Prior to 1950, the Internal Revenue Service directed its activities in the foundation area toward assuring that its basic requirements were met before granting a tax-exemption ruling. The sharp increase in income tax rates during and after World War II made the use of foundations attractive to business corporations, as well as to individuals, primarily because of the flexibility in timing of gifts they afforded. During the late forties, however, the laxness of administration of the federal tax laws by the Internal Revenue Service and the almost virtual absence of supervision at the state level made the foundation an attractive vehicle for a group of individuals whom Andrews characterized as having "tax savings rather than philanthropy as the primary objective."[41] Certain corporations, known as feeders, were operated as businesses, but distributed all of their profits to a charitable organization in competition with profit-making corporations. Other foundations undertook various income-producing activities that were similarly in competition with profit-making organizations but, because of their favored tax status, offered a vehicle for rapid accumulation of surplus, which in some instances was loaned to the original donor of the foundation, often with no interest or at low interest rate and with no provisions for repayment. Still other foundations entered into lease-back arrangements in relation to real property and in other ways conferred favors on donors and substantial contributors.

Reaction to these practices led, initially, to a requirement that foundations file regular information returns.[42] In 1948, in the course of a Congressional investigation of the textile industry,

[38] Ch. 349, sec. 2, 428 Stat. 556 (1894).
[39] *Pollock* v. *Farmer's Loan and Trust Co.*, 157 U.S. 429 (1895).
[40] Ch. 6, sec. 38, 36 Stat. 113.
[41] Andrews, *Corporation Giving*, p. 103.
[42] Internal Revenue Code of 1954, sec. 6033.

attention was focused on the use of foundations to further the private interest of a Rhode Island business.[43] The culmination of this investigation was the passage of the Revenue Act of 1950 which contained restrictions on the operations of those tax-exempt organizations that were not dependent upon public support, thus primarily affecting foundations. Thereafter tax exemption would be lost if the organization entered into any one of a series of self-dealing transactions that were not reasonable[44] or if its accumulations of income were unreasonable in amount or duration.[45]

The Patman Investigation

In 1952 and 1953 foundations again came under criticism in Congress, but the investigations led to no major legislative changes. Dissatisfaction with foundation operations remained muted for almost a decade following these investigations but, in 1962, Congressman Wright Patman, acting as chairman of the Select Committee on Small Business of the House of Representatives, filed a report based on information he had compiled on the operations of 534 organizations which called for an immediate moratorium on foundation tax exemptions for the following reasons:

> 1. Laxness and irresponsibility on the part of the Internal Revenue Service.
> 2. Violations of law and Treasury regulations by far too many of the foundations encompassed in our study.
> 3. The withdrawal of almost $7 billion from the reach of the tax collectors for taxable years 1951 through 1960. This amount represents the total receipts of only 534 out of an estimated 45,124 tax-exempt foundations.
> 4. The rapidly increasing concentration of economic power in foundations which—in my view—is far more dangerous than

[43] For a description of the investigations and pertinent citations, see Marion R. Fremont-Smith, *Foundations and Government*. Russell Sage Foundation, New York, 1965, pp. 356–357.

[44] Internal Revenue Code of 1954, sec. 503 (amended by P.L. 91–172, Tax Reform Act of 1969).

[45] Internal Revenue Code of 1954, sec. 504 (repealed by P.L. 91–172, Tax Reform Act of 1969).

anything that has happened in the past in the way of concentration of economic power.

5. Foundation-controlled enterprises possess the money and competitive advantages to eliminate the small businessman.[46]

Patman presented subsequent installments of his report in 1963, 1964, 1966, 1967, and 1968. He also held public hearings in 1964 and 1967.[47] In 1962, shortly after publication of the first Patman Report, the Treasury Department, acting at the request of the Senate Finance Committee and the House Ways and Means Committee, conducted its own survey of 1300 foundations. Its report and recommendations were the subject of Congressional hearings in 1965.[48] The Nixon administration made recommendations for amendment of the Internal Revenue Code provisions relating to foundations in the spring of 1969[49] and, after a series of hearings, extensive revision of both the charitable deduction and tax-exemption sections of the Internal Revenue Code were enacted as part of the Tax Reform Act of 1969 on December 22, 1969.[50]

The Tax Reform Act of 1969

This Act left the 5 percent limitation for corporate charitable deductions unchanged.[51] However, section 170(c) dealing with the type of property donated and the nature of the charitable donee were made applicable to corporations and individuals alike.

[46] U.S. Congress, House of Representatives, Select Committee on Small Business, *Chairman's (Patman) Report*, "Tax Exempt Foundations and Charitable Trusts: Their Impact on Our Economy." First Installment, 82nd Congress, 2nd session. Committee Print, Government Printing Office, Washington, 1962, p. 1.

[47] F. Emerson Andrews, *Patman and Foundations: Review and Assessment*. The Foundation Center, New York, 1968.

[48] U.S. Congress, Senate Committee on Finance, *Treasury Department Report on Private Foundations*. 89th Congress, 1st Session. Committee Print, Government Printing Office, Washington, 1963.

[49] U.S. Congress, House of Representatives, Committee on Ways and Means, *Tax Reform Proposals*, contained in the message from the President, April 21, 1969. Government Agency Printing Office, Washington, 1969.

[50] Tax Reform Act of 1969, Pub. Law 91–172 (Jan. 1, 1970).

[51] Internal Revenue Code of 1954, sec. 170(b), as amended, contains the deductions provisions herein described.

For tax years after the effective dates of the Act, the value of a contribution of property which, if sold, would give rise to ordinary income rather than capital gains was limited to the donor's basis.[52] Gifts of appreciated property held for six months or more to a category of exempt organizations characterized in the Act as "private foundations" could be deducted only in amounts equal to the donor corporation's basis and that portion of the appreciation which would not have been taxed to the corporation if the property had been sold by it. An exception was made if the private foundation itself distributed an amount equal to the amount received within two-and-one-half months following the year of receipt.[53] A similar reduction was required in the case of a gift of appreciated tangible personal property if its use by the donee organization was unrelated to the purpose or function constituting the basis of its exemption. Thus, a corporation could make a gift of a painting to a museum and deduct the fair market value of the gift, but if it made a similar donation to the Red Cross, the amount of the allowable deduction would be fair market value at the date of the gift less 62.5 percent of the gain that would have been long-term if the corporation had sold the property at that date and donated the proceeds to the organization. The amount of a deduction for a gift of any property which, if sold, would give rise to ordinary income or short-term capital gains, as opposed to long-term gains, was limited to the donor's basis and no deduction at all was permitted for a gift of the use of property.[54] The impact of these changes, therefore, was greatest on those corporations that in the past had made contributions of supplies, materials and products, and of appreciated assets, particularly to private foundations.

The most far-reaching changes made by the Tax Reform Act of 1969 were those affecting the operations of foundations.[55] For the first time, the Code defined foundations as a separate category of tax-exempt organizations. It imposed an annual excise tax equal to 4 percent of their net income from investments, and set forth a series of five limitations on their activities, violation of

[52] Internal Revenue Code of 1954, sec. 170(e)(1).
[53] Internal Revenue Code of 1954, sec. 170(b)(1).
[54] Internal Revenue Code of 1954, sec. 170(e)(3).
[55] Internal Revenue Code of 1954, sec. 509(a).

which would subject the foundation and in some instances its "managers" and substantial contributors to personal excise taxes.[56] Continued violation of any of these prohibitions, furthermore, now results in additional penalties and taxes and, ultimately, imposition of a confiscatory tax on the foundation's assets.[57]

The new restrictions were designed to remove uncertainties and loopholes in the prohibited transactions and accumulations of income provisions of the 1950 Act. Five specific types of self-dealing transactions between foundations and disqualified persons were subjected to excise tax. Disqualified persons were defined as the foundation's trustees, directors, substantial contributors (generally any person who contributes more than $5,000 to the foundation if that amount is more than 2 percent of the total contributions received to the date of the contribution in question from all sources), persons owning more than 20 percent of the interest of a corporation, partnership, trust, or business enterprise that is itself a substantial contributor, members of the families of any of the first three categories, and certain entities controlled by any of the above.[58]

In place of the restrictions under prior law on unreasonable accumulation of income, all private foundations were required to expend annually for charitable purposes an amount equal to the higher of their net income from investments or a fixed percent of the fair market value of their assets held for investment.[59] This "minimum investment return" was subject to adjustment by the secretary of the treasury to reflect changes in money rates and investment yields so that it would bear the same relationship as 6 percent had to money rates and investment yields for the calendar year 1969. Furthermore, foundations in existence on May 26, 1969, would not become subject to the minimum investment payout rule until taxable year beginning in 1972 when the applicable percentage was set at 4.5 percent, rising by one-half percent in subsequent years until it reaches 6 percent.[60]

[56] Internal Revenue Code of 1954, sections 4940–4945.

[57] Internal Revenue Code of 1954, sec. 507.

[58] Internal Revenue Code of 1954, sec. 4946(a).

[59] Internal Revenue Code of 1954, sec. 4942.

[60] Internal Revenue Code of 1954, sec. 4942(4); Tax Reform Act of 1969, sec. 101(1)(3)(A).

In an attempt to prevent foundation control of business, the Act placed a limit of 20 percent on the amount of voting stock or of the financial interest in an unincorporated business enterprise which could be held jointly by a foundation and its disqualified persons.[61] If third party control could be demonstrated to the Internal Revenue Service, the allowable percentage was raised to thirty-five. Company-sponsored foundations were thereby effectively prohibited from holding their sponsoring company's stock. A series of divestiture provisions for foundations' excess business holdings on May 26, 1969, were designed to permit orderly disposition of existing assets.

A fourth restriction prohibited foundations from making any investments that would jeopardize the foundation's assets.[62] Finally, a series of activities, characterized as taxable expenditures, were henceforth prohibited.[63] The ability to engage in activities that were designed to influence legislation and to participate in voter registration drives was denied to private foundations, with some minor exceptions. Grants and awards to individuals henceforth could be made only under a program approved in advance by the Internal Revenue Service and then only if it was demonstrated that the grant or award would be tax exempt to the recipient or that it was designed to "achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent."[64]

Private foundations making grants to any organization other than those classified as public charities were required to exercise "expenditure responsibility": namely, the foundation was made responsible to exert all reasonable efforts and establish adequate procedures to see that the grant was spent solely for the purpose for which it was made, to obtain full and complete reports from the grantee on how the funds were spent and to make full and detailed reports with respect to such expenditures to the secretary or his delegate.

Finally, unlike other tax-exempt charitable organizations that

[61] Internal Revenue Code of 1954, sec. 4943

[62] Internal Revenue Code of 1954, sec. 4944.

[63] Internal Revenue Code of 1954, sec. 4945.

[64] Internal Revenue Code of 1954, sec. 4945(g)(3).

are permitted to expend insubstantial amounts for purposes other than those that were the basis for their exemption, private foundations were prohibited from making "expenditures" for any purpose other than those specified in that section of the Internal Revenue Code that established the category of purposes eligible for donation deductions.[65]

The taxable expenditure provisions reflected Congressional displeasure with the substantive activities of private foundations that had not been considered a problem to either the Treasury Department or Congress prior to 1968. For the company-sponsored foundation that had scholarship programs for its employees or their families, the restriction on grants and awards and the self-dealing prohibitions were of concern. A Temporary Regulation promulgated shortly after passage of the Act stated that a scholarship or fellowship grant paid or incurred by a private foundation in accordance with a program which was consistent with the allowance of deductions for contribution under sec. 170 made to the private foundation would not be an act of self-dealing. The Regulation then stated,

> For example, a scholarship or fellowship grant made by a private foundation in accordance with a program to award scholarship or fellowship grants to the children of employees of the donor shall not constitute an act of self-dealing if the private foundation has, after disclosure of the method of carrying out such a program, received a ruling or determination letter stating that it is exempt from taxation under section 501(c)(3) and that contributions to the private foundations are deductible by the donor under section 170.[66]

Undoubtedly these provisions will have far-reaching effects on the use of company-sponsored foundations. By the end of 1971, it was clear that many foundations were terminating, and, although it was impossible to obtain reliable statistics as to the effect of the Act on the birth rate of foundations, it appeared inevitable that it would be a considerable deterrent to future growth.

[65] Internal Revenue Code of 1954, sec. 170(c)(2)(B).

[66] Temp. Reg., sec. 143.2 (b), adopted by T.D. 7030, 35 Fed. Register 4293 (Mar. 9, 1970). Proposed regulations under section 4945 adopt a similar position. Proposed Reg., Sec. 53.4945–4(b)(1),(2),(3), 36 Fed. Register 5363 (Mar. 20, 1971).

Shareholders and Company Giving

Noting that two of the five reported decisions on the validity of corporation donations since 1952 were reported in 1969, Blumberg predicted that "with increased corporate activity in the social sphere, litigation is a realistic possibility."[67] Legal theory assigns to shareholders, as owners of a corporation, control over the business enterprise. However, shareholders who are dissatisfied with a corporation's policy or activities have, in actuality, limited methods of redress. The law translates their power into an ability to elect managers, to vote on matters affecting the structure of the corporation, such as amendment of the charter, merger, consolidation, sale of corporation assets outside the ordinary course of business, and voluntary dissolution. It also permits them to call management to account in the courts for breaches of fidelity, specifically the duties of loyalty and of care.

In a small, closely held corporation, the right to elect management is sufficient to assure control. In a large business enterprise with shares owned by millions of individuals and institutions, the power of management to perpetuate itself is virtually unlimited. Management is rarely displaced by stockholder vote and, in fact, it is only in take-over situations that this has occurred in recent years. As Bayless Manning has noted, the insurgents in these instances are invaders rather than rebels, whose strength arose not from the force of their arguments but from the purchase of voting shares for the purpose.[68]

Shareholders' rights to vote on matters of corporate structure are counterbalanced by management's right to direct the business and affairs of the corporation. Both sets of rights are set forth in state enabling legislation, but, as the law has developed, management's powers have tended to increase at the expense of shareholders. Thus, the courts have widened the scope of matters that are considered properly encompassed in the management of the business and affairs of a corporation. Statutes and by-laws inevitably require affirmative votes of more than the majority of out-

[67] Blumberg, "Corporate Responsibility," p. 168.

[68] Bayless Manning, "Book Review," *Yale Law Journal*, vol. 67, 1958, pp. 1477, 1478.

standing shares on questions of changes in corporate structure, and the law has failed to define what subjects, apart from those specifically required by statute, are appropriate for shareholder action.[69]

Attempts to restore control to shareholders have appeared with regularity since the late twenties. However, enactment of the Securities Exchange Act of 1934 has been the only major legal result of these attempts, although the "corporate democracy movement" has had indirect effects on management action, particularly in the area of more accurate reporting.[70]

An assault on corporation contributions policy by shareholders in 1950 did lead to passage of an amendment to the New Jersey Corporation Code to require notice to shareholders if donations in any one year exceeded 6 percent of capital and surplus, and shareholder approval of a donation if, after notice, owners of 25 percent of the outstanding shares objected in writing. This same section also prohibited donations to a beneficiary that owned more than 10 percent of the donor corporation's outstanding shares.[71] In 1957, the statute was amended to require notice if donations exceeded 5 percent.[72] However, in 1969, as part of a complete revision of the New Jersey corporate laws, all limitations on the amount of contributions were removed, although the limitation on contributions to a corporation owning 10 percent or more of the donee's stock was retained.[73]

Because of the fact that 5 percent of capital and surplus will only in rare instances be less than the amount deductible for federal tax purposes, this limitation is virtually meaningless. It is so recognized by supporters of greater shareholder control who appear also to understand the difficulty of obtaining enactment of effective restrictive legislation at the state level and seek rather to

[69] J. A. C. Hetherington, "Fact and Legal Theory: Shareholders, Managers, and Corporate Social Responsibility," *Stanford Law Review*, vol. 21, 1969, pp. 248, 250–251.

[70] Louis Loss, *Securities Regulations*, vol. 2, 2nd edition. Little, Brown and Company, Boston, 1961, p. 910.

[71] New Jersey Public Laws, Ca 220; Laws of 1950.

[72] New Jersey Public Laws, ch. 74, Laws of 1957.

[73] New Jersey Rev. Stat. An., sec. 14A: 3–4; as amended by Public Laws, ch. 350, Laws of 1968.

use the Securities Exchange Commission machinery to further their ends.[74]

The Securities Exchange Act, however, has been primarily a vehicle for investor financial protection, and its information statements are directed toward disclosure of information designed for individuals making decisions as to the purchase or sale of shares. The Securities Exchange Commission's proxy rules do require that a proxy statement accompany each proxy solicited by management and be accompanied by a statement that contains information as to the method of solicitation, the number of voting securities outstanding, the company's nominees for directors, and material transactions between the company, management, and owners of more than 10 percent of outstanding shares.[75]

A potential weapon afforded to shareholders is to be found in the Securities Exchange Commission Rule 14a-8 which requires that shareholder proposals must be included in management proxy statements but only under certain conditions. The question must be: (1) permissible under the laws of the state in which the corporation is domiciled; (2) not related primarily to the shareholder's personal affairs; (3) not designed "primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes"; and (4) one that does not require or request that the management take action with respect to any matter relating to the conduct of the ordinary business operations of the soliciting corporation.[76]

The prohibition on inclusion of matters relating to general social or political conditions was first announced in a ruling of the Securities Exchange Commission in 1945,[77] and the restriction on proposals relating to ordinary business affairs was introduced in 1954. Until 1970, there had been very little litigation under this section; the few published cases indicate that share-

[74] Note: "Corporate Charitable Donations: Shareholder Protection and Public Disclosure," *Columbia Journal of Law and Social Problems*, vol. 5, 1969, pp. 99, 106–107.

[75] Securities Exchange Act of 1934, sec. 14, 15 U.S.C., sec. 781 (n) (1964).

[76] SEC Rule 14a–8(c), 17 C.F.R., sec. 240. 14a–8(c) (1970).

[77] SEC, Securities Exchange Act Release no. 3683, Jan. 3, 1945.

holders attempting to take advantage of the proxy rules were primarily interested in the qualification, selection, and remuneration of directors and officers and their accountability in reporting to shareholders. It was generally assumed that there was little chance of including in a management proxy statement a shareholder's proposal requiring a corporation to take either positive or negative action to accomplish a result deemed socially desirable by a shareholder.[78]

A group of what have been termed "professional shareholders" have regularly succeeded in using these rules to include questions relating to the propriety of contribution programs over the last decade, but to date have been unable to elicit any serious support. Watson surveyed fifty large companies in 1967 and found that several of them had motions to amend their by-laws introduced at their annual meetings the prior year, which would have prohibited contributions "not in direct furtherance of the business interests of this corporation." Each time the motion was voted down overwhelmingly, drawing no more than approximately 3 percent to 4 percent of the shares voted.[79]

He reported that, according to a firm of proxy solicitors, this same resolution had been voted on in fourteen companies in 1966 and defeated in each instance. In each case management had responded emphatically against the proposal. The resolution had been introduced in each of three successive years at the annual meeting of one of the several companies participating in Watson's study and twice in the immediate past of these other companies. The largest number of shares voted in favor of the resolution was 12 percent.[80]

In both 1970 and 1971 similar proposals were introduced at the annual meetings of the American Telephone and Telegraph Company, Ford, General Motors, Chase Manhattan Bank, Du

[78] Patrick H. Allen, "The Proxy System and the Promotion of Social Goals," *The Business Lawyer*, vol. 26, 1970, pp. 481, 485.

[79] John H. Watson, III, "Corporate Contributions Policy," *The Conference Board Record*, June 1967, pp. 12, 13. See also Blumberg, "Corporate Responsibility," p. 177, n. 118.

[80] Watson, "Corporate Contributions Policy," pp. 12, 13. See also Blumberg, "Corporate Responsibility," p. 177, n. 118.

Pont, U.S. Steel, and Xerox corporations, but at no one of them did the number of shares voted in favor of restricting donations exceed 9 percent.[81]

Lack of support for resolutions of this type is of particular importance because, under another of the proxy rules, management may omit a proposal and supporting statements from a solicitation if substantially the same proposal has been raised at any annual or special meeting within the five preceding years and it received less than 3 percent of the total votes cast with regard thereto. It may also be excluded if it has been submitted at two meetings within the five-year period and at the second received less than 6 percent of the votes cast and, finally, if the question was raised at three meetings and the last vote was less than 10 percent.[82]

Shareholders and Social Policy

In the winter of 1969, a group of individuals organized themselves under the name "Project for Corporate Social Responsibility" and attempted to utilize these proxy rules to raise objections to the social policies of the General Motors Corporation. They requested management to include nine proposals in the proxy statements for its annual meeting in May of 1970. The Securities Exchange Commission permitted inclusion of three of the proposals: increasing the number of directors from twenty-three to twenty-six; appointing three directors to represent the "public interest," and creation of a stockholder committee of twelve to twenty-five persons chosen jointly by management, the union, and citizens groups that would study the company's performance in the area of environmental problems.[83]

The corporation strongly opposed the proposals and campaigned vigorously against their acceptance. The controversy received wide-spread attention in the press and became the basis of student protests at several large universities. Although the proposals received less than 3 percent of the votes cast at the meet-

[81] L. L. L. Golden, "Public Relations: Countercurrents," *Saturday Review*, vol. 53, December 12, 1971, p. 60.

[82] SEC Rule 14 a–8 (c), 17 C.F.R., sec. 240. 14a–8(c) (1970).

[83] *The New York Times*, March 20, 1971, p. 1, col. 5.

ing, General Motors' subsequent response, which included appointment of its first black director and creation of a Public Policy Committee of its board, indicated that it did not believe it could afford to ignore public protests, even if they were backed by a minority of its shareholders.[84]

Also in 1969, the Medical Committee for Human Rights requested the Securities Exchange Commission to include in the proxy statement of Dow Chemical Company a proposal that the Board of Directors consider the advisability of amending the corporation's Certificate of Incorporation to prohibit the manufacture of napalm. The Securities Exchange Commission allowed the Dow Corporation to exclude the statement but on an appeal by the Medical Committee to the Court of Appeals for the District of Columbia the court held that it was error to permit exclusion without explanation.[85] The court found that this was not a question of business policy that was the exclusive concern of management. To the contrary, because it was directed toward the nature of the business in which the company would engage and involved amendment of the Certificate of Incorporation, it was within the province of the stockholders' rights. Furthermore, the court held that the restriction against questions of general social policy was inapplicable by virtue of the fact that the issue raised by the shareholders was not a general social question but was limited to whether management could use corporate assets to promote certain social goals which it believed desirable. Management, it was found, had no greater right than shareholders to make such a decision.[86]

In 1970 and 1971 the number of shareholder protests of this nature increased. Some were accompanied by disruptions at shareholder meetings, sit-ins, and boycotts. Institutional investors of

[84] *The New York Times*, March 7, 1971, Section IV, p. 10, col. 1; for a general discussion of the results of the first Campaign GM, see Donald Schwartz, "The Public Interest Proxy Contest: Reflections on Campaign G.M.," *Michigan Law Review*, vol. 69, 1971, pp. 520–529.

[85] *Medical Committee for Human Rights* v. *Securities Exchange Commission*, 432 F.2d 659, (D.C., Cir. 1970), cert. granted, 401 U.S. 973 (1971).

[86] For further discussion see, Allen, "The Proxy System,"; "Note: Proxy Rule 14a–8: Omission of Shareholder Proposals," *Harvard Law Review*, vol. 84, 1971, pp. 700–728.

varying types such as churches, universities, retirement funds, mutual funds, and investment companies were subjected to pressure to vote their holdings in favor of socially-oriented proposals and to make investment decisions with an eye to social considerations. These events led to a revision of earlier assumptions that shareholder actions were insignificant. Blumberg, characterizing these developments as the "politicalization of the corporation," believed in fact, that the process was irreversible.[87]

The final method of shareholder control referred to above is the ability to sue managers for breaches of fiduciary duty. This power is circumscribed as a practical remedy by the costs of such actions and by the tendency of the courts and the legislators to limit liability for negligent behavior without a clear showing of fault and causation. Several cases decided in the late sixties may have reflected a reversal of this trend in the courts. Management, however, has turned to the use of malpractice insurance, often purchased by the corporation, thereby limiting the effectiveness of this method of shareholder control.[88] In the area of charitable contributions, however, it is to be noted that the 1969 Delaware case was just such an action.

Other suggestions for controlling a corporation's contribution policy will be discussed later. A review of the law as it existed at the close of 1971 indicates, however, that neither statutes nor judicial decisions place substantial impediments in the way of corporations desirous of making contributions for traditional philanthropic causes. It remains to be determined whether expansion by corporations into areas of social, economic, and environmental concern will result in an expansion of the legal limits on corporation action or, as Blumberg has suggested, to a backlash that might ultimately result in limitation of corporate power.[89]

[87] Phillip I. Blumberg, "The Politicalization of the Corporation," *Boston University Law Review*, Vol. 51, Summer, 1971, p. 457.

[88] Hetherington, "Fact and Legal Theory," p. 259.

[89] Blumberg, "Corporate Responsibility," p. 178.

2 / CORPORATION PHILANTHROPY IN PRACTICE

Law develops to meet the changing attitudes and the changing needs of society. In turn, once new principles are incorporated into the law, the law itself provides an impetus to increased acceptance of change. Thus, in an inquiry into the relationship of corporations and philanthropy, one must look to the impact that change in the law dealing with corporation contributions has had on the amount and nature of donations by corporations.

Limitations of Financial Data

Reliable information on the amount of contributions by corporations is difficult to obtain. Early records are incomplete, compiled primarily from Community Chest figures that are limited in many instances to certain selected cities or areas. In the period from 1929 to 1936 there appears to be a total gap in information. In 1936, with amendment of the Internal Revenue Code to permit the deduction of corporation contributions, a more valid source of data became available. It has provided a consistent source for comparative study since that date. However, it would be wrong to assume that the Internal Revenue Service figures can give any more than an indication of trends. Andrews' survey of the giving policies of companies, made in 1952, indicated that it was common for corporations to deduct as ordinary business expenses gifts which come within common definitions of philanthropy, thereby reducing the corporation's taxable net income, and in addition, escaping the 5 percent limitation on deductions for contributions.

> Our Survey discovered that among the corporations sampled, sums "given to agencies for health, welfare, education, or religion as a business expense" amounted to 7.6 percent of the amount separately reported under 23(q), or 0.036 percent of net income. If this ratio holds for all corporations, welfare agencies were receiving from corporations in recent years from $10 million to $15 million more than the government figures reflect.[1]

Further evidence of the extent to which corporations deduct contributions as business expenses was found in a 1968 survey of business support of the arts by 345 companies. These companies gave approximately $9 million as deductible contributions, and an additional $8 million which they reported as business expenses, or 88.6 percent of the usually-considered contributions for which income tax deductions are claimed.[2]

Furthermore, tax returns in no way reflect the value of the services of corporate officers in fund raising and other charitable activities undertaken during regular working hours and, thereby, underwritten by the corporation. Nor do they reflect a corporation's handling of its employees' contributions through in-plant solicitation, often involving substantial amounts of corporate resources. Recently adopted programs to alleviate urban problems, to train minority groups, to improve the environment, and to support cultural causes, even when they encompass traditional philanthropic donations to some degree, usually are not included in a corporation's donations budget.[3]

The Record of Growth

Accepting these limitations, one finds a pattern of growth in the amount of corporation contributions that, in terms of mere totals, appears phenomenal. As noted, earlier estimates are not

[1] F. Emerson Andrews, *Corporation Giving*. Russell Sage Foundation, New York, 1952, pp. 41–42.

[2] Gideon Chagy, ed., *Business in the Arts '70*. Paul S. Eriksson, New York, 1970, p. 21.

[3] John H. Watson, III, *Report on Company Contributions for 1968*. National Industrial Conference Board, New York, 1969, p. 13.

reliable. During the war years, 1917 and 1918, it is thought that corporations contributed between $40 and $50 million to the Red Cross and YMCA.[4] These years, in fact, are commonly referred to as the ones in which corporation contributions first reached a significant percentage of total contributions from all sources.[5]

In 1920 the amount of contributions to community chests was estimated to be approximately $2.5 million and although by 1929 it had risen to $13.5 million, the increase has been attributed primarily to the spread of the community chest movement during the decade rather than reflecting a true increase in the amount of corporation contributions.[6] Although comprehensive data for the depression years are unavailable, Andrews' study of the scattered information, often on specific gifts by large corporations, led him to conclude that there was a sizable increase in the amount of gifts by certain corporations between 1929 and 1935.[7]

Income tax statistics for 1936 indicated corporate donations of $30 million. In the succeeding four years they were $33, $27, $31, and $38 million respectively. During World War II there was a rapid increase in the volume of giving, similar to that recorded during World War I. In 1941, corporations deducted contributions of $58 million; in 1942, $98 million; in 1943, $159 million. In 1944, the amount was $234 million and, by 1945, contributions of $266 million were nine times the 1936 amount. The increase since 1945, as shown on Table I has continued upward, surpassing one billion in 1968.

The Nelson Analysis

Important insights on these figures are provided in Ralph Nelson's *Economic Factors in the Growth of Corporation Giving,* which contains detailed analyses of Internal Revenue Service data from 1936 through 1964.[8] Accepting the influence of social and political factors, Nelson, nevertheless, attempted to demonstrate

[4] Andrews, *Corporation Giving,* p. 28.

[5] *Ibid.,* p. 33.

[6] Ralph L. Nelson, *Economic Factors in the Growth of Corporation Giving* Russell Sage Foundation, National Bureau of Economic Research, New York, 1970, p. 17.

[7] Andrews, *Corporation Giving,* pp. 35–37.

[8] Nelson, *Economic Factors in Corporation Giving.*

TABLE I. Fiscal Contributions by Corporations

Year	*Dollars in Millions*	*Year*	*Dollars in Millions*
1945	266	1958	395
1946	214	1959	482
1947	241	1960	482
1948	239	1961	512
1949	223	1962	595
1950	252	1963	657
1951	343	1964	729
1952	399	1965	785
1953	495	1966	805
1954	314	1967	830
1955	415	1968	1,005
1956	418	1969	1,075*
1957	417	1970	990†

Source: Internal Revenue Service Statistics of Corporations Income—various years.

* Estimated by American Association of Fund Raising Counsel, Inc., *Giving USA: A compilation of facts and trends on American philanthropy for the year 1970*. New York, 1971, p. 24.

† Estimated by Council for Financial Aid to Education, *1970 Corporation Support of Higher Education.*

that much of the growth of corporation giving must be explained in terms of related developments of a more strictly economic nature. He pointed out that during the quarter century from the late 1930s to the early 1960s when corporation contributions increased nineteen-fold, the gross national product rose from $87 billion to $560.4 billion per year. Before-tax profits for corporations with net income rose from $8.8 billion to $59 billion a year and the net after-tax cost of tax-deductible contributions declined as marginal tax rates on income rose from 15 to 19 to 38 to 52 percent.[9]

During this same period, reported contributions rose from an annual rate of $31 million to $595 million. These contributions, measured as a share of gross national product, increased threefold, from one-thirtieth of 1 percent in 1936–1940 to one-tenth of 1 percent in 1960–1964, although the major growth occurred in the four war years, 1940–1944, after which the movement was

[9] *Ibid.*, pp. 2–3.

within the relatively narrow range of approximately one-tenth of 1 percent.[10]

Recognizing that inflationary factors during this period result in an overstatement of the growth in the amount of economic activity represented by these measures, Nelson made comparisons based on dollars of 1936 value, and found that the actual rise from 1936 to 1964 was from $30 million to $285.9 million (in 1936 dollars). In relationship to gross national product, this rise was from 0.0364 percent to 0.1160 percent.[11]

A second series of comparisons, relating to the growth of contributions to corporate net income, showed that the observed growth pattern departed significantly from that measured against national product. Three separate measurements were used: net income before taxes; net income after taxes but before gifts and contributions; and net income after taxes and after gifts and contributions.

The annual percentage of corporate income before taxes given to philanthropy has grown substantially, rising from 0.31 percent during the period 1936–1940 to 1 percent for 1960–1964. The differences in the two measures of after-tax income were found to be very slight.[12] Under both measures, the increase was even greater than that measured in relation to before-tax income, rising from 0.36 to 1.6 percent. Of particular significance was the sustained increase since World War II. From 1946–1949 to 1960–1964, Nelson found that giving as a percentage of after-tax income increased by 54 percent, from 1.04 to 1.6 percent.[13]

Because of changes in marginal tax rates, this increase in giving does not, however, indicate that there was a proportionate rise in the net cost of gifts. In fact, Nelson found that the net after-tax cost of one dollar in contributions declined by almost two-fifths over the period. Even so, there was a growth in the share of after-tax income that corporations chose to be out-of-pocket. As Nelson explains:

[10] *Ibid.*, p. 5.

[11] *Ibid.*, p. 92.

[12] *Ibid.*, pp. 5, 21–22 (Nelson's more detailed analyses used the second concept, primarily because it is more substantially equivalent to corporate disposable income).

[13] *Ibid.*, pp. 5–7.

> Had corporations chosen to make the same out-of-pocket outlays relative to disposable income in 1960–1964 as they had in 1936–1940 (0.28 percent), they would have made only 36 percent of the gifts and contributions that they actually reported for 1960–1964. Instead of an average of $589 million per year, in current dollars, they would have contributed only about $212 million per year.[14]

These statistics relate only to corporations reporting a positive net income. A separate study of corporations reporting losses or zero net income indicated that these corporations made contributions of $118 million during the period under study, or 1.4 percent of total corporate contributions for the period.[15]

A final aspect of growth is the number of corporations making contributions. However, Nelson reported an absence of data, stating that the only direct data are the result of a special tabulation made by the Internal Revenue Service for the year 1958.[16] In that year, of 990,381 corporations filing income tax returns, 27.7 percent reported contributions or gifts. Among these, the proportion of large corporations was greater than small ones. No attempt was made in these tabulations to distinguish between corporations with profits and those with losses, and the year 1958 was one of economic recession, with reduced profits and low total contributions. Taking these factors into consideration, Nelson received the impression nonetheless that:

> the practice of corporation giving is much more widespread than indicated by the gross percentage of corporations reporting contributions. Certainly, considerable room exists for increasing the number of corporations that follow a policy of giving. However, in terms of the potential dollar addition to total corporate giving that would result from more widespread giving, the prospect is a much more modest one.[17]

Nelson used these overall growth figures for a series of correlation analyses in an attempt to determine some of the factors

[14] *Ibid.*, p. 8.
[15] *Ibid.*, p. 23.
[16] *Ibid.*, pp. 26–27.
[17] *Ibid.*, pp. 27–28.

that might account for the rise in contributions. His conclusions may be summarized as follows:

1. By virtue of size alone, large corporations give neither more nor less in proportion to their size than do smaller ones.

2. The immediate and certain tax reduction that results from contributions was a significant factor in the giving decision.

3. An increased and widespread acceptance of the legality, appropriateness and worth of corporation giving can be clearly demonstrated during the period under study.

4. There is little relationship between responsiveness of giving to changes in the rate of return on shareholder investments or on profitability.

5. The level of giving bears a significant relationship to the degree with which companies use labor in production.

6. There is possibly a significant degree of short-term relationships between contributions and dividend payments.[18]

Other National Surveys

Nelson's conclusions regarding the relationship of the rate of giving to the size of corporations and to the degree with which they use labor in production are at variance with the results of Andrews' 1952 study, as well as with those from a series of surveys conducted triennially since 1955 by the National Industrial Conference Board. Andrews analysed statistics for 1948 compiled by the United States Treasury Department to obtain data on the rate of giving as a percentage of assets. This 1948 tabulation of 537,000 corporations filing returns with balance sheets indicated that the rate of giving was 0.33 for 601 corporations with assets of $100 million dollars or more. For corporations of intermediate size, with assets between $1 million and $100 million, representing 7 percent of the total number of corporations, the rate was 0.8 percent, slightly above the general average for that year for all corporations of 0.69 percent. At the other end of the scale and representing 93 percent of all corporations, the 500,000 corporations with assets under $1 million and somewhat less than 16

[18] *Ibid.*, pp. 72–73.

percent of total net profits gave at a rate of 1.27 cents per dollar of profit.[19]

In a survey of 326 corporations conducted in 1950, Andrews found the same relative decline in rate for large corporations.[20] This same survey also used number of employees as a criterion of size and found that the trends in giving were in general the same as for corporations ranked by assets. Again, it was the corporations with fewer employees that made the largest gifts in proportion to net income, although in terms of the number of dollars given, more than one third of the total came from nine corporations in the sample having 20,000 or more employees each.

The National Industrial Conference Board tabulations compiled by Watson are not comparable to Internal Revenue Service statistics in that they do not represent payments by companies to their controlled foundations. However, they do include contributions made in the same year by these foundations. Furthermore, unlike the Nelson study, these surveys measured the ratio of corporation giving to net income before taxes.

In his periodic surveys of 401 large industrial companies, Watson has found a pattern that did not change significantly until 1970. Among the surveyed companies, this ratio for 1970 was 0.82 percent.[21] In 1968 and 1965 it was 0.68 percent,[22] although in 1962 it was 0.76 percent.[23] The explanation for the discrepancy between these figures and the 1 percent ratio reported by the Internal Revenue Service was believed to be found in the composition of

[19] Andrews, *Corporation Giving*, pp. 44–46. A similar pattern was found in a 1945 tabulation.

[20] *Ibid.*, pp. 46–47, 270. Andrews reported bias in the sample in favor of large corporations, with an emphasis on manufacturing corporations, as well as a difficulty arising from a considerable proportion of nonrespondents. Further, he felt there was probably a bias toward the more liberal givers and cautioned against attempts to equate it with the total number of corporations.

[21] John H. Watson, III, *Biennial Survey of Company Contributions*, The Conference Board, Inc., New York, 1972, p. 1.

[22] John H. Watson, III, *Report of Company Contributions for 1968*. National Industrial Conference Board, New York, 1968, p. 2; and his "Report on Company Contributions for 1965," *The Conference Board Record*, vol. 3, 1966, p. 45.

[23] John H. Watson, III, "Report on Company Contributions for 1963," *Business Management Record*, Oct., 1963, p. 24.

the Board's sample which was heavily weighted by larger companies with relatively low ratios.[24] Furthermore, in the surveys made before 1970, Watson found no correlation on a broad scale between the number of employees and the amount of contributions whether measured by the amount of contributions per employee or the percentage of contributions to net income before taxes of companies grouped by number of employees per $1,000 of assets.[25] See Table II for the results of the 1970 survey.

TABLE II. Percent of Contributions to Net Income, before Taxes—Companies Grouped by Number of Employees and by Size of Assets

(Insurance companies excluded)

Company Size by Number of Employees	*Number of Companies*	*Net Income before Taxes in Thousands*	*Contributions in Thousands*	*% of Contributions to Net Income*
Below 250	11	$ 10,579	$ 80	.76
250–499	5	2,484	178	7.17
500–999	12	83,937	608	.72
1,000–4,999	76	1,605,022	14,124	.88
5,000–9,999	63	2,257,104	21,185	.94
10,000–24,999	79	4,989,732	45,000	.90
25,000 and over	85	24,915,344	196,190	.79
Total	331	$33,864,200	$277,365	.82

Company Size by Assets in Millions	*Number of Companies*	*Net Income before Taxes in Thousands*	*Contributions in Thousands*	*% of Contributions to Net Income*
Below $15	19	$ 273,184	$ 1,941	.71
$15–24	3	7,633	42	.55
25–49	9	29,403	296	1.01
50–99	23	237,807	2,894	1.22
100–199	47	615,201	8,361	1.36
200 and over	225	31,002,343	247,392	.80
Total	326	$32,165,572	$260,926	.81

Source: John H. Watson, III, *Biennial Survey of Company Contributions*, The Conference Board, Inc., New York, 1972, p. 3. Reprinted by permission.

[24] Watson, *Report of Company Contributions for 1968*, p. 2.
[25] *Ibid.*, p. 3.

A third series of compilations on corporation donations has been made biennially since 1954 by the Council for Financial Aid to Education. A 1968 survey of 538 companies produced findings similar to those of The Conference Board. Again, however, the sample was weighted heavily toward the very large corporations in the United States. The total contributions of these companies, measured as a percentage of pre-tax net income, was 0.79 percent —higher than that reported by the Conference Board but less than the percentage obtained from Internal Revenue Service statistics. The ratio of giving to assets was found to be 0.048 percent and to net sales, 0.094 percent.[26] In an analysis of the contributions of a small group of manufacturing companies it was found that there was an inverse correlation between size and amount of contributions relative to size, whether measured as a percentage of assets, net sales, or pre-taxable net income. The correlation was strongest with respect to sales and income and weakest with respect to assets.[27] No statistics were presented on the relationship of number of employees to amount of contributions. The findings of the Business Committee for the Arts for 1969 were similar. The companies most likely to give to the arts were those with relatively small pre-tax net income and fewer than 1,000 employees.[28]

Metropolitan Area Surveys

There have also been three surveys of corporation giving in selected metropolitan areas, which are of interest because the surveyed companies, measured both by number of employees and by taxable income, were weighted less heavily toward larger companies than those participating in the studies conducted by the NICB and the Council for Financial Aid to Education. In 1953, the Harvard Business School Club of Cleveland, Inc., financed by grants from the Committee for Economic Development and the Fund for Adult Education, conducted a survey of companies contributing $500 or more to the Cleveland Com-

[26] Council for Financial Aid to Education, *1968 Survey of Corporation Support of Higher Education*. New York, 1969, p. 16.

[27] *Ibid*., p. 17.

[28] Chagy, *Business in the Arts '70*, pp. 22–23, 26–28.

munity Fund in 1952. It was found that these companies contributed a total of $4,729,326 in that year from which it was estimated that total contributions by all Cleveland corporations and their branches and by Cleveland branches of companies with headquarters elsewhere was approximately $10.7 million. The average gift per employee to local Cleveland charities made by companies in the survey was $20.22, while the average gift per employee to all causes was $14.79.[29] Ten of the participating corporations had administrative headquarters in Cleveland and all other operations out of town. These companies gave $235.05 per local employee. This was of particular note in view of the fact that these employees represented only 2.6 percent of the total employees of the ten companies.[30] The ratio of contributions to pre-tax net income was substantially higher than the national average reported in Andrews' study. However, exclusion from the sample of companies that had not made any contributions to the Community Fund was felt to have affected this result.[31]

Two surveys of the contributions policies of corporations in the Greater Boston area were made in 1967 and 1970 respectively. The first, which was conducted as part of a study, *The Arts in Boston*, was financed by a grant from the Permanent Charities Fund of Boston and was carried out under the auspices of the Joint Center for Urban Studies of the Massachusetts Institute of Technology and Harvard University and the Cultural Foundation of Boston.[32] Because of its focus, the survey concentrated on the largest companies in the area, measured by number of employees. Information was obtained from 97 companies and 13 company-sponsored foundations, of which 46 percent were manufacturing concerns. These companies made contributions which average slightly under 1.2 percent of taxable income. The median of a company's total gifts was slightly over $20,000, with only two reporting that they gave the full 5 percent. Thirteen percent of the companies gave less than 0.1 percent, 17 percent of them gave

[29] Harvard Business School Club of Cleveland, *Corporation Giving in Greater Cleveland*. Privately published, 1953, pp. 42–48.

[30] *Ibid.*, p. 44.

[31] *Ibid.*, p. 49.

[32] Bernard Taper, *The Arts in Boston*. Harvard University Press, Cambridge, 1970.

from 0.1 percent to 0.4 percent of taxable income, and another 17 percent gave between 0.5 percent and 0.9 percent. The company most likely to give was found to be one with more than 1,000 employees and more than $1 million net income.[33]

The most recent study, similarly conducted under the auspices of the Joint Center for Urban Studies, under a grant from the Permanent Charities Fund of Boston, by Dan H. Fenn, Jr. was directed toward ascertaining Boston's attitudes toward the involvement of business in the community. The study included a survey of 139 companies, directed toward obtaining information on their contributions to community service projects. These corporations reported total financial contributions in the Boston area of $4.8 million with 51 percent of them contributing $1,070,000 and 46 percent giving $3,745,000 for an average of $35,000 per company. Only 1 percent made no contributions, another 2 percent did not report contributions. The sample contained 45 companies with 500 or less employees, 21 with 501 to 1,000, 50 with 1,001 to 5,000, and 19 with more than 5,000. Fifty-five of them had total incomes of under $1 million; 41 reported income from $1 to $9.9 million and 18 had incomes of $10 million or more. The overall rate of giving measured on pre-tax net income was found to be 0.85 percent. The largest givers were companies with more than 1,000 employees and net income of more than $10 million.[34]

Donations by Types of Industry

Nelson's studies made no attempt to differentiate between companies on the basis of the industry involved, nor by subgroups within industry. The Conference Board surveys, as well as those conducted by the Council for Financial Aid to Education, are weighted primarily toward manufacturing companies. A possible explanation of the fact that the ratio of giving to net income, as found in their surveys, is lower than those found in Nelson's studies, which are based on Internal Revenue Service statistics,

[33] *Ibid.*, pp. 81–82, 141–147.

[34] Dan H. Fenn, Jr., "*Corporate Responsibility: The View from the Street.*" Unpublished manuscript based on study sponsored by Harvard–M.I.T. Joint Center for Urban Affairs, 1969.

TABLE III. Corporation Contributions: Amount and Percent of Net Profit by Major Industrial Groups, All Active Corporations, 1966–1967

Industrial Group	*Number of Corporations*	*Net Income (Millions) (Less Deficit)*	*Contributions*		
			Amount (Thousands)	*Percent of Total*	*Percent of Net Profit*
Total	1,468,725	$80,527	$805,035	100.0	1.0
Agriculture, forestry, fisheries	27,945	289	2,999	—	.10
Mining	14,831	1,740	7,471	1	.43
Contract construction	112,373	1,399	19,913	2	1.42
Manufacturing	187,642	44,404	469,260	58	1.06
Transportation, communication, electric, gas, sanitary services	59,925	11,620	63,368	8	.55
Wholesale and retail trade	453,174	8,240	113,890	14	1.38
Finance, insurance, and real estate	402,740	11,002	100,727	13	.92
Services	202,065	1,828	27,405	3	1.49
Not allocable	8,030	6	2	—	—

Source: *Statistics of Income . . . 1966, Corporation Income Tax Returns*. Accounting Periods Ending 1966 Through June 1967. U.S. Government Printing Office, Washington, D.C., 1970, pp. 14–20.

may be found in the detailed breakdowns of corporation contributions by industry. Table III contains data for 1966 extrapolated from Internal Revenue Service statistics. It indicates that manufacturing, with 55 percent of total net income, gave 58 percent of all contributions, at a rate of 1.06 percent. Wholesale and retail trade, with 10 percent of all income gave 14 percent of all contributions at a rate of 1.38 percent. Finally, insurance and real estate with 13.7 percent of all income, made 14 percent of all contributions at a rate of 92 percent. 1966 was a year in which the overall rate of contributions to net income was comparatively low. The variations within industries are not, however, appreciably different from those for prior years.[35]

Watson has found that the manufacturing segment of industry is more beneficent than nonmanufacturing, with the former making gifts of 0.91 percent of net income, compared with 0.63 percent for the latter. The exception was wholesale and retail trade, with a comparatively higher percent of 1.49. Among manufacturing groups he found that textile mill products, rubber and plastic products, printing and publishing, stone, clay and glass products, and producers of transportation equipment had a rate in excess of 1.75 percent.[36]

In Fenn's study, the largest givers in the Boston area were banking and insurance companies.[37] Chagy likewise found that it was nonmanufacturing companies that were more likely to give to the arts and that the most generous ones were those with local markets.[38] A study by Jules Cohn of the urban affairs programs of 247 large corporations indicated that 100 percent of the banks, 80 percent of the merchandizers, 75 percent of the utilities and 65 percent of electronic corporations had contributions programs supporting urban affairs, but no attempt was made to compare the amount of donations.[39]

There is clearly a need for more precise information on the extent of corporation philanthropy, particularly if it is to be used

[35] Andrews, *Corporation Giving*, pp. 342–346, contains extensive data for years prior to 1950.

[36] Watson, *Biennial Survey of Company Contributions*, pp. 4–5.

[37] Fenn, "Corporate Responsibility," p. 98.

[38] Chagy, *Business in the Arts '70*, p. 29.

[39] Jules Cohn, "Is Business Meeting the Challenge of Urban Affairs?" *Harvard Business Review*, vol. 48, March-April, 1970, pp. 68–71.

as a measure of performance. The problem is both quantitative and qualitative. However, given the difficulties of using the Internal Revenue Service statistics, unless more comprehensive private studies are undertaken it is unlikely that a complete picture can be obtained. One can note overall growth and can be assured that the large companies are making substantial contributions in terms of dollars, but beyond that it is difficult to be precise.

Comparison with Total Philanthropy

The discussion thus far has dealt with the growth of corporation giving relative to the corporate universe. A further measure of corporation philanthropy is its position in relation to the total amount of private philanthropy.

According to estimates compiled by the American Association of Fund Raising Counsel, individual donors, accounting for approximately 78 percent of the 1970 estimate of total philanthropic contributions have consistently been the largest single source of donations.[40] They accounted for 87 percent of all philanthropy in 1950 and between 75 and 80 percent in the decade of the sixties. The total contributed by individuals in 1950 was $3.9 billion, compared with $14.3 billion in 1970. However, this growth is explained primarily by the fact that personal income in this period rose more than 200 percent. The bequest figure estimated for 1970 was $1.4 billion. Foundation gifts in 1970 were estimated at $1.7 billion, more than double the 1960 figure of $710 million, and representing an increase of 6.3 percent over the prior year. The growth rate of 2,000 new foundations a year was expected to diminish, however, due to the changes in the tax laws effective in 1969–1970.

Corporation donations for 1969 were estimated by the AAFRC early in 1971 at $900 million. Publication of the Internal Revenue Service Preliminary Statistics of Corporate Income for 1968 later in that year indicating corporate donations of $1.005 billion led to a revision of the AAFRC's estimate for 1969 to $1.075 billion, with a similar amount expected to be donated in

[40] Harlan F. Lang, ed. *Giving USA, A compilation of facts and trends on American philanthropy for the year 1970.* American Association of Fund Raising Counsel, Inc., New York, 1971.

1970. The original estimate had been based on the I.R.S. figure of $829 million of contributions in 1967, with a prediction of a 4 percent annual rise. The actual increase in donations by corporations from 1967 to 1968 of 21 percent was totally unanticipated. The predicted increase of 7 percent for 1969 was based primarily on the 1968–1969 Council for Financial Aid to Education's survey of giving to higher education and the estimate for 1970 was based on economic indications, particularly Department of Commerce estimates of a decline in corporate profits for 1969 and 1970.[41]

Nonetheless, the share of corporation giving in total private philanthropy has been and continues to be small. Its importance lies in the fact that growth has been more rapid than that from other sources and that it is believed that there is a far greater potential for giving than has yet been seen.[42]

Areas of Support

A final question to be determined from statistical data is where the corporation dollars go. The only consistent source of information on this subject is the National Industrial Conference Board studies, although the Council for Financial Aid to Education's surveys have delineated the breakdown of contributions to education as opposed to other philanthropic causes, and studies made by the Business Committee for the Arts since 1968 make a similar comparison for its field of interest.

Accepting, again, the limitations of the Conference Board survey, primarily due to the relatively small size of its sample and the fact that it is largely confined to manufacturing companies, one finds marked changes in the fields of interest to which corporations have contributed since 1948.[43] The first of the NICB

[41] *The Bulletin of the AAFRC, Inc.*, July–August 1971, pp. 1–2.

[42] Hayden Smith, "Prospects for Voluntary Support," in Robert H. Connery, ed., *The Corporation and the Campus: Corporate Support of Higher Education in the 1970's*. American Academy of Political Science, New York, 1970, pp. 120, 132.

[43] Andrews, *Corporation Giving*, p. 70. Andrews' survey of the recipients of donations of 326 companies substantiated the findings of a 1948 survey of 73 companies made by the National Industrial Conference Board and not included in its triennial compilations when changes in categories of the two surveys are taken into account.

surveys, that for the year 1947, covered 71 companies with a total of \$16 million in gifts. Of this amount, 66 percent was given for health and welfare, 14 percent to education, and 20 percent identified merely as "other." In 1955, 180 companies made total gifts of \$32,260,000 for the following causes:[44]

	Percent
Health and welfare	50.7
Education	31.3
Culture	3.2
Other	22.3

Subsequent surveys made in 1959, 1962, 1965, 1968, and 1970 contained more refined breakdowns. The results are set forth in Table IV and indicate that an increase in the percentage of contributions to education started in 1955, with a companion decline in health and welfare grants.[45]

The Council for Financial Aid to Education has recorded a similar trend. Estimates made by the Council indicated that in 1950, 17 percent of the contributed dollars went for education. In 1955, the percentage rose to 25.1 percent and in 1958 it was 34.7 percent. There was a slight decline in 1959 to 33.2 percent, but in 1960 the amount was 36.9 percent. In subsequent years it fluctuated between 33.6 percent and 38 percent, a high reached in 1967, after which there was a decline to 34.3 percent in 1970, the most recent year for which estimates are available.[46]

As can be seen from Table IV, the Conference Board surveys indicate that, commencing in 1965, there has been an increasing interest in civic causes. In his commentary on the 1968 survey, Watson noted that business concern for minority groups and urban problems was reflected in the policies of a majority of reporting companies. In a separate tabulation of grants for "Urban Programs," it was found that:

[44] John H. Watson, III, *Company Contributions: Policies and Procedure*. National Industrial Conference Board, Studies in Business Policy, No. 89, New York, 1956, p. 11.

[45] Watson, *Biennial Survey of Company Contributions*, pp. 12–13.

[46] Council for Financial Aid to Education, *1970 Corporation Support of Higher Education*. New York, 1971, p. 16.

TABLE IV. The Contributions Dollar

	1970 401 Companies		1968 401 Companies		1965 540 Companies	
	Thousands of Dollars	% of Total	Thousands of Dollars	% of Total	Thousands of Dollars	% of Total
Health and welfare						
Federated drives: United Funds and the like	$ 74,168	24.07	$ 57,257	21.74	$ 50,558	24.2
National health agencies (not included above)	3,146	1.02	4,210	1.60	3,176	1.5
National welfare agencies (not included above)	3,929	1.27	4,882	1.83	4,043	1.9
Hospitals						
Capital grants	17,156	5.56	15,210	5.78	17,172	8.2
Operating grants	2,404	.78	1,564	.59	2,018	1.0
Other local health and welfare agencies	10,346	3.36	9,462	3.59	5,301	2.5
Capital grants (excluding hospitals)	7,721	2.51	5,317	2.02	4,653	2.2
Total health and welfare	118,872	38.57	97,840	37.15	86,921	41.5
Education						
Higher education						
Scholarships	13,787	4.47	10,212	3.88	10,569	5.0
Fellowships	4,539	1.47	4,802	1.82	4,715	2.3
Research grants (not treated as a business expense)	6,711	2.18	8,761	3.33	5,073	2.4
Capital funds	20,123	6.53	25,289	9.60	15,180	7.3
Direct unrestricted grants	32,580	10.57	26,948	10.23	20,487	9.8
Grants to state, area, and national fund-raising groups	7,418	2.41	5,884	2.23	7,068	3.4

Education-related agencies	3,345	1.08	3,376	1.28	3,741	1.8
Other	18,113	5.87	11,189	4.25	8,513	4.1
Secondary education						
Capital grants	1,138	.36	453	.17	765	.4
Other	8,233	2.67	5,294	2.01	4,233	2.0
Total education	115,990	37.64	102,208	38.81	80,344	38.4
Culture (cultural centers, performing arts, museums, etc.)[2]						
Operating funds	7,903	2.56	5,750	2.18	3,332	1.6
Capital grants	8,505	2.76	7,299	2.77	2,501	1.2
Total cultural	16,408	5.32	13,349	4.95	5,833	2.8
Civic causes (municipal and community improvement, good government and the like)[2]						
Total civic	25,098	8.14	18,946	7.19	12,099	5.8
Other						
Religious causes	1,020	.33	1,952	.74	1,053	.5
Groups devoted solely to economic education	1,970	.64	1,388	.53	1,788	.9
Groups in U.S. whose principal objective is aid to other countries	5,171	1.68	10,738	4.08	7,868	3.8
Causes other than above	16,787	5.45	13,296	5.05	8,474	4.0
Total "other"	24,949	8.10	27,374	10.39	19,183	9.2
Dollars not identifiable because donee is unknown	6,845	2.22	3,968	1.51	4,916	2.3
Grand Total	$308,165	100.00	$263,387	100.00	$209,296	100.0

TABLE IV. The Contributions Dollar (*continued*)

	1962 *465 Companies*		*1959* *280 Companies*		*1955*[1] *180 Companies*	
	Thousands of Dollars	*% of Total*	*Thousands of Dollars*	*% of Total*	*Thousands of Dollars*	*% of Total*
Health and welfare						
Federated drives: United Funds and the like	$ 39,280	25.5	$ 25,450	25.1	$ 8,378	21.9
National health agencies (not included above)	2,183	1.4	1,520	1.5	497	1.3
National welfare agencies (not included above)	4,114	2.7	3,340	3.3	....	...
Hospitals						
Capital grants	9,369	6.1	9,330	9.2	3,290	8.6
Operating grants	1,016	.7	1,410	1.4	....	...
Other local health and welfare agencies	5,140	3.3	2,830	2.8	....	...
Capital grants (excluding hospitals)	2,002	1.2	1,820	1.8	....	...
Total health and welfare	63,104	40.9	45,700	45.1	19,397	50.7
Education						
Higher education						
Scholarships	7,832	5.1	4,860	4.8	1,071	2.8
Fellowships	4,271	2.8	4,050	4.0	994	2.6
Research grants (not treated as a business expense)	4,040	2.6	3,440	3.4	1,262	3.3

Capital funds	9,695	6.3	9,930	9.8	2,257	5.9
Direct unrestricted grants	18,813	12.2	8,010	7.9	2,027	5.3
Grants to state, area, and national fund-raising groups	4,791	3.1	2,830	2.8	573	1.5
Education-related agencies	1,793	1.2	1,310	1.3	....	...
Other	9,740	6.3	3,340	3.3	3,596	9.4
Secondary education						
Capital grants	537	.3	100	.1	191	.5
Other	3,019	2.0	1,720	1.7	....	...
Total education	64,531	41.9	39,590	39.1	11,975	31.3
Culture (cultural centers, performing arts, museums, etc.)[2]						
Operating funds						
Capital grants						
Total cultural	8,239	5.3	2,940	2.9	1,224	3.2
Civic causes (municipal and community improvement, good government, and the like)[2]						
Total civic						

TABLE IV. The Contributions Dollar (*continued*)

	1962 465 Companies		1959 280 Companies		1955[1] 180 Companies	
	Thousands of Dollars	% of Total	Thousands of Dollars	% of Total	Thousands of Dollars	% of Total
Other						
Religious causes	589	.4	400	.4	191	.5
Groups devoted solely to economic education	1,756	1.1	1,520	1.5	803	2.1
Groups in U.S. whose principal objective is aid to other countries	2,726	1.8	500	.5	114	.3
Causes other than above	10,856	7.1	7,200	7.1	1,759	4.6
Total "other"	15,927	10.3	9,630	9.5	2,869	7.5
Dollars not identifiable because donee is unknown	2,341	1.5	3,540	3.5	2,792	7.3
Grand Total	$154,142	100.0	$101,400	100.0	$38,260	100.0

[1] The breakdown of the contributions dollar for the year 1955 was less refined than for subsequent years. As a consequence, distribution within major areas of support is incomplete.

[2] Culture and Civic Causes were not tabulated separately prior to 1965.

Source: John H. Watson, III, *Biennial Survey of Company Contributions*, The Conference Board, Inc., New York, 1972, pp. 12–13. Reprinted by permission.

> . . . 4 out of 5 of the companies reporting contributed funds to help meet the crises in the cities. Almost 40 percent of the companies allocated up to 5 percent of their annual contributions for this purpose. Another 20 percent gave larger amounts, in some instances up to 10 percent of their contributions. In three out of four companies, this represents new money over and above that given in the past to support traditional causes. In other instances, funds have been shifted to this new category in whole or in part. Where only a partial shift was made, some new money was added.[47]

The Triennial Surveys also provide statistics on the relationship of the size and the nature of a company to the types of beneficiaries of its donations. Thus, support of health and welfare received the top priority among smaller companies, education among larger companies. In particular, manufacturing companies generally laid greater stress on educational support than nonmanufacturers, and among the sectors of manufacturing, nonelectrical machinery, tobacco, and petroleum gave more charitable support to education than other sectors.[48] In contrast, support of civic and arts programs appeared to be a function of reduced company size; the smaller companies' average gifts to these causes were $.18 per contribution dollar for civic and $.08 for the arts, while for the larger companies the averages were $.07 and $.05 respectively.[49]

The Cleveland Survey of Contributions made in 1952 reflected the increasing interest in support of education reported elsewhere, but also confirmed the finding that community funds and other health and welfare appeals received the largest percentage of contributions. The amount of gifts for cultural purposes was exceedingly small, comprising less than 1.5 percent of total gifts.[50] The ratio of local as contrasted to national and international causes was roughly two to one for all companies, but in the smaller companies, local support accounted for as much as 90 percent of total contributions.

It was also found in the Cleveland study that corporations located in that city, in general, favored local appeals above those

[47] Watson, *Report on Company Contributions for 1968*, pp. 12–13.
[48] *Ibid.*, p. 6.
[49] *Ibid.*, p. 12.
[50] Harvard Business School Club of Cleveland, p. 45.

from areas where the companies had branches. However, it was noted that certain companies with branch operations in more remote communities lacking health and welfare services provided their employees with hospital, recreational, and other needs and treated these items as business expenses rather than philanthropic contributions.

The proportion of total company gifts given to various types of causes in 1967 in Boston, compiled for Taper's study, is shown in Table V. Fewer than half of the companies reporting made

TABLE V. Proportion of Total Company Gifts Given to Various Types of Causes in Greater Boston in 1967

	Percent of Companies			
Proportion of Total Gift	*Arts*	*Health and Welfare*	*Education*	*Other*
Less than 40 percent	78	28	54	71
40 percent–60 percent	9	25	28	7
More than 60 percent	5	37	7	8
Not ascertainable	8	10	11	14
Totals	100	100	100	100
Number of Companies	(47)	(87)	(70)	(58)

Source: Bernard Taper, *The Arts in Boston*. Harvard University Press, Cambridge, 1970, p. 146. Reprinted by permission.

any gifts to the arts and the majority of such gifts went to the major fund-raising drives of the Boston Symphony Orchestra and the Museum of Fine Arts.[51]

Fenn's 1970 study of contributions by Boston corporations to local causes showed the United Fund receiving 43.4 percent of all contributions, with established health organizations and educational institutions receiving 14.1 percent and 13.8 percent respectively. Of the other categories tabulated, community-oriented

[51] Taper, *The Arts in Boston*, p. 81. This finding was supported in the statistics compiled in a much broader survey by the Conference Board for the Business Committee for the Arts. See Chagy, *Business in the Arts '70*, p. 32.

projects received 7.7 percent; recreation 6.4 percent; the arts 2.9 percent; job training of hard-core unemployables 2.1 percent; crime prevention 0.4 percent; and drug treatment 0.1 percent. In a separate tabulation of contributions made to black and other minority groups outside the United Fund in 1964 and 1969 it was found that the number of companies making contributions increased from 11 percent in 1964 to 39 percent in 1969, and the percentage of the total contributions to such groups increased from 0.5 percent for 1964 to 1.4 percent for 1969.[52]

Urban Programs

Additional data on donations to urban causes were obtained by Jules Cohn who compiled a survey of the urban programs of 247 companies, all of which appear on *Fortune*'s list of the largest United States financial and industrial corporations. Cohn found that 175 of these companies had revised their annual donations lists since 1967 to include grants to national and local groups associated with urban affairs and that of these, forty-five had actually cut back on donations to traditional charities.

> Organizations benefiting most from corporate donations are those specifically oriented to minority-group problems. Both the Urban Coalition and the National Alliance of Businessmen are favored, as are the National Association for the Advancement of Colored People, the United Negro College Fund, and the Urban League.
>
> Approximately one fourth of the 247 companies have added at least one of the latter three to their donations lists since 1967; another 23 companies, which had contributed to these organizations before 1967, are now giving significantly more.[53]

[52] Fenn, "Corporate Responsibility," pp. 97, 99. Undoubtedly, the explanation for the fact that the proportion of gifts devoted to education by the Boston companies was so much lower than the national average is to be found in the exclusion from this tabulation of gifts made outside the community. However, it is to be noted that the 1966 survey of corporate support of higher education by the Council for Financial Aid to Education found that Boston corporations gave 31.5 percent of their total contributions to education, compared with a national average of 41.3 percent.

[53] Cohn, "Is Business Meeting the Challenge?" pp. 71–73.

Restrictions and Preferences in Donation Policies

Andrews reported in 1952 that although there was a wide variation in procedure with respect to contributions to capital funds for building and endowment, in general, corporations did not make gifts of this nature as a matter of policy. Of 305 corporations surveyed, 51 percent refused to make such gifts and an additional 13 percent made none in 1950. More recent surveys indicate that this is no longer the case.[54] In 1970, 18 percent of all contributions recorded by the Conference Board were of this nature, with a slightly higher amount going to institutions of higher education than to hospitals and other health and welfare institutions.[55]

The Council on Financial Aid to Education's 1968 survey of corporation gifts to educational institutions similarly indicated that 30.3 percent of a total of $137,800,000 contributed for education was for capital purposes as opposed to current operations. Although it was not possible to make specific comparisons with its previous surveys, it was thought that this breakdown was about the same as in prior years.[56]

It has been demonstrated that the largest percentage of corporate gifts have consistently gone to what can be termed "recurring drives," such as those conducted by the United Funds. There are several reasons for this, including the historical development of corporation giving and the ability of the professional fund raisers who manage these annual solicitations. Primarily, however, it can be traced to the fact that gifts to local community drives result in the most immediate and direct benefits to the employees of the corporation.

In the area of education, there is a wide range of programs supported by business corporations. Although direct unrestricted grants have consistently received the largest share of the corporation dollar, use of employee gift-matching programs appears to have been increasing rapidly. Scholarship programs sponsored by individual companies have been consistently popular with certain business corporations; other forms of gifts include contributions

[54] Andrews, *Corporation Giving*, p. 118.
[55] Watson, *Biennial Survey of Company Contributions*, p. 11.
[56] Council for Financial Aid to Education, p. 23.

of material and equipment; teaching aids for students and teachers; and contributions of company manpower.[57] This final category is, of course, one that is rarely reflected in terms of dollars contributed and is, therefore, extremely difficult to measure. As with health and welfare, the education field is replete with professional fund-raising organizations, including some that have consistently directed their attention to the business corporation. Undoubtedly much of the increase in corporation giving to education can be traced to their efforts.[58]

Recent experience with efforts to increase the proportion of corporation gifts for cultural purposes indicates, again, the need for outside impetus, primarily from those seeking funds.[59] The creation in 1967 of the Business Committee for the Arts reflected an awareness of this fact. It is too soon to assess its impact. Writing in 1970, Taper felt that "at the moment, then, large scale corporation support of the arts, though a dazzling prospect, remains something of a mirage."[60] Experience in other areas, notably with regard to education, does indicate that community acceptance of cultural institutions as proper recipients of private contributions is a necessary step toward increasing the share of the corporation's contribution budget going to these institutions.

Support of urban programs is the latest entry on the roster of beneficiaries of corporation support. As noted earlier, 1968 was the first year in which it received separate attention in the Triennial Survey. In Cohn's study of 201 large companies with urban programs, it was found that only four were in existence before 1965. In 1970, however, he reported dissatisfaction with the progress of these programs. In regard to donations, as opposed to hiring and training projects, he noted that most companies had seen or experienced political repercussions as well as criticism

[57] John H. Watson, III, *Industry Aid to Education*. National Industrial Conference Board, New York, 1969, p. 7.

[58] Merle Curti, and Roderick Nash, *Philanthropy in the Shaping of Higher Education*. Rutgers University Press, New Brunswick, N.J., 1965, *passim*.

[59] Taper, *The Arts in Boston*, pp. 79–81; see, also, Richard Eells, *The Corporation and the Arts*. The Macmillan Company, New York, 1967; and William J. Baumol, and William G. Bower, *Performing Arts: The Economic Dilemma*. Twentieth Century Fund, Inc., New York, 1966.

[60] Taper, *The Arts in Boston*, p. 74.

from shareholders and customers, although he made no predictions as to their impact on future policies.[61]

Fenn's study demonstrated the difficulty of obtaining an accurate picture of actual trends. This is particularly noticeable in his attempts to obtain estimates from corporations in regard to nonfinancial contributions such as manpower and equipment. Thirty-five percent of the companies in the study reported participation of this type. The areas in which it was directed were listed as education (5 percent), recreation and youth service (4 percent), job training (17 percent), general inner-city minority assistance (6 percent), housing (8 percent), and other (4 percent). Among the 35 percent of participating companies who made nonfinancial contributions, 21 percent said they made no estimate of costs, 9 percent said they did, and 5 percent did not answer. The estimated amounts ranged from $1,000 to $49,999 but the sample was clearly too small for any general conclusion to be drawn.[62]

Possibly reflecting the dissatisfaction reported by Cohn, Fenn found no indication of any planned expansion of giving or expression of interest in taking on new projects. He concluded that, "The impetus of the middle sixties seems indeed to have been lost and the interest seems much lower, so far as Boston is concerned."[63]

Andrews, writing in 1952, complained that "with a few honorable exceptions, corporation giving is still traditional and custom-bound."[64] In the intervening years, the most noticeable overall changes have been the increased share of corporation donations devoted to education, and the noticeable rise in the support of the arts and urban problems, although their share of the total corporation gift is considerably smaller when measured in dollar amounts. One cannot predict whether these newer concerns are merely reflections of a short-term "fad" or whether there will be a meaningful increase in the amount of support in the future. Furthermore, support for both education and the arts has not been markedly innovative in the last two decades. The one area in which there appears to have been an attempt to de-

[61] Cohn, "Is Business Meeting the Challenge?" p. 73.

[62] Fenn, "Corporate Responsibility," p. 78.

[63] *Ibid.*, 75.

[64] Andrews, *Corporation Giving*, p. 126.

vise new approaches is the attack on urban and minority problems. But as Watson noted in 1969:

> Involvement of company personnel in urban projects is becoming more extensive, but the cost is seldom, if ever, calculated. Most cooperators also identify employment and job training as their principal targets in helping to alleviate ghetto problems. Seven out of every 10 companies support this conclusion. Expenditures for these purposes are primarily business expense items, not contributions.[65]

He predicted, however, that the link between bringing the disadvantaged into the work force and the need for more and better education would lead to increased contributions to secondary education, as well as to colleges and universities. In addition, he felt that although given lower priority by business, concern for inner city needs, including open and improved housing and medical services, could leave its mark on the pattern of corporation giving in future years.[66]

Administrative Arrangements

As to the methods for administering corporation contributions Andrews observed in 1952 that "corporation giving is not at present a carefully considered, integrated program in most companies. . . . The 'program,' if it may be called that, is usually last year's contributions plus a few new items based on spot decisions of the president or another chief officer made in time he is able to borrow from his ordinary and urgent duties."[67]

Nearly two decades later, Watson reported:

> . . . Conference Board studies show that the same management skills and tools are being brought to bear on corporate giving as on other company functions. In contrast to the situation ten years ago, few companies are content to handle contributions on a day-to-day basis. Instead they are now much concerned with questions about policy and procedure in this area. . . .
>
> In 1955, it was difficult to locate as many as 15 company policy statements on contributions during a nationwide survey.

[65] Watson, *Report of Company Contributions for 1968*, p. 13.
[66] *Ibid.*
[67] Andrews, *Corporation Giving*, p. 90.

During a 1965 statistical survey, however, copies of 45 policies were submitted to the Board without special request. Generally, such policy statements may be found in company policy and procedures manuals, but some corporations have published them for distribution outside the company.

Today, between one-fourth and one-third of those companies having contribution programs have also established contribution committees, and thereby tie in contribution objectives with overall company goals. In a few, education committees have been created too.

The staff concerned, on a full-time basis, with the giving function is now larger than ever before. One-third of the 55 members on The Conference Board's Council of Executives on Company Contributions today spends a majority or virtually all of their time on the function. And among the larger companies represented in NICB surveys, two-thirds use a contribution budget.[68]

In contrast, however, one finds Fenn observing that, in the Boston area in 1969, decisions concerning a particular company's involvement in philanthropic causes were made at the highest levels of management. Although a majority of companies (72 percent) did have a designated executive (48 percent) or committee of executives (37 percent) to review requests for financial donations, in one-half the companies reporting, the president or chairman of the board was the person who made the final decision and the person most involved in the entire decision-making process. Supporting this observation, criteria for evaluating requests were found to be for the most part vague, leaving much to individual interpretation. Decision-making in regard to nonfinancial contributions was also reported to rest in a majority of cases with the president, owner, or chairman of the board.[69]

Taper reached a similar conclusion both from nation-wide observations as well as from his Boston data. His Boston study included a check list of reasons for making contributions. "Only 2 percent of the companies indicated that the reputation and influence of the person soliciting a gift from them played a sig-

[68] John H. Watson, III, "Recent Company Contribution Trends," *The Conference Board Record*, vol. 5, no. 1, 1968, p. 4.

[69] Fenn, "Corporate Responsibility," p. 80.

nificant part in determining whether they gave."[70] He then reported the comments of a Boston fund-raising expert, James V. Lavin, of the Lavin Company.

> Lavin described that finding as "sheer nonsense" pointing out that this factor appeared somewhat more often than 2 percent in the responses to the open-ended question, though nowhere near as frequently as he believes it does in real life. He then summarized his long years of fund-raising experience in a blunt, succinct formulation of what motivates many companies to give. "It can be summed up in three factors: (1) Who puts the bite on whom. (2) Which of the top officers is particularly interested in this cause. (3) You scratch my back, I'll scratch yours."[71]

Taper believed, however, that Lavin's formulation was more accurate in regard to new areas of philanthropy than to requests for established causes such as the United Fund, although it may also be an appropriate characterization when the issue is whether there should be an increase in the amounts given to accepted causes.

Policy Statements

The policy statements referred to by Watson follow a general pattern. Usually, they include statements as to the charitable aims and beliefs of the company, a description of the organizations and causes that will and will not be supported, and the methods of administering grant requests. The National Industrial Conference Board has published representative samples of policy statements from ten large industrial companies.[72] Review of these and more recent formulations indicate a consistency in broad objectives, but some divergence in specific areas of support, primarily related to the nature of the company.

The general statements are of value to the extent they assist management to focus on the decision to initiate a contributions program and the direction it will take. For the grant-seeker, as well as the general public, they represent little more than plati-

[70] Taper, *The Arts in Boston*, p. 78.

[71] *Ibid.*

[72] Watson, *Company Contributions: Policies and Procedure*, pp. 23–42.

tudes. Policy statements that are explicit in describing areas of support that will be excluded are of greatest value to grant-seekers, if merely in terms of time-saving. Similarly, the explicitness with which methods of administration are set forth make it easier for the grant-seekers and the corporation.

Behind every public policy statement is an unpublished one, developed for internal use. In those companies with large donations budgets, there is often a manual of procedure. These documents promote consistency in a large enterprise, particularly one with geographically separated units. They often delineate the difference between contributions and business expenses, and for companies with foundations, the distinction between gifts that will be made directly and those made by the foundation. They will often indicate, in addition, detailed statements of motivation and policies relating to publicity of contributions.

Quite naturally, smaller companies have rarely in the past published written statements, and often have not even developed internal ones, particularly if the chief responsibility for the contributions program is vested in a single executive.

Contributions Committees

The most consistently approved method of administering a contribution program is through a contribution committee, comprised of three to six executives, representing the finance, personnel, public and community relations, and customer relations departments. In certain corporations, the president and board chairman will be represented on the committee. In others, the committee will be advisory to the chief executive. Here, again, historical development, the predilection of the chief executive, and the nature of the company's operation will affect the exact method. It is not uncommon to have committees at the division level of a large decentralized company, each reporting to a parent contributions committee. This committee will set an annual budget, adopt policies for contributions, and guidelines for administration. In a small company, its chairman may be assigned to administer the contributions program. For the larger companies, the committee will have a full or part-time staff man assigned to it. More often than not he will be a vice president in charge of public relations. The caliber of a contributions program is most often determined by the interest and ability of this person, his attitude toward the program, and the other responsibilities assigned to him.

Budgets and Yardsticks

As for budgets and yardsticks, again one finds the most authoritative information on actual practice in the publications of the National Industrial Conference Board. Most often, prior contributions determine the level of budgets, although in some instances they may be developed from the sum of recommendations and a projection of pre-tax earnings. Often a comparison is made with policies of other companies. Enlightened practice will include a study of trends and analysis of the scope of possible aid. The most imaginative giving practices, however, are found in those companies that have brought in personnel trained in the social welfare or educational fields, serving either as consultants to assist in the formulation of programs or as members of their permanent staff.

For companies with offices or plants in different locations the budget problem is further complicated. Most of these companies permit decentralization of a certain amount of giving, with the major share, however, being disbursed nationally. A local sales or plant manager often will be given authority in regard to local gifts, but the proportion of the contributions budget given to local offices for discretionary disbursement is invariably very small.

Since World War I certain soliciting organizations, led by the Community Chests and Funds, have used quotas or, more euphemistically, "yardsticks for corporation giving" or "fair-share guidelines" as fund-raising devices. These schemes have met with firm resistance from certain companies that resent outside determination of their internal policies. Andrews reported that in 1952 the use of quota systems was spreading, often with encouragement from corporate executives.[73] In 1965, however, Watson indicated that, although a majority of companies he had surveyed paid some attention to formulas offered by federated drives, they were seldom a determining factor in the size of the company's

[73] Andrews, *Corporation Giving*. p. 78.

gift. The primary reason for rejection of the quota approach was that it was not appropriate for persons outside a company to judge its responsibility, nor was it possible to reduce decisions to a mathematical formula.[74]

Although reliance on quotas established by fund-raising organizations appears to have been rejected in the past two decades, Watson reported that certain forms of self-imposed quotas were used by many companies, particularly the larger ones, to determine the amount of their gifts to annual federated drives. Quotas will often be set for the entire "company family," including thereby individual gifts by employees and the corporation's contributions. The amount of the corporation's gift may be based primarily on number of employees, although certain companies use capital investment, payroll size, or earnings, or a combination of them. However, even the authorized and published quotas appear to serve primarily as guidelines, with the other factors already noted, particularly the amount of prior gifts and the relative size of other corporations' gifts, entering into the final determination.

Watson also found that multiple-plant companies usually establish their budget from the bottom up by compiling the amount of local commitments, with these sums adding to a total company contributions budget, although some use the reverse method. It is not uncommon to give local managers discretion to vary a prior year's gift within a limitation of no more than 10 percent, and attempts are made to compare various local situations to avoid inequities. For those relatively few companies that prefer to start from a national formula, earnings are usually the first criteria and distributions among divisions will be made in proportion to numbers of employees. Watson noted that companies tended to be more generous at their headquarters than elsewhere, primarily because of prestige factors, but also in part because of the involvement of company executives in community drives at the headquarter's location.[75]

[74] John H. Watson, III, "Industry Support of Federated Appeals," *The Conference Board Record*, October, 1965, pp. 17–18.

[75] *Ibid.*, p. 24.

Information Sources

A recurring problem for any philanthropic donor, corporate or otherwise, is evaluation of the numerous requests for funds. Certain agencies have been created to assist in the evaluation process. For corporations, the most important have been Better Business Bureaus and the National Information Bureau. The latter organization, established in 1918 at a time when solicitations were multiplying and among them numerous appeals that were later found to be rackets,[76] has been effective in the investigation of and exposure of questionable activities and, for its member organizations, supplies reliable information on soliciting organizations. The American Association of Fund-Raising Counsel, Inc., was organized in 1935 to improve practices among professional solicitors and has encouraged passage of state and local legislation to control charitable solicitations. Through its annual publication *Giving USA* it has also taken on the task of compiling comprehensive statistics on American philanthropy.

The contributions of the National Industrial Conference Board are well documented in this study. The Council for Financial Aid to Education and the more recently organized Business Committee for the Arts supply information and private assistance to corporations with special interests in these areas of philanthropy. The annual conferences of the Council on Foundations, the Biennial Conferences on Charitable Foundations sponsored by New York University, and the meetings of the National Council on Philanthropy all present information of value to corporate executives administering contribution programs, as well as officials of company-sponsored foundations. The facilities and publications of The Foundation Center provide a consistent source of information on developments in the philanthropic area. There is, thus, no lack of assistance for corporations anxious to adopt a program of creative giving and failures to do so must be found within the companies themselves.

A recent suggestion by W. J. Baumol for increasing the volume of corporation philanthropy through a consortium of

[76] Scott M. Cutlip, *Fund Raising in the United States*. Rutgers University Press, New Brunswick, N.J., 1965, pp. 224–233.

business donors was designed to overcome what he characterized as the tyranny of the small decision, a situation he found particularly prevalent in corporation giving.[77] Starting from the proposition that corporate funds can be expected to flow to activities that serve the enlightened self-interest of the donor firm, he demonstrated that in the area of public services, self-interest is not enough to assure the supply of desired services and, even when it is supplied, its volume will be less than the optimum for all beneficiaries.

> Consider a group of firms which benefit from the presence of a regional theater in their community. If those companies form an association in which each pledges to bear its share of the deficit of the theater, provided all other members also do so, then the connection between the outlay and the return will become a direct one. The externalities will have been internalized. Each management will indeed be able to say to its stockholders that the outlay is a simple matter of economics and self-interest. Moreover, the cost incurred by each will be small, but the effectiveness of its contribution in preserving the activities of the theater will be very substantial. Similarly, consortia may be formed to sustain a private college or a hospital or any other nonprofit enterprise whose welfare is essential for the interests of the group. The initiative for such an association may appropriately come from the contributor corporations or from the organizations they are designed to support. In some cases one might consider utilization of industry or trade organizations that are already in operation—here corporate executives can bring their proposed contribution programs, decide on an appropriate apportionment of the cost, and work out a detailed plan and time schedule.[78]

Fenn's suggestions to the Boston Community follow a similar approach. He urged the establishment of a regular, inclusive forum to facilitate exchange of ideas and information by corpo-

[77] W. J. Baumol, "Enlightened Self-Interest and Corporate Philanthropy," The Commission on Foundations and Private Philanthropy, *Foundations, Private Giving, and Public Policy*. University of Chicago Press, Chicago, 1970, pp. 262, 271–276.

[78] *Ibid.*, p. 275.

rations and community agencies. He would also like to see individual companies that undertake new programs making efforts to enlist the aid of smaller companies, which would be unlikely to act on their own.[70]

The first concrete step of this nature was taken in St. Louis in 1970 with the creation of the Metropolitan Association of Philanthropy, Inc., a tax-exempt membership organization comprised of foundations, corporations, trusts, and other donors. Its stated purpose was to assist its members in increasing their effectiveness in making grants by serving as a clearing house for information on potential grantees and on the actions and plans of members, and by assisting donees with the preparation of proposals. Of thirty original members, twenty were business corporations, ten were foundations and charitable trusts, the majority of which were sponsored by business corporations.

The success of any of these cooperative efforts, however, will require, in the first place, a less defensive approach on the part of the corporate donors—an approach that does not set as much store on the privacy of its decision-making process in the contributions area. Until there is a more wide-spread change in this attitude, inter-company cooperation will not be a realistic possibility.

Contributions Other Than Dollars

Several references have been made to the philanthropic contributions of corporations that are not included in the measure of dollars given. Company time devoted to in-plant solicitations and payroll deductions of contributions are two examples of this type of nonfinancial support. The most important, undoubtedly, is the donation of personnel on company time for participation in fund-raising drives. In fact, they are one of the largest sources of volunteers for United Fund drives. In addition to granting time off during working hours, usually to middle and upper management level personnel, certain companies also grant secretarial or clerical help, as well as the use of company equipment such as automobiles and calculating and duplicating machinery for use by em-

[70] Fenn, "Corporate Responsibility," p. 127.

ployees doing voluntary work. Halls and parking lots are also given rent free in some instances for community meetings. Certain companies will furnish teams of employees for charitable work, although apparently this is not a wide-spread practice. However, in specialized situations, for example, where a company has an area of expertise that will be of assistance to a nonprofit institution or organization, a group effort by employees will be sponsored. Again, it is the community welfare drives that are favored in these programs, although certain industry connected organizations such as Junior Achievement have also received wide-spread corporation assistance.[80]

Before discussing the role of company-sponsored foundations in the administration of corporation contributions programs, a final word must be said about the nature and sources of the foregoing information. Primary reliance has been placed on the studies conducted by Watson for the National Industrial Conference Board. Aside from the Andrews study, the four city-wide surveys, and the generalized compilations of the Internal Revenue Service, his findings are the only ones available that provide authoritative insights into the practices and policies of corporations. It is no coincidence that the National Industrial Conference Board has produced this information. For the individual investigator, the average company is extremely loath to provide information in any detail. Stockholders making individual requests will receive information on the amount of contributions, but only rarely detailed breakdowns of actual gifts. The air of defensiveness is pervasive, for large companies as well as small. It can be explained in part as one views the history of corporation giving, particularly the period of uncertainty concerning the legality of a donations program. It is doubtful that fears of shareholder protest are realistic, although they are most often given as the reason for secrecy. Regardless of its basis, this secrecy has undoubtedly had important effects on the nature of giving, and the attitudes of those who administer contributions programs.

[80] Henry G. Hamel, and G. Clark Thompson, "Employee Participation in Community Affairs," *Business Management Record*, October, 1963, pp. 8–15.

Company-Sponsored Foundations

The creation of a company-sponsored foundation has been one of the surest methods of obtaining professional administration of a corporation's contribution program. As noted earlier, a foundation is a separate legal entity, either a trust or corporation, created under authority of state law and granted exemption from taxation by the federal government. Although its managers, whether trustees or directors, may all be officers or directors of the sponsoring company, they have a separate set of powers and owe a separate set of duties in regard to the operation of the foundation, and their activities are subject to supervision at the state and federal level.

Proponents of company-sponsored foundations have listed among their advantages stability of giving despite instability in company earnings, better planning, particularly with regard to long-term commitments, and greater efficiency,[81] through centralized administration and more independent review of solicitations, including isolation of company officers from customer pressure.

The *Foundation Directory, Edition* 3, used for its definition of company-sponsored foundations those organizations where it was known that a business corporation or partnership was a "principal contributor."[82] Prior editions of the *Directory* classified foundations as company-sponsored if it was known that a business corporation or partnership was a "direct contributor." Because this resulted in the inclusion of family foundations to which a family business was a minor contributor, the earlier criteria were changed in the third edition. Reliable statistics on the growth of these foundations has, therefore, been difficult to obtain.

Table VI presents Andrews' data on the periods of origin of

[81] Rembrant Hiller, Jr., "The Company-Sponsored Foundations" in F. Emerson Andrews, ed. *Foundations: 20 View Points*. Russell Sage Foundation, New York, 1965, pp. 85–86. Hiller also included favorable tax treatment, particularly for gifts of appreciated securities and other property, an advantage that has been removed under the provisions of the Tax Reform Act of 1969.

[82] F. Emerson Andrews, "Introduction," Marianna O. Lewis, ed., *The Foundation Directory, Edition* 3. Russell Sage Foundation, New York, 1967, pp. 28–29.

TABLE VI. Periods of Origin of 1,472 Company-Sponsored Foundations

Dollar figures in thousands

Period	Number	Per-cent	Present Assets: Amount	Present Assets: Per-cent	Present Assets: Average per Foundation
Before 1938	19	1	$ 75,185	6	$3,957
1938–1941	17	1	19,691	1	1,158
1942–1945	172	12	172,549	13	1,003
1946–1949	114	8	137,897	11	1,209
1950–1953	620	42	634,202	49	1,022
1954–1957	283	19	149,566	11	528
1958–1961	192	13	91,344	7	475
1962–1965[a]	55	4	26,856	2	488
Total	1,472	100	$1,307,290	100	$888

[a] Record incomplete

Source: F. Emerson Andrews, "Introduction," *The Foundation Directory, Edition* 3, Russell Sage Foundation, New York, 1967, p. 29.

the 1,472 company-sponsored foundations listed in the *Directory.*[83] He attributed the extraordinary variations in the post World War II era to corporate tax chronology, particularly noting the fact that more than 42 percent of the foundations were established in the four-year period July 1, 1950, through 1953 when the excess profits tax led to a combined tax rate of 82 percent. He gave several explanations of the slackening rate since 1953, including decline in tax rate, the enactment of provisions in the Internal Revenue Code permitting carryover of excess contributions, as well as the recommendations in 1963 by the Treasury Department that would have placed a twenty-five year restriction

[83] For inclusion in *The Directory*, a foundation was required to meet the definitional test of a nongovernment, nonprofit organization having a principal fund of its own, managed by its own trustees or directors and established to maintain or aid social, educational, charitable, religious, or other activities serving the common welfare. In addition, it either made grants totalling $10,000 or more in the year of record or possessed assets of $200,000 or more. *Ibid.*, p. 7.

on the life of a foundation in which board membership in excess of 25 percent was comprised of persons related to the donor.[84]

These 1,472 company-sponsored foundations represented 22 percent of all listed foundations, controlled 6 percent of the assets, and made 15 percent of the grant expenditures of the group. Their grants represented 13.5 percent of the assets of all company-sponsored foundations, thereby confirming the fact that in many instances company-sponsored foundations, unlike others, are used primarily as a conduit for corporation contributions, rather than for accumulation of capital. Nevertheless, a comparison of nineteen of the largest company-sponsored foundations which were listed in both *Directory 1* and *Directory 3*, indicated that there was an asset increase of 120 percent, with a grant increase for the period of 82.5 percent.[85]

Nelson attempted to estimate the volume of corporation contributions channeled through foundations by comparing total corporation contributions with expenditures tabulated by company-sponsored foundations in the three editions of *The Foundation Directory*. He found that from 1956 to 1965 approximately one-fourth of total corporation contributions were made by foundations, a figure that remained fairly consistent throughout the period.[86] He also attempted to ascertain the effect of the use of foundations on the flow of contributions from donor corporations to charitable beneficiaries. In so doing, he found it necessary to distinguish two stages in the life of company-sponsored foundations, the endowing stage and the endowed. During the former, charitable beneficiaries will receive less than the amount given by the corporation, the balance being invested as capital assets. In the endowed stage he found that recipients may receive more than the corporation actually gives, the balance reflecting earnings on invested assets and, in some instances, distribution of capital invested in prior years. Extrapolating from balance sheets of 170 large company-sponsored foundations, he found that the six-year period 1951–1956 witnessed the endowing stage in pronounced degree, with growth of all company-sponsored foundations estimated at $400 million and recipient philanthropic agencies re-

[84] See Chapter 1, p. 19.
[85] Andrews, "Introduction" to *The Directory*, pp. 28–33.
[86] Nelson, *Economic Factors in Corporation Giving*, pp. 75–76.

ceiving $2,129 million or eight-ninths of total corporation contributions in those years of $2,384 million. In contrast, in the four-year periods, 1957 through 1960, and 1961 through 1964, the patterns of flow were more typical of the endowed stage. See Table VII.

TABLE VII. The Percentage of Corporate Contributions Channeled Through Company-Sponsored Foundations, 1956–1958, 1960–1962, and 1964–1965 (Dollar values in millions)

Period	*Average Annual Contributions Reported on Tax Returns All Corporations* (*1*)	*Average Annual Expenditures Tabulated Foundations* (*2*)	*Number in Tabulation* (*3*)	*Column (2) as Percentage of Column (1)* (*4*)
1956–1958	$410	$108	1,320	26.3
1960–1962	530	149	1,716	28.1
1964–1965	752	181	1,472	24.1

Sources: *Column (1): 1956–58, 1960–62, 1964,* Appendix Table I; *1965,* extrapolation of 1964 value of $729 million, based on the compound annual growth rate of 6.4 percent found for the growth from 1955 through 1964. *Columns (2) and (3): 1956–58,* Ann D. Walton and F. Emerson Andrews, Editors, *The Foundation Directory, Edition 1* (New York: Russell Sage Foundation, 1960), Table 6, p. xxii; *1960–62,* Ann D. Walton and Marianna O. Lewis, Editors, *The Foundation Directory, Edition 2* (New York: Russell Sage Foundation, 1964), Table 9, p. 30; *1964–65,* Marianna O. Lewis, Editor, *The Foundation Directory, Edition 3* (New York: Russell Sage Foundation, 1967), Table 13, pp. 32–33. It should be noted that, in Editions 1 and 2, a company-sponsored foundation was defined as one which had a corporation or partnership as a direct contributor. This definition was tightened, in Edition 3, from "direct contributor" to "principal contributor," with resulting reductions in expenditures and members. The amount of this reduction is not known, but probably is not substantial.

Table VII reprinted by permission from Ralph Nelson, *Economic Factors in the Growth of Corporation Giving,* National Bureau of Economic Research and Russell Sage Foundation, New York, 1970, p. 76.

In terms of the overall flow of corporation contributions, Nelson concluded that the endowed and semi-endowed structure of some company-sponsored foundations is presently having only a small effect, primarily because endowment income accounts for only 25 to 30 percent of total receipts and company-sponsored foundations as a group distribute only one-fourth of all corporation contributions.[87]

He concluded that the general findings on corporation giving were not significantly affected by the interposition of company-sponsored foundations, with the exception of the period in the early 1950s when tax rates lead to abnormally high contributions, which many corporations channelled into building foundation endowment.[88]

These findings represent an expansion of part of Nelson's earlier study of the investment policies of all foundations, which used statistics for the years 1951 to 1960.[89] This earlier study contained the first analysis of the investment policies of company-sponsored foundations. The data were obtained from The Foundation Center and from statistics released as part of the Patman Report on Foundations, which provided only a limited measure of actual portfolio. Nelson found that the greater the reliance on investment income to support expenditures, the higher the percentage of that income derived from dividends. This was particularly pronounced for 42 foundations of large, widely held corporations, where 58 percent of income came from dividends. As to the range of holdings, one in three of 177 foundations had less than one-tenth of its assets in corporate stock and more than one in four had more than seven-tenths of its assets in stock. Investment in stock was relatively less popular among the 42 large foundations than in the 135 others. These 42 held 60.64 percent of their 1960 assets in stock, 33.14 percent in corporate and government bonds and 6 percent in various other investments. The active yield on investments held by company-sponsored foundations was lower than that from college and university endowments but well above that of the large family-based foundations. Dividend yield on stocks, however, was highest for family foundations and lowest for endowments, with company-sponsored foundations, again, fitting in between.

Admitting that these findings were limited, Nelson observed

[87] *Ibid.*, pp. 84–85.

[88] *Ibid.*, p. 85.

[89] Ralph Nelson, *The Investment Policies of Foundations.* Russell Sage Foundation, New York, 1967, pp. 138–144.

that present data were not available to pursue the inquiry further and that only with wide-spread public reporting would it be possible to make conclusive analysis of patterns. The Tax Reform Act of 1969 has insured that data on income, expenditures, and investment holdings of company-sponsored foundations will hereafter be available and it is to be hoped that further studies will be made. Of particular interest, of course, will be the determination of the effect of the new disclosure requirements on both the birth and death rate of these foundations, factors that in turn will undoubtedly be influenced by one of the as yet unanswered questions; namely, the extent to which company-sponsored foundations now hold stock of their sponsoring company.[90]

Administration of Foundations

Data on the administration of company-sponsored foundations are available primarily in Andrews' *Corporation Giving*, and two studies by Watson of company-sponsored foundations, the first published in 1955, which deals with the technical aspects of establishing and maintaining a foundation, and a 1970 publication, *Twenty Company-Sponsored Foundations: Programs and Policies* which deals primarily with foundation programming. In addition, *A Study of Company-Sponsored Foundations* by Frank M. Andrews was published in 1960 and contains data obtained from a survey of corporations in the Chicago metropolitan area conducted by the Chicago Chapter of the Public Relations Society of America in 1956.

This Chicago study indicated that companies that had sponsored foundations were likely to be large rather than small, with their principal business manufacturing, finance, or communications, rather than retailing, wholesaling, or service. Compared to companies of similar size, they were more likely to consider themselves as "faster-growing" and to have branches or divisions away from the home office. Among the objectives listed for creating a foundation the most frequent was a desire to spread contributions over a period of years, followed by improvement of administration of contributions programs and better planning.[91]

[90] See pages 19–23 of this volume.

[91] Frank M. Andrews, *A Study of Company-Sponsored Foundations*. Russell Sage Foundation, New York, 1960, pp. 20–26.

As to foundation personnel, only seven of fifty-six companies had even one officer drawn from outside the ranks of the company. A few of the largest had full-time staff members, but one-half reported receiving less than nineteen days per year from the person most directly concerned with the foundation's operation. Only one of forty-two companies replying to a question regarding reporting indicated that it published an annual report.[92]

Of the causes supported, education was particularly prominent, exceeded in amount only by gifts to community chests. Support of hospitals and social welfare followed on the list. Finally, five out of six of the individuals most intimately acquainted with the foundations believed that their existence had made it possible for the sponsoring companies to spend their contribution more effectively.[93]

Andrews also attempted in this study to compare the contribution programs of companies with foundations and those without. He found that companies with foundations are more likely to have a contribution committee than those without; companies with foundations are more likely to assign authority for making large gifts to a committee than to the president than a company with no foundation. Furthermore, the time of personnel assigned to contributions policy for companies with foundations was likely to be far greater than in those without. Similarly, in terms of the amount contributed, it was demonstrated that companies with foundations were more likely to contribute greater amounts, but the more detailed findings in regard to company as opposed to foundation gifts primarily reflected the fact that the study was made during what Nelson characterized as the endowment-building years. Andrews concluded that:

> Compared to the contribution programs of companies not having foundations, those associated with foundations were likely to have been more active, better organized, and with a clearer conception of long-range goals and ways of attaining them. Those who argue that a foundation can aid in leveling contributions between fat and lean profit years and in making recipients of company philanthropy less dependent on business prosperity seem to be supported by numerous instances where greater

[92] *Ibid.*, pp. 27–28.
[93] *Ibid.*, pp. 31–38.

> flexibility and closer attention to profits (within the company) were related to sponsorship of a foundation. Advocates who cite better administration or better planning as advantages of the company-sponsored foundation receive support from findings that a greater range of talents and interests and a greater amount of time were devoted to the contribution programs of foundations. The result seemed to be both diversity and originality in the causes receiving foundation support. People who claim that a foundation enables a company to take better advantage of existing tax laws may point to striking differences in the effects of the excess profits tax on companies with and without foundations.[94]

It is of interest to compare these observations with Watson's, made fifteen years later, that company-sponsored foundations have brought creative programs and greater sophistication to company giving. He did not believe they had measurably influenced a corporation's rationale for giving, but rather that they had permitted the company to pursue its goals "more effectively and efficiently."[95] Foundations do not appear to have replaced direct giving by the sponsoring company, but rather, Watson found they had become a vehicle for developing special techniques for directing a particular segment of the corporate philanthropy dollar, particularly in support of education and, more recently, toward solving minority and ghetto problems. For example, among the case studies of twenty company-sponsored foundations in his report, the budgets of eight of them represented half or more of the company's annual contribution activity and those of two were less than the company's direct giving. In one instance the foundation supported only educational projects with the company contributing directly from other funds.[96]

Company-sponsored foundations, unlike other foundations, have at their disposal the staff of the parent company and the large ones usually operate with only one or two full-time executives and appropriate secretarial assistance. There is a trend toward greater professionalism at the administrative level of the

[94] *Ibid.*, pp. 64–65.

[95] John H. Watson, III, *Twenty Company-Sponsored Foundations: Programs and Policies*. National Industrial Conference Board, New York, 1970, p. 1.

[96] *Ibid.*, pp. 1–9.

foundation, but Watson reported that some foundation executives feel a need for enlarged staff if they are to broaden the scope of their immediate programs and be able to anticipate needs rather than merely react to crises. There does appear to be evidence of a trend toward increased representation on foundations' boards of outside directors. Of the twenty foundations studied by Watson, four did not indicate the composition of their management, but only eight reported no outside directors or trustees.[97]

Frederick Bolman has summarized the pertinent problems of the company-sponsored foundation. He pointed to the need for greater professionalization of staff, the propriety of maintaining reserves and the proper ratio of reserves to grants. He queried whether a more realistic treatment of the costs of operating a foundation professionally would lead to wider use of professional staff, able to provide more imaginative performance. In regard to grant-making, he asked whether a foundation had a duty to resist pressures on the company from interested parties rather than relying on formulae and group solicitations, all of which he considered a reaction to the company's public relations problems and a defensive response to pressure rather than a reflection of the ingenuity and initiative that he considered to be the distinguishing characteristics of the ideal foundation.[98] Inevitably, it is the fully endowed foundations that are moving more closely in the direction of other members of the foundation field and, as can be seen clearly from a majority of the twenty case studies presented by Watson, displaying the ideal characteristics described by Bolman.

There remains for all company-sponsored foundations, however, the basic question of whether corporate interest or the general welfare is the proper objective of the company-sponsored foundation. As Bolman stated:

> The argument is about the distance between the quid and the quo, or the kind of enlightenment in enlightened self-interest. From their very inception, company foundations have lived under

[97] *Ibid.*

[98] Frederick deW. Bolman, "Company-Sponsored Foundations in Education," *New York University, Proceedings, 7th Biennial Conference on Charitable Foundations, 1965*. Matthew Bender & Co., New York, 1965, pp. 39, 44–51.

the stimulus of public relations. The query is how vitality and the greatest worth will develop.[99]

These same questions asked about the role and performance of company-sponsored foundations can well be asked of the contribution programs of all corporations, not merely those which have created foundations to channel their contributions programs. They are not new questions. Bolman suggests that they cannot be finally answered until the status and purpose of corporation philanthropy is determined. This, in turn, requires thinking through the place of industry in society. In the next chapter, various formulations of the role of the corporation in society and the place of philanthropy within the corporate scene will be explored.

The foregoing review of the practice of corporation philanthropy, as opposed to the theory, indicates growth in the volume of donations, participation by an increasing number of companies, a slow but steady move toward improved performance, limited, however, primarily to the largest companies and even then not pervasive among them. There remain large numbers of companies who give little or who give without real consideration of the reason for their actions or, even more importantly, the potential impact of their deeds.

In Andrews' 1952 study of corporation giving, he called upon corporations to spend some of their funds in new and creative patterns, "using the specific knowledge and resources of their particular industry toward the common welfare in ways not possible for other donors."[100] The classic example of this type of giving has been the school of watchmaking for handicapped and paraplegic veterans established by a watch manufacturing company. More recent examples can be found in the study of Twenty Company-Sponsored Foundations published by the National Industrial Conference Board and in other works cited in this chapter. There is clearly neither a lack of examples of innovative philanthropy nor a lack of material drawing attention to the shortcomings of the great majority of programs. The unsolved question is how to achieve improved performance.

[99] *Ibid.*, p. 48.
[100] Andrews, *Corporation Giving*, p. 126.

3 / CORPORATION PHILANTHROPY IN THEORY

The foregoing description of the gradual acceptance of philanthropy as a legitimate activity of business corporations is but one facet of the broader subject of the changing role of the corporation in modern society. The justification of philanthropic practices by business cannot be viewed without some perspective on the larger questions of the relationship and responsibility of business institutions to the society in which they exist.

Discussion of the question of corporate social responsibility, however, is colored by the existence of a discrepancy between economic facts and political and legal theories. The economic facts are that, since the turn of the century, the nature of the American economy has changed from one of a myriad of small enterprises in which the shareholders were the controlling managers and directors to one of ever larger, more complex industrial units and financial organizations, run by managers who hire capital from unknown and numerous stockholders but in no meaningful way are accountable to them or effectively subject to the other cornerstone of classic economic theory, the influence of the competitive market.[1]

The Shareholder-Ownership Theory

Political and legal theory, as expressed in the legal system of the United States, continues, however, to regard the corpora-

[1] See Richard J. Barber, *The American Corporation*. E. P. Dutton & Co., New York, 1970.

tion as being "owned" by its shareholders who possess all the legal attributes of that status, particularly the right to control management and to share in profits. Enactment of the Securities Exchange Act in the thirties represented efforts to restore stockholders' power from erosion by the increase in the number of owners of shares of the largest corporations, as well as by the growth in the number of corporations offering stock for public sale. Similarly, the antitrust laws, the restrictions on restraint of trade, and the regulation of certain select industries by government represented attempts to buttress the control potential of the marketplace.

Berle and Means and the Corporate Conscience

The economic facts were first observed by Adolf A. Berle and Gardiner C. Means in the early thirties.[2] There are many theoreticians today who continue to refute them or to advocate measures designed to permit a return to the older system, but by far the largest number of voices have been directed toward devising substitutes for stockholder-power and market control as the means by which corporate management can be held to account.

In the early thirties, contemporaneously with publication of the Berle and Means study of the corporation, E. Merrill Dodd and Berle participated in what is often referred to as the "classic" debate over the responsibilities of corporate directors. The debate was started by Berle who claimed that corporate powers are powers in trust, "necessarily and at all times exercisable only for the ratable benefit of all the stockholders as their interest appears."[3] Dodd's view was that the fiduciary obligations of corporate managers extended not merely to the stockholders, but included other constituencies; namely, employees, consumers, and the general public. He predicted rejection of profit-maximization as the appropriate standard for measuring corporate behavior.[4] Berle re-

[2] Berle, Adolf A., and Gardiner C. Means, *The Modern Corporation and Private Property*. Commerce Clearing House, New York, 1932.

[3] Adolf A. Berle, and Gardiner C. Means, *The Modern Corporation Review*, vol. 44, 1931, p. 1049.

[4] E. Merrill Dodd, "For Whom Are Corporate Managers Trustees?" *Harvard Law Review*, vol. 45, 1932, p. 1145.

plied to this by agreeing that corporate use of private property was a matter of public interest, but that this view afforded no measurable standard for judging behavior. Until another was developed, he believed that profit-maximization should continue to be the criteria.[5]

During the war years, the "debate" was essentially dropped, but by 1954 Berle could look back and recognize that social and legal developments had resulted in general acceptance of the conclusion that modern directors were not limited to running business enterprises for maximum profit but were, in fact and in law, recognized as administrators of a community system.[6] He formulated a thesis based on the existence of a "corporate conscience," controlled by what he described as inchoate law, which is merely his shorthand for public expectations that have not yet been translated into substantive laws, but which will in time come to be on the statute books or formulated by the courts and administrative agencies. The collectivization of enterprise in a few hundred large groups, whose powers had not been effectively curtailed by the community, had compelled the corporation, almost against its will "to assume in appreciable part the role of conscience-carrier of the twentieth-century American society."[7] So long as there remained a degree of diversity within the large corporations (in short, some measure of oligarchy, rather than either monopoly or socialism) and continued pressure of public opinion directed toward maintaining diversity and a balance between state and private power, he believed the economic power of the corporation would remain in check.

Wilbert Moore and Trusteeship

Wilbert E. Moore, in his 1962 study of *The Conduct of the Corporation*, discounted the public trusteeship concept, as well as the concept of social responsibility as proper rationales for controlling corporate behavior. Admitting that the concept of

[5] Adolf A. Berle, "For Whom Corporate Managers Are Trustees, A Note," *Harvard Law Review*, vol. 45, 1932, p. 1365.

[6] Adolf A. Berle, *The 20th Century Capitalist Revolution*. Harcourt Brace, New York, 1954, p. 169.

[7] *Ibid.*, p. 182.

trusteeship was attractive, lending dignity and a sense of service to the duties of directors, he indicated the impossibility of achieving true disinterestedness. "If the relationship is one of trust—a fiduciary position in the archaic language of the law—how does it happen that the trustees have their hands in the till?"[8] The notion of social responsibility was viewed as defensive and apprehensive because it was offered, not only as justification for corporate size and success, but for the power and privilege of the corporate managers themselves. Rejecting, also, the idea of "responsible management" because of the realities of the manner in which directors and officers are chosen and the lack of means for testing performance, he returned reluctantly to the "notion of trusteeship," stating that it was:

> virtually the only one in our institutional system that fits the corporate executive and the rest of management. But the fit is only approximate. The legal and moral status of management can no longer be justified in traditional, proprietory terms. Other terms are not yet fully established. They may not be for some time to come, but both legislative and judicial actions are likely to move increasingly toward public circumscription of the powers and duties of the modern captains of industry.[9]

Moore's approach to the problem of making the concentrated economic power of the corporation responsible, as well as accountable, was to start with a search for "a positive sense of mission for the corporation . . . we know approximately what the public is against, but what is the corporation for?"[10]

Abram Chayes, on the other hand, anticipating the efforts of groups such as those who have produced "Campaign GM," and other similar attacks on existing corporate structure, visualized the development of methods for obtaining representation of the interests of the various groups affected by corporate decisions in somewhat the same manner as legal invention facilitated the development of collective bargaining. He believed the starting point for such a development was in a study of the institutional framework of the corporation. By identifying the position of each

[8] Wilbert E. Moore, *The Conduct of the Corporation*. Random House, New York, 1962, p. 8.

[9] *Ibid.*, p. 10.

[10] *Ibid.*

of the various constituencies within the corporate organization, one would be able to identify the method best suited to assuring for it a degree of control commensurate with its interests.[11]

The Conservative Position

For those who have continued to reject the notions of corporate conscience and a trusteeship role for directors, profit-maximization is considered the appropriate standard for measuring corporate behavior, with shareholder control and market performance the means of enforcement. This orthodox approach, exemplified by the thinking of Frederick Hayek and Milton Friedman, views the unlimited power of government (and particularly the federal government) as the ultimate foe.[12] Friedman, for example, believed that the proper role of government should be confined to determining, arbitrating, and enforcing the rules of the game and promoting competition by acting against monopolistic tendencies (although he viewed abolition of the corporate income tax as the most effective means of preventing monopoly). He also considered it appropriate for local governments to attempt to overcome neighborhood effects widely regarded as sufficiently important to justify government intervention, and to support private charity through aid to "the madman, the child and the poor." However, he believed that the only social responsibility of business was

> to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.

Acceptance of responsibilities other than to make as much money as possible for stockholders was viewed by him as "a fundamentally subversive doctrine," impossible to define.[13]

[11] Abram Chayes, "The Modern Corporation and the Rule of Law," in Edward Mason, ed., *The Corporation and Modern Society*. Harvard University Press, Cambridge, 1966, pp. 25, 38–45.

[12] Frederick Hayek, *The Road to Serfdom*. University of Chicago Press, 1944.

[13] Milton Friedman, *Capitalism and Freedom*. University of Chicago Press, Chicago, 1962, pp. 132–133.

Eugene V. Rostow, on the other hand, would not reject governmental measures designed to provide means for surveillance and disclosure of corporate activity, including the use of optional voting trustees to represent shareholders, the creation of an independent body, either public or private, authorized to bring minority stockholder suits in the name of the inherent visitorial power of the state.[14] Nevertheless, he believed that the best guide to corporate practice remained the clear-cut economic imperative of long-term profit maximization. In his view, the adoption of corporate statesmanship as a policy for business would lead, on the economic side, to disruption of the market mechanism, and the allocation of resources. On the political and legal side, such a philosophy would lead either to restrictive action by government, which could only view the entry of corporations into programs for advancing the general welfare as an encroachment into its realm of authority or, conversely, the ultimate breakdown of the democratic system through the transfer of governmental authority to the corporations.[15]

Galbraith and the Power of the Technostructure

Kenneth Galbraith's study, *The New Industrial State*, published in 1967, added a new dimension to the question of the situs of power in the large corporations and the question of their responsibility. His analysis was confined to "the few hundred technically dynamic, massively capitalized and highly organized corporations" that produce nearly half of all the goods and services in the United States each year.[16] Power in these corporations was not lodged in the directors as was generally thought, but in a group he characterized as "the technostructure," namely, the

[14] Rostow acknowledged indebtedness for this idea to Bayless Manning. See Bayless Manning, "Book Review," *Yale Law Journal*, vol. 67, 1958, pp. 1477, 1490–1491.

[15] Eugene Rostow, "To Whom and For What End Is Corporate Management Responsible?" in Mason, *The Corporation and Modern Society*, pp. 46, 69–71. See also Theodore Leavitt, "The Dangers of Social Responsibility," *Harvard Business Review*, vol. 36, September-October 1958, pp. 41–50.

[16] John Kenneth Galbraith, *The New Industrial State*. 2nd Ed., Rev., Houghton Mifflin Company, Boston, 1971, p. 9.

large staffs of professionalized specialists and technicians who, through their group action, ultimately shape the actions of the corporation as well as of the entire society.[17]

Galbraith believed that the technical complexity of modern enterprise, requiring large scale organization and planning, has moved informed decision-making beyond the competence of any one man or group. It was clearly not in the hands of directors whom he considered to be more of a ratifying body. Corporate decisions, made usually by these technicians and managers, move upward through various reviewing groups for approval and, ultimately, action so that after a decision has been executed it is very difficult to determine exactly where it was made or even where the original idea arose.[18]

Galbraith's view was that this managerial cadre has no interest in profits as such. Its basic motivation is to promote and extend its own interests. The technostructure exerts its power to serve its deeper interests or goals. He identified two primary goals and two secondary ones. The primary ones are autonomy (which is achieved through a secure level of earnings) and continued growth of the organization. Secondary goals are technological virtuosity and a return on capital sufficient to permit a rising dividend rate. Once attainment of these goals appears secure, he saw a place for a variety of other and lesser goals, subject to the limitation that they not interfere with the two primary objectives. He cited traditional philanthropic purposes as examples of lesser goals, indicating that although some of them might serve the primary and secondary goals, such justification was not necessary so long as they served goals that the technostructure and society considered good and not in conflict with the higher goals.[19]

The relationship of the goals of the technostructure to those of the society in which it exists is explained by Galbraith in terms of a "principle of consistency." The relationship between society at large and an organization must be consistent with the relationship of the organization to the individual.[20] There must be consistency in the goals of all three, as well as in the motives behind

[17] *Ibid.*, pp. 59–64.
[18] *Ibid.*, pp. 65–68.
[19] *Ibid.*, p. 177.
[20] *Ibid.*, pp. 159–165.

their pursuit. Accordingly, he viewed the members of the technostructure as seeking to adapt the goals of the corporation to their own, while the corporation seeks to adapt the social attitudes and goals of society to those of the members of its technostructure.

Galbraith believed that a similarity of goals, particularly in regard to stabilization of the economy and continued expansion has, furthermore, led to a close fusion of the industrial system with the state, tending, in fact, toward the ultimate merger of the two, with the result that the state would not thereafter focus its attention on solving those problems that were not also considered problems for the industrial system. Among these problems he believed were transportation and other public services, housing, conservation, as well as "the assertion of the aesthetic dimension of life, wider choices as between income and leisure, and the emancipation of education." His conclusion was that only an assertion of political power by the intellectual community, as found in the educational and scientific estate, could effectively provide the impetus for a restructuring of society's goals and, by extension, the goals and behavior of the corporation.

Other Recent Suggestions for Change

Richard J. Barber, while agreeing with Galbraith about the position of the technostructure, pointed to the importance of banks and other financial institutions as sources of power and saw the development of a new pattern of control.

> Individual shareholders are investing more and more of their savings indirectly, through mutual and pension funds. This is putting greater effective power in the banks, and other financial institutions; more clearly than ever before, control of our biggest firms is coming into the hands of a duo composed of their immediate management and the representatives of a relatively few financial concerns.[21]

He discounted the ability of the intellectual estate to control the modern institutional corporate grants and felt that Galbraith's call for business to look to goals other than economic ones was

[21] Barber, *American Corporation*, p. 291.

"more hopeful than realistic," requiring a basic change in the economic-political system that would require greater state direction and control than society was ready to accept.[22]

Nonetheless, Barber's answer was a strengthening of government. He called for a modernization of its institutional apparatus, especially in Congress, to make it more productive. He believed this could be accomplished by means of a restructuring of the committee system along functional lines, an increase in staff support, and the creation of "a suitably equipped, quasi-independent Congressional staff agency that could advise Congress in depth about future policy problems, including those stemming from business operations."[23]

In addition, he believed the partnership notion, discussed by Galbraith, must be extended further, primarily through an increase in governmental power, which would require closer continuing cooperation between government and business. He would require public review of prices, mergers, investments, and product innovation and, in the event of unresolvable conflict, development of means by which the public view can be enforced.[24]

The notion of giving affected interests a voice in the management of corporations was criticized by Robert Dahl, however, on the grounds that it would do little to democratize the internal environment of an enterprise but would, instead, corrupt it into a system of rather remote delegated authority with no legitimate means for electing representatives and holding them accountable. He also believed that the question of which group would be represented and in what proportion was not capable of solution.

> Since the consequences of different decisions affect different interests, have different weights and cannot always be anticipated, what particular interests are to be on the board of management, and how are they to be chosen?[25]

His preference was for a form of self-management wherein an enterprise would be run by a council or board of directors

[22] *Ibid.*, p. 14.

[23] *Ibid.*, p. 295.

[24] *Ibid.*, pp. 297–298.

[25] Robert A. Dahl, *After the Revolution*. Yale University Press, New Haven, 1970, p. 139.

elected by all the employees of the enterprise, operating, however, within a context of external controls, both governmental and economic.

Legitimacy of Corporation Philanthropy

The legitimacy of corporation philanthropy has received separate consideration within this debate over the broader question of the role of the corporation in society. In many cases the bias of the various commentators can best be understood in terms of the extent to which they accept the traditional thesis of the supremacy of the market and the concomitant view that the corporate duty of management is to its shareholders or whether they consider the large corporations as virtually autonomous. However, among the "traditionalists," attitudes toward corporate donations vary depending upon how narrowly they define "profit-maximization." Thus, Friedman, as an example of those who view "profit-maximization" in its purest form, can say that corporate support of charity, and of universities in particular, is an inappropriate use of a corporation's funds in a free society.[26]

Others who maintain that profit-maximization is the primary motivation but accept the thesis that there are other constituencies to which management owes duties, likewise refuse to acknowledge the legitimacy of corporation philanthropy. For example, Andrew Hacker, a political scientist, has argued that "corporation money which is now earmarked for gifts could and should be going elsewhere: to stockholders (as increased dividends) or to consumers (in reduced prices), to government (as taxes) or even to the general taxpayer (whose own rates might be lower were the business tax yield greater)."[27] His argument was based primarily on the premise that corporation giving is aristocratic, aimed at perpetuating established philanthropies. He also criticized the lack of policy behind individual corporation gifts, finding business management capricious and its decisions beyond any control. To the extent that corporations continue to make donations, the illusion is preserved that needy causes are taken care of through

[26] Friedman, *Capitalism and Freedom*, p. 135.

[27] Andrew Hacker, "When Big Business Makes Gifts (Tax-Deductible)," *The New York Times Magazine*, November 12, 1967, p. 34.

corporate generosity. Corporations not only cannot, but because of their conservative nature, will not solve the most pressing problems of society. Believing that only well-financed government programs can perform this task, he concluded that the current practice of granting tax deductions for corporate contributions should be reviewed.

One may reject the importance of profit-maximization (or, as those who take a more sophisticated view would prefer, "profit-orientation") and still be critical of the practice of corporation philanthropy.

Bayless Manning expressed fear of the prospect of vast donations of investor's funds by directors of publicly-owned corporations, because, like Hacker, he feared that they would inevitably favor institutions conforming to management's predispositions, but also because of "the life and death implications of more centralized donative power upon the charitable and educational institutions themselves."[28] He suggested the development of a procedure under which management would submit the amount and shareholders designate their choice of charity by categories. On the other hand, he felt it might be desirable to restrict corporations' budgets to a specific amount so that investors could at least take this factor into account in deciding whether to buy or sell stock.[29]

J. A. C. Hetherington, discussing what he termed the fact-theory discrepancy in the relationships between shareholders and management, concluded that preoccupation with the problem of maintaining the fiction of shareholder control of management has directed scholarship away from actual developments and toward unworkable solutions to control of management. He viewed the theory of the corporate good citizen and the notion of corporate social responsibility as attempts by management to defend itself from efforts to limit their autonomy, acknowledging, however, that it has been a successful defense in that it has served to placate other interest groups such as employees, suppliers, dealers, and customers by its implied rejection of the traditional concept of the inevitable conflict between them and management,

[28] Bayless Manning, "Book Review," pp. 1489–1496.
[29] *Ibid.*

while suggesting the role of public servant to the public critics of corporate power.[30]

Hetherington characterized corporate charitable giving as the first, and perhaps only, clearly identifiable child of the corporate good citizen image, providing tangible evidence of the humanity and benevolence of the large corporation.[31] His criticism of the practice was based on two grounds. First, he questioned the competence of corporate managers to decide what activities to support. Secondly, he believed that the addition of various social responsibilities to the managerial function would increase the difficulty of evaluating manager performance. Regardless of the deficiencies of the existing structure, he thought that it had succeeded in motivating management toward productivity and efficiency and had provided a standard that permitted evaluation of managerial performance, one that could be used by managers themselves as well as outsiders. It was this standard that he viewed as essential to the functioning of the stock market. Assumption by management of diverse social responsibilities would interfere with the formal relationship of enterprise and investor and adversely affect the ability of the market to allocate resources. Believing that, in the broadest sense, modern management had been sensitive to the demands of those whose interests were affected by its policies and that its record of performance "is not inconsistent with the broader interests of society when measured by any widely accepted standards," he saw in the expansion by industry into charitable and other nonprofit activities a potential for upsetting this equilibrium by broadening the autonomy of corporate managers.

Donative Practice Serving Corporate Interest

On the other side of the debate over the propriety of corporation philanthropy, one starts with those who have viewed donative practices as merely one method of achieving profit-maximization. Alfred Neal characterized this view as the "political theory,"

[30] J. A. C. Hetherington, "Fact and Legal Theory: Shareholders, Managers, and Corporate Social Responsibility," *Stanford Law Review*, Vol. 21, 1969, p. 248.

[31] *Ibid.*, p. 278.

deriving from such objectives as protecting the corporation investment, earning the good-will of the community, and achieving better relationships with labor, customers, and other interested groups.[32] For Henry Manne, all corporation philanthropy is in actuality of this character. He believed the pressures of the market continue to force corporate executives to operate their companies in the shareholders' interests, leaving no room for charitable or other nonprofit oriented activity unless they represent a nonmonetary perquisite or cost for some factor of production. In this light, corporate contributions are viewed as self-interested conduct being passed off as something else, with much of it being merely good public relations.[33]

For those who accept the "social service" role of the corporation, the justification for corporation philanthropy finds new bases. Thus, Berle, in *The 20th Century Capitalist Revolution*, used examples of various types of corporate charitable contributions to demonstrate the operation of the corporate conscience and the importance of diversity in maintaining control over its exercise. He believed that corporate philanthropy was basically and purely altruistic, but had been tortured into a framework of profit-maximization to avoid legal questions, thereby disguising its true and proper nature.[34]

In contrast to Berle, Blumberg believed that corporate activity in the social sphere was not, in any sense, altruistic, but reflected a tactical judgment as to the most advantageous manner for the corporation to conduct its business in the light of the climate of opinion in which it must function. He did not believe that justification of the validity of corporate action in terms of its being "good business" was outmoded, either in the area of traditional philanthropy or in relation to newer social programs.

> Contrary to the views of the business philanthropists, responsibility to the community has not replaced responsibility to shareholders as the legal standard for determining the validity of

[32] Alfred C. Neal, "A More Rational Basis for Non-Profit Activities," *The Conference Board Record*, vol. 5, 1968, pp. 5–6.

[33] Henry G. Manne, "The Myth of Corporate Responsibility," *The Business Lawyer*, vol. 26, November 1970, pp. 533, 536.

[34] Adolf A. Berle, "Modern Functions of the Corporate System," *Columbia Law Review*, vol. 62, 1962, pp. 433–434.

> corporate conduct, but this does not present insuperable problems.[35]

Furthermore, he viewed corporate social responsibility as a proper reflection by businessmen of their appraisal of what he characterized as "the public acceptance-expectation-demand process," which he recognized as an objective social force operating on the corporation as an entity, as well as on corporate managers as individuals.[36] Responsiveness to public expectations reflects a tactical judgment as to the most advantageous manner for the corporation to conduct its business in light of the climate of opinion in which it must function.[37]

Eells and Economic Environment Theories

Richard Eells, one of the most prolific writers on the subject of corporation philanthropy, started with an acceptance of the legitimacy of corporate donative power and proceeded to the formulation of a "prudential theory of corporation giving." In his view, the justification of corporation philanthropy was "what it does to protect the wider corporate environment that sustains the shareowners' profitable investment."[38]

He accepted profit-orientation as the ultimate motivation for business decisions without, however, rejecting the responsibility of business to its other constituencies. Corporation giving was viewed as a legitimate and proper method for fulfilling these responsibilities as part of prudent corporation management.

> There is no necessary conflict in principle between the pursuit of long-term returns to a company as a business institution in a free society, and the pursuit of public interest. "Benefit" to a company under a modern reading of the old common-law rule certainly does not exclude concurrent and long-term returns

[35] Phillip I. Blumberg, "Corporate Responsibility and the Social Crisis," *Boston University Law Review*, vol. 50, 1970, p. 205.

[36] *Ibid.*, p. 164; see Katz, "The Philosophy of Mid-Century Corporation Statutes," *Law and Contemporary Problems*, vol. 23 (1958), pp. 171, 191.

[37] Blumberg, "Corporate Responsibility," p. 207.

[38] Richards Eells, *Corporation Giving in a Free Society*. Harper & Row, New York, 1956, p. 29.

> shared by business institutions generally and the environing society.[39]

High on the list of these returns he put preservation of pluralism against encroachment by the state.[40]

Donative policy is thus seen by Eells as an effort to promote corporate enterprise as "a creative force in society," while at the same time reflecting a prudent reaction to the needs of the enterprise. He rejected, however, the use of the word "philanthropy" to characterize business donations, preferring the word "support." In his view the business dollar was not made to be given away, but rather to be "invested carefully, prudently, and expertly in those areas which have some relation to the needs and interests of business."[41]

These proponents of corporation philanthropy are disinterested parties. One must add to their formulations the statements of those members of the business community itself who have been in the forefront of attempts to increase the amount and extent of corporate donations. However, the vast majority of their statements appear, on analysis, to be either defensive or exhortative. The defensiveness, which was particularly evident before the decision in the *Smith* case of 1953, reflected uncertainty as to the legal propriety of a contributions policy. The exhortations are most often sincere reflections of a commitment to the ideals of corporate responsibility. They do, however, demonstrate the operation of that part of Galbraith's theory of consistency that predicts that corporate power will be used to shape the goals of society to its own. In substance, however, they do not add measurably to the dimensions of the debate.

New Efforts to Control Corporate Policy

The acceptance by a part of the business community of responsibility for solving minority and urban problems, which marked the sixties, was accompanied by an increased general

[39] Richard Eells, "A Philosophy for Corporate Giving," *The Conference Board Record*, vol. 5, January 1968, pp. 16, 17.

[40] *Ibid.*, p. 17.

[41] Kenneth G. Patrick, and Richard Eells, *Education and the Business Dollar*. The Macmillan Co., New York, 1969, p. 16.

awareness that the interests of business and government were not always and necessarily antithetical and that government alone could not be relied upon to solve underlying social problems. These attitudes have added new dimensions to the debate on the role of the corporation. Donald Schwartz summarized the new approach succinctly,

> To deal with our national problems, or to affect any of the policies which give rise to those problems, it is necessary to affect the corporation and its policies. Our political state and our economic state combined are responsible for where we are. . . .[42]

At a pragmatic level, this awareness has lead to a search for new methods to alter corporate policies, often marshaling government in the attack, but initiating originally with groups that have heretofore been primarily outside the political process. Thus, conservationists have used class law suits to police corporate policies once thought to be subject to exclusive government control. Campaign GM and the Medical Committee for Human Rights utilized the proxy machinery that was originally devised to protect shareholder financial interests to raise basic questions of general social and political policy. The tactics of labor organizations, including boycotts, picket lines, and distribution of handbills, were used by a group of employees of the Polaroid Corporation to force the company to discontinue selling its products in South Africa. Students have been boycotting industry recruitment officers to protest war policy and demanding that universities refuse to invest their funds in companies with social policies they consider improper.[43] This same demand has been put forth by church groups and other exempt organizations. Attempts also have been made to mobilize the so-called institutional investors, primarily the trustees of pension funds and the managers of mutual investment companies.[44]

[42] Donald Schwartz, "Corporate Responsibility in the Age of Aquarius," *The Business Lawyer*, vol. 26, November 1970, pp. 513–514.

[43] See, John C. Simon, Charles W. Powers, and Jon P. Gunnemann, *The Ethical Investor: Universities and Corporate Responsibility*. Yale University Press, New Haven, 1972, pp. 171–178, for a proposed set of guidelines for the management of university investments.

[44] For a description of these activities and an assessment of their effectiveness see, Phillip I. Blumberg, "The Politicalization of the Corporation," *Boston University Law Review*, vol. 51, 1971, pp. 438–456.

The legal literature of the early seventies is replete with suggestions for broadening and improving the remedies available to individuals. It includes suggestions for permitting easier access to the courts to bring class suits based on a community interest and for requiring community representation in the decision-making process in regard to location of power plants and other large industrial sites that affect the environment. Legislation has been introduced in Congress to prohibit the Securities Exchange Commission from denying access to the proxy machinery by shareholders raising "economic, political, racial, religious or similar issues, unless the matter of action is not within the control of the issues."[45]

There has been a revival of interest in increasing shareholder power over corporate elections, in particular by permitting direct nomination of directors. There is renewed interest in using the Securities Exchange Commission machinery to insure greater disclosure of corporate social actions, and a new look at the antitrust laws to ascertain whether they are impeding efforts to solve community problems such as pollution. Suggestions from earlier decades for public representation on the board of directors have likewise been revived, as well as Manning's suggestion for creating an independent private or governmental panel to monitor corporate decisions. Schwartz called for a new study of these suggestions, as well as of the possibility of management itself creating a board whose purpose would be to question the social implications of corporate decisions. However, he recognized the futility of relying on independent trustees or independent boards unless they were provided with adequate funds with which to function.[46]

Ralph Nader would go even further by requiring federal charters for all corporations that contained newly formulated standards of performance and suspension of executives who violate these standards. He has also called for greater public disclosure of corporate actions, direct public election of a proportion of the directors of all large corporations, constitutionalization of the rights

[45] S–4003, 91st Congress, 1st Session, 1970. This bill was introduced on June 23, 1970, and referred to the Banking and Finance Committee. No further action was taken.

[46] Schwartz, "Corporate Responsibility in the Age of Aquarius," pp. 521–525.

of all employees, not just union members, and reform of the Trade Secrets Act, which he believes has been utilized to cloak corporate inaction. At the basis of these ideas is a theory of power that reflects the newly articulated distrust of government and corporations alike:

> If it is going to be responsible, it has to be insecure; it has to have something to lose. That is why putting all economic power in the state would be disastrous, because it would not be insecure.[47]

The response of the corporate community to these challenges has been mixed. While individual companies were taking legal actions to block shareholder attempts to use the proxy rules to raise social questions and asking shareholders to vote against those questions which did appear on the ballot, many were simultaneously taking steps to meet the specific demands being put forward. There was, furthermore, evidence of the effort to respond to the change in public expectations by formulating new rationales for action. The Committee for Economic Development, for example, published in June 1971 a statement on the Social Responsibilities of Business prepared by its Committee on Research and Policy. The statement accepted the premise that the business corporation was an important instrument for social change with affirmative duties in ten specific areas: economic growth and efficiency; education; employment and training; civil rights and equal opportunity; urban renewal; pollution abatement; conservation and recreation; culture and the arts; medical care; and improving the operations of government. Although making no specific recommendations for action, it suggested the response of corporations in each of these areas should be either by voluntary philanthropic efforts of individual companies and groups of companies, by the creation of new profit-making ventures, or by tax support of government programs. The framers of the statement further asserted that these social activities were entirely consistent with shareholder interest.

> Stockholders' interests, therefore, tend to ride with corporations as a group and with investment policies which provide benefits to the corporate sector as a whole—in the form of improved environ-

[47] *The New York Times*, January 24, 1971, sec. 3, pp. 1,9.

mental conditions, a better labor force, and stronger public approval of private business. That is, corporations as a group—and singly as well, under reasonable assumptions—will earn more on their invested capital, and stockholders will be better off if these broader investment policies are adopted.[48]

Conclusion

The call is, thus, for a new definition of business objectives. The history of corporation philanthropy indicates that it came to be considered a legitimate activity of business only when the definition of business objectives was broadened in the minds of corporate management and the general public. The future of corporation philanthropy now depends in part upon whether this new view of "responsive" corporations becomes widely accepted. In this process corporate donations programs are not likely to be completely curtailed. One may, however, predict a leveling off of growth, particularly if the budgets for traditional charitable programs are invaded to finance newer activities.

There is another factor which must be considered, however. There is ample evidence that the future financial needs of nonprofit independent institutions will not be met if the amount of voluntary support from all sources, including corporations, is not increased. The alternatives to support from the private sector are government aid or government assumption of the services now provided by the nonprofit sector. However, increased mistrust of government's ability to look after individual needs creates a dilemma. If increased government participation is rejected, the result is likely to be pressure not only for increased amounts of support from the private sector, but for improved performance. In the area of corporation philanthropy, this will undoubtedly lead to greater public scrutiny of donations policies, coupled with

[48] Research and Policy Committee, *Social Responsibilities of Business Corporations*. Committee for Economic Development, New York, 1971, p. 30. See also, Henry C. Wallich, and John J. McGowan, "Stockholder Interest and the Corporate Role in Social Policy," in William J. Baumol et al., *A New Rational for Corporate Social Policy*. Committee for Economic Development, New York, 1971, on which the framers of the statement appear to have relied.

demands for more efficient administration of programs. One may hope that the result will be a more imaginative and independent definition of the objectives of corporate philanthropic policies and not merely a continuing series of ill-considered defensive reactions. One may also ask for a more widespread adoption of sound administrative practices. It is unlikely that the theoretical debate will be resolved. There is an opportunity, however, for improvement of the practice.

APPENDIX / STATUTORY AUTHORIZATION FOR CORPORATION CONTRIBUTIONS

Approved Purposes and Groups

State	*Public Welfare*	*Charitable*	*Scientific*	*Educational*	*War*	*Religious*	*Literary or Artistic*	*Prevention of Cruelty to Animals or Children*	*Comm. Chest Funds*	*Benevolent Societies*
Ala.	X	X	X	X	X					
Alaska	X	X	X	X	X					
Ariz.	No Specific Statutory Authorization									
Ark.		X	X	X		X	X	X	X	
Calif.	X	X	X	X						
Colo.	X	X	X	X	X					
Conn.	X	X	X	X						
Del.	X	X	X	X	X					
D.C.		X								
Fla.		X	X	X						
Ga.	X	X	X	X						
Hawaii	X	X	X	X	X					
Idaho	No Specific Statutory Authorization									
Ill.	X	X	X	X	X	X				
Ind.										
Iowa	X	X	X	X		X				
Kans.		X	X	X		X			X	X
Ky.	X		X	X		X				
La.		X		X		X				
Maine	X	X	X	X						
Md.[a]		X	X	X			X		X	
Mass.[c]		X	X	X						
Mich.	X	X	X	X		X				
Minn.[d]		X	X			X	X	X	X	X
Miss.	X	X	X	X	X					
Mo.[a]		X							X	X
Mont.[e]	X	X	X	X	X	X				
Nebr.	X	X	X	X	X				X	
Nev.	X	X	X	X						
N.H.	X	X	X	X						
N.J.		X	X	X					X	X
N.Mex.	X	X	X	X	X					
N.Y.[f]		X	X	X					X	
N.C.	X	X	X	X		X	X	X	X	
N.Dak.	X	X	X	X	X					
Ohio	X	X	X	X						
Okla.[g]				X					X	X
Oreg.	X	X	X	X	X					
Pa.	X	X	X	X		X				
R.I.	X	X	X	X						
S.C.	X	X	X	X						
S.Dak.	X	X	X	X	X					
Tenn.	X	X	X	X		X				
Tex.	X	X	X	X	X					
Utah	X	X	X	X		X				
Vt.		X	X	X		X	X			
Va.	X	X	X	X		X	X			
Wash.	X	X	X	X	X					
W.Va.[k]		X	X	X		X	X	X		
Wis.	X	X	X	X		X				
Wyo.	X	X	X	X	X					

					Restrictions					Model Act
	Philanthropic Societies	*State or Federal Gov't*	*Veterans' Rehabilitation*	*Hospitals*	*Restriction on Stock Ownership by Donee*	*No Part May Inure to Benefit of Any Stockholder*	*Restrictions May be Imposed by Articles or State Law*	*Limit on Amount*	*Incorporates Internal Revenue Code*	*Recognizable Version of Model Act*
Ala.							X			X
Alaska										X
Ariz.										
Ark.						X	X			X
Calif.										X
Colo.										X
Conn.							X			X
Del.										X
D.C.										
Fla.						X				X
Ga.										X
Hawaii						X				X
Idaho										
Ill.										X
Ind.							X		X	
Iowa							X			X
Kans.	X									
Ky.										X
La.					X	X	X			
Maine										X
Md.[a]		X					X	X[b]		
Mass.[c]				X		X		X		
Mich.							X			X
Minn.[d]	X	X	X			X	X			
Miss.										X
Mo.[a]						X				
Mont.[e]										X
Nebr.										X
Nev.										X
N.H.										X
N.J.	X				X					
N.Mex.										X
N.Y.[f]		X			X					
N.C.						X				
N.Dak.										X
Ohio										X
Okla.[g]	X					X				
Oreg.										X
Pa.										X
R.I.										X
S.C.									X	X
S.Dak.										X
Tenn.								X[h]		X
Tex.										X
Utah										X
Vt.								X[i]		
Va.							X	X[j]		X
Wash.										X
W.Va.[k]		X	X			X				
Wis.										X
Wyo.										X

Notes:

[a] Also includes "Civic purposes."

[b] Limited to profits.

[c] Mass. has three separate statutes enacted at different times. Section 12 (1889) allowed a gift of $5,000 (or $500 per annum) by vote of the shareholders "for the support of free beds . . ." for the use of its employees. Section 12A (1938) allowed the directors to contribute a reasonable amount to any fund, approved by commissioner of public welfare, "formed for the purpose of raising money to be used for the betterment of social and economic conditions in any community in which such corporation is doing business." Section 12C (1953) is quite broad, allowing gifts for charitable, scientific or educational purposes, but containing a limit of one-half of one percent of the capital and surplus on hand at the close of preceding fiscal year unless specifically authorized by the shareholders.

[d] Includes civic and patriotic purposes. Allows gifts to a fraternal society, order, association, or posts or organizations of war veterans as long as no part inures to the benefit of any private individual or shareholder.

[e] Includes "and generally participate in the creation and maintenance of instrumentalities for the preservation and benefit of social and economic conditions in the territory in which it operates."

[f] Restricts gifts to entities in states in which the corporation is operating or which in the judgment of the directors may be beneficial to the business activities or the well-being of its employees.

[g] Also includes gifts to "patriotic or civic instrumentalities . . . ; or boards of trade, chambers of commerce, and commercial clubs; and of employee credit unions, company pension, annuity, and bonus plans, . . . as in (the directors') judgment will benefit or contribute to the corporate or public interest.

[h] Contributions must be from earned surplus.

[i] Limit of 5 percent of net income for previous calendar year unless specially authorized by stockholders.

[j] Limitation of 5 percent of net income applies only to regulated corporations.

[k] Also allows contributions to organizations or posts of war veterans if organized in United States and no part of their net earnings inures to benefit of any private shareholder or individual. Also forbids any gifts to groups with substantial lobbying or propaganda activities.

Sources:

Ala. Code, tit. 10, sec. 21–(56)(16) (Supp. 1969); Alaska Stat., sec. 10, 05.009(13) (1968); Ark. Stat. Ann., sec. 64–104(6) (1966); Cal. Corp. Code, sec. 802(g) (West 1955); Colo. Rev Stat. Ann., sec 31–2–1(13) (1963); Conn. Gen. Stat. Ann., sec. 33–291(f) (1960); Del. Code Ann., tit. 8, sec. 122(9) (Supp. 1968); D.C. Code Ann., sec. 29–904 (m) (1967); Fla. Stat. Ann., sec. 608.13(13) (1956); Ga. Code Ann., sec. 22–4107 (1969); Hawaii Rev. Laws, sec. 416–26(14) (1968); Ill. Ann. Stat., ch. 32, sec. 157.5(m) (Smith-Hurd Supp. 1970); Ind. Ann. Stat., sec. 25–211b (1970); Iowa Code Ann., sec. 496A.4(13) (Supp. 1970); Kan. Stat. Ann., sec. 17–3009 (1964); Ken. Rev. Stat. Ann., sec. 271.125(13) (Supp. 1968); La. Rev. Stat. Ann., sec. 9.2280 (1965); Me. Rev. Stat. Ann., tit. 13, sec. 141 (Supp. 1970); Md. Ann. Code, art. 23, sec. 9(a)(10) (1966); Mass. Gen. Laws Ann., ch. 155, sec. 12, 12A, 12C (Supp. 1971): Mich. Comp. Laws Ann., sec. 21.10 K (1967); Minn. Stat. Ann., sections 300.66, 300.67 (1969); Miss. Code Ann., sec. 5309–04 (Supp. 1970); Mo. Rev. Stat., sec. 351.385(15) (1957); Montana Rev. Code Ann., sec. 15–2204(m) (1967); Neb. Rev. Stat., sec. 21–2004(13) (Supp. 1967); Nev. Rev. Stat., sec. 78.070(6) (1970); N.H. Rev. Stat. Ann., 27:294.4 VIII (1955); N.J. Rev. Stat., sec. 14A: 3–4 (1969); N.M. Stat. Ann., sec. 51–24–4 (Supp. 1969); N.Y. Gen. Corp. Law, sec. 34 (McKinney, Supp. 1969); N.C. Gen. Stat., sec. 55–17(a)(6) (1965); N.D. Cent. Code, sec. 10–19–04(13) (1960); Ohio Rev. Code Ann., sec. 1701.13(D) (Page, 1969); Okla. Stat. Ann., tit. 18, sec. 1.19(11) (1953); Ore. Rev. Stat., sec. 57.030 (13) (1969); Pa. Stat. Ann., tit. 15, sec. 1302(16) (1967); R.I. Gen. Laws Ann., sec. 7–1.1–4(m) (1970); S.C. Code Ann., sec. 12–12.2(7) (Supp. 1970); S.D. Comp. Laws Ann., sec. 47–2–58(13) (1967); Tenn. Code Ann., sec. 48–402(j) (Supp. 1970); Tex. Bus. Corp. Act Ann., art. 2.02(14) (1956); Utah Code Ann., sec. 16–10–4(m) (Supp. 1969); Vt. Stat. Ann., tit. 11, sec. 107 (1958); Va. Code Ann., sec. 13.1–3(m) (Supp. 1970); Wash. Rev. Code Ann., sec. 23A.08.020(13) (1969); W.Va. Code Ann., sec. 31–1–3 (1966); Wisc. Stat., sec. 180.04(12) (1967); Wyo. Stat. Ann., sec. 17–36.4(m) (1965).

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