

## Syllabus

PUBPOL 559S.01; LAW 585

Philanthropy, Voluntarism and Not-For-Profit Law and Management

Sanford School of Public Policy and the School of Law  
Duke University

Spring Semester, 2014

Wednesdays, 8:30 a.m. until 11:00 a.m.

(EXCEPT FOR THE LAST CLASS, WHICH WILL BE ON FRIDAY, APRIL 18 IN THE SAME HOURS)

Sanford 003

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This syllabus will guide our proceedings, gently and flexibly. Although I may adjust it as we proceed, I do not anticipate major departures. I will advise you of significant changes, if any, at least a couple of weeks in advance.

### **BOOKS TO PURCHASE:**

James Fishman and Stephen Schwarz, Nonprofit Organizations: Cases and Materials, 4th ed. Foundation Press, 2010.

Brian O'Connell, ed., America's Voluntary Spirit: A Book of Readings. The Foundation Center, 1983.

Jim Collins, Good to Great and the Social Sectors: A Monograph to Accompany Good to Great. Jim Collins, 2005.

Most required readings, except for Fishman/Schwarz, O'Connell, and Collins, will be available on the course Sakai site. The items listed as "Recommended" and "for further reading" are NOT REQUIRED READINGS. I am providing them in order to guide you in exploring any subjects of particular interest to you, even if we do not focus on them in class. They can be located using an internet search engine such as Google; alternatively, if you have trouble locating an article please let Jake Reeder know as we may have copies in the office. As new articles of importance are published during the semester, they will appear on the Sakai site or be circulated in class; please check the Sakai site regularly for announcements regarding additions or changes to the reading assignments. I will also distribute additional clippings or readings every week, not intended to be assignments but to be illustrations that will inform class discussions. I encourage members of the class to communicate with one another and with me via e-mail in between class sessions so as to enrich class discussion and participation. My e-mail address is [joel.fleishman@duke.edu](mailto:joel.fleishman@duke.edu). Jake Reeder, my teaching assistant for the class, will be available throughout the semester to answer questions about locating the course materials. Jake can be reached on [jake.reeder@duke.edu](mailto:jake.reeder@duke.edu) or at 434-249-0502. If you wish to make an appointment with me, please call Pam Ladd, my assistant, at 613-7376, or email her at [pamela.ladd@duke.edu](mailto:pamela.ladd@duke.edu). I am usually available in my office at Duke, Room 239 of the Sanford School on Wednesdays, but, to be sure that I will be there when you wish to see me, it's better to make an appointment for a specific time with Pam Ladd.

The World Wide Web is a rich source of information concerning philanthropy and nonprofits. In addition to the readings that will occasionally appear on the course Sakai site mentioned above, the site also has a collection of numerous links to websites important in the nonprofit and philanthropic sectors. Please take time to explore these websites throughout the semester.

The Chronicle of Philanthropy will be distributed throughout the semester for you to browse. During class, I will identify and discuss articles of primary importance, especially trends or major events occurring in the nonprofit and philanthropic worlds.

## **GENERAL RECOMMENDED READINGS (NOT required)**

- Tom Tierney and Joel Fleishman, Give Smart: Philanthropy that Gets Results, Public Affairs, 2011.
- Olivier Zunz, Philanthropy in America, A History, Princeton University Press, 2011
- Leslie R Crutchfield, John Kania and Mark Kramer, Do More Than Give: The Six Practices of Donors Who Change the World, Jossey-Bass, 2011
- Claire Gaudiani and David Burnett, Daughters of the Declaration – How Women Social Entrepreneurs Built the American Dream, Public Affairs New York, 2011.
- Laura Arrillaga-Andreessen, Giving 2.0 – Transform Your Giving And Our World, Jossey-Bass, 2012.
- Patricia Illingworth, Giving Well: The Ethics of Philanthropy, Oxford University Press, 2011.
- Paul C. Light, The Search for Social Entrepreneurship, Brookings Institute Press, 2008.
- Paul C. Light, The Four Pillars of High Performance: How Robust Organizations Achieve Extraordinary Results, McGraw-Hill, 2005.
- Ray Bacchetti and Thomas Ehrlich, eds., Reconnecting Education & Foundations: Turning Good Intentions into Educational Capital, San Francisco: Jossey-Bass, 2007.
- Matthew Bishop and Michael Green, Philanthrocapitalism: How the Rich Are Trying to Save the World, Bloomsbury, 2008.
- Elizabeth T. Boris and C. Eugene Steuerle, Nonprofits and Government, 2d ed., Urban Institute Press, 2006.
- David Bornstein, How to Change the World: Social Entrepreneurs and the Power of New Ideas. Oxford University Press, 2004.
- Paul Brest and Hal Harvey. Money Well Spent: A Strategic Plan for Smart Philanthropy, Bloomberg Press, 2008.
- Arthur C. Brooks and James Q. Wilson, Who Really Cares: The Surprising Truth about Compassionate Conservatism -- America's Charity Divide—Who Gives, Who Doesn't, and Why It Matters, Basic Books, 2007.
- Leslie Crutchfield and Heather McLeod Grant, Forces for Good: The Six Practices of High-Impact Nonprofits, New York: Jossey-Bass, 2007.
- Joel Fleishman, The Foundation: A Great American Secret. New York: Public Affairs Books, 2009 (paperback).
- Joel Fleishman, Scott Kohler and Steven Schindler, The Casebook for The Foundation, New York: Public Affairs Books, 2007
- Marion Fremont-Smith, Governing Nonprofit Organizations: Federal and State Law Regulation, Harvard University Press, 2004.
- Peter Frumkin, Strategic Giving: The Art and Science of Philanthropy. University of Chicago Press, 2006.
- Christopher Gergen and Gregg Vanourek, Life Entrepreneurs: Ordinary People Creating Extraordinary Lives, Wiley, 2008.
- Giving USA 2013: The Annual Report on Philanthropy for the Year 2012. AAFRC Trust for Philanthropy, and Indiana Center for Philanthropy, June 18, 2013.
- Paul Light, The Search for Social Entrepreneurship, Brookings Institute Press, 2008.
- Dan Pallotta, Uncharitable: How Restraints on Nonprofits Undermine Their Potential (2008).
- Walter W. Powell and Richard Steinberg, The Nonprofit Sector: A Research Handbook, Yale University Press, 2006.
- David Bornstein and Susan Davis, Social Entrepreneurship: What Everyone Needs to Know, Oxford University Press, 2010.
- Joe & Carol Reich, Getting To Bartlett Street, February Books, 2012
- David Bornstein, How to Change the World: Social Entrepreneurs and The Power of New Ideas, Penguin Books, 2005
- Mario Morino, Leap of Reason: Managing to Outcomes in an Era of Scarcity, Venture Philanthropy Partners, 2011
- Rob Witwer, The Blueprint: How the Democrats Won Colorado, Fulcrum Publishing, Inc. 2010.
- Mary Brown Bullock, The Oli Prince's Legacy: Rockefeller Philanthropy in China, Woodrow Wilson Center Press, 2011

## **FOUNDATION IMPACT RESEARCH GROUP**

Students are encouraged, but not required, to attend Foundation Impact Research Group seminars held almost every other Wednesday afternoon at 4:30 p.m. in the Rhodes Conference Room. The purpose of these seminars is to stimulate faculty and student research on strategic choice making of foundations and the measurement of foundation impact on society. The speakers at these seminars are usually the presidents of foundations or major nonprofits. The FIRG dates and speakers are listed throughout the syllabus and will be announced in class.

## **COURSE OVERVIEW**

The scope of this seminar is as broad as the idea of the voluntary society itself, with particular attention to the American version thereof. The central question to be addressed is the extent to which, and how, a large number of people of varying ethnic, racial, religious, and cultural backgrounds, living together in a country, state, or city, governed by

democratically elected officials, can, may or should rely on organized or unorganized voluntary action by citizens to fulfill both their own individual needs and the needs of their respective communities. In the wake of the September 11th challenges to American society, as well as only now beginning to emerge from the most serious downturn in the nation's economy since the Great Depression of the late 20s and early 30s, the role of the not-for-profit sector in bringing Americans together across the lines that divide us has become all the more important.

To explore those questions, we will examine alternative allocations of responsibility for solving particular problems -- voluntary, not-for-profit, for-profit, joint public/private, publicly encouraged/subsidized, and publicly coerced -- along with examples, reasons, and theories for particular forms of organization. We will probe what it is that motivates donors and volunteers to give money and time, and to assess not only their effectiveness in solving or ameliorating problems but also the comparative praiseworthiness of their respective motives. Private, community and corporate foundations, as well as the tax-exempt organizations to which they and other donors contribute, are part of the inquiry, especially as to their goals, decision rules, governance, and public accountability. We will continuously examine the framework of public policy that embodies public judgments about the desirability of allocating some part of the burden of social problem-solving to voluntary organizations alone or in partnership with public organizations, as well as the tax policies that are crafted to facilitate and encourage such problem-solving policies. We will also examine the laws defining the boundaries between permissible and impermissible action by not-for-profits. Because of the growing demand for accountability of the not-for-profit sector in general, and of foundations in particular, we will focus throughout the course on the extent to which foundations are achieving social impact commensurate with the tax benefits they and their donors are receiving. We will also examine the social utility of perpetuity in foundations as opposed to limited lifetimes for foundations, the latter of which permit a more rapid distribution to society of foundation assets than the usual minimum annual payout by perpetual foundations of 5% of their asset value.

The class will be conducted as a discussion seminar, with so-called Socratic dialogue as the dominant practice. You will be expected to know the central ideas in the required readings and to be prepared to answer questions about them. Class attendance will be recorded and the quality of your participation in class discussion will be noted.

**No laptop computers will be permitted for use in class.** Laptops are distracting and impede the quality of discussion in the seminar, which relies heavily on class attentiveness and discussion. **No looking at your cell phones or iPads permitted in class. They, too, are distracting not only for you but for other students and me!**

The principal reason this course is a seminar rather than a lecture stems from my hope to help enable you to learn better writing through careful analysis of good ideas about public policy. Six weekly papers, of not more than five pages double-spaced, are required, beginning with the second class. As your papers are intended to help you frame the required readings of the week, they must be submitted in time for me to correct them and return them to you at the class in which the readings you write about are discussed. To meet that schedule, each week's **papers must be e-mailed to me** at [joel.fleishman@duke.edu](mailto:joel.fleishman@duke.edu) **by 4:00 p.m. on the Sunday before class. NOTE THAT NO PAPER IS DUE ON SUNDAY, FEBRUARY 2. Papers are to be sent only as Word attachments.** I will correct them and return them to you, graded and commented upon, at class the following Wednesday, with detailed comments on grammar, syntax, style, and usage.

For all sessions except as otherwise specified in the syllabus section on each class, I will expect you to use the assigned paper both to synthesize and criticize the main ideas presented in the required readings. As this seminar offers you an opportunity to help you improve your writing, spelling and syntax by learning from the mistakes of others as well as your own, we will often spend the first part of the class sessions for which papers are required in discussing writing transgressions frequently committed, of course without identifying the individual grammatical miscreants.

**In addition, a term paper of approximately 25 pages will take the place of a final examination. It must be e-mailed to me** at [joel.fleishman@duke.edu](mailto:joel.fleishman@duke.edu) **on or before Sunday, April 27<sup>th</sup> no later than 4:00 p.m.** It is my practice to keep clean copies of student papers, so you will be asked to resubmit a corrected version of your paper after I have returned it to you corrected and graded.

Your term paper should present a careful analysis of any significant issue affecting foundations or nonprofits that is of particular interest to you. It could deal with a particular significant achievement of a foundation or a group of foundations working together in bringing about, or trying unsuccessfully to bring about, a major change in public policy, or in pioneering what eventually became widespread practice in an area that affects the public interest. You may also focus on the strategy of a community foundation in dealing with a significant problem within the area of the foundation's geographical focus. If you choose a particular foundation initiative, your paper should also assess the strengths and weaknesses of the strategies implemented by that foundation or group of foundations for taking the achievement(s) to relevant scale. You should also feel free to write your paper on such issues as the investment policy of foundations, including whether it is beneficial to their purposes to use social investing criteria, program-related investments, and/or mission-related investing. If you choose this topic, it's imperative that you gather empirical data on the different rates of return that foundations have achieved in comparison with investment policies that do not include social investing criteria. Your paper should also provide as much empirical data on impact as you can obtain with reasonable effort. I will be happy to introduce you to persons at the foundation, foundations or nonprofits about which you are writing who can give you access to such documents or data as you need. Your choice of paper topic is entirely up to you. But, as outlined below, you must obtain my permission before starting any research or writing on the topic.

You may review the case studies which are online at The Center for Strategic Philanthropy and Civil Society's website (<http://cspcs.sanford.duke.edu/>) for brief analyses of past foundation initiatives to spark your thinking. Those case studies also appear in Joel Fleishman, Scott Kohler and Steven Schindler, The Casebook for The Foundation, New York: Public Affairs Books, 2007.

Among the relatively recent themes and approaches you might consider are donor experimentation with for-profit entities to carry out their philanthropic endeavors fashioned as social entrepreneurship and alliances between foundations and governments, foundations and business, or foundations and public charities or other foundations to achieve shared objectives. There are good examples of that phenomenon in Mark Tercik's Nature's Fortune. (2013).

One of the subjects on which Tony Proscio and I are currently writing a book involves comparing the social advantages and disadvantages of perpetual foundations with limited-life foundations, the latter of which involves the deliberate, gradual giving away of assets and income until no resources are left. To date, he and I have identified about 80 such foundations, which have completed their spend-down or are now on a course of spending-down. A potential area of focus for your term paper, therefore, could be to select one of these foundations and to describe, from your own perspective as well as from that of the foundation, the actual legacy of the spend-down entity. In other words, what was the impact of the foundation on society over the long run--that is what has it left that will endure after it closed its doors and turned off its lights.

'=If you prefer to write your term paper on some other topic related to this course, feel free to discuss your proposal with me, but you must have my approval before proceeding. Other possibilities include analyzing ongoing proposals for reform in the nonprofit sector, proposing your own reforms that balance the interests of accountability and flexibility or effectiveness, or evaluating the various forecasts of tremendous upcoming intergenerational wealth transfers and the implications for the charitable sector.

IT IS ESSENTIAL THAT YOU THINK ABOUT POSSIBLE TOPICS AS SOON AS POSSIBLE AND CLEAR TOPICS WITH ME BEFORE BEGINNING RESEARCH. FOR YOUR OWN BENEFIT, I NEED TO BE CERTAIN THAT YOU ARE NOT TAKING ON MORE THAN YOU CAN MANAGE AND ARE FRAMING YOUR TOPIC IN A WAY THAT MAKES SENSE IN THE CONTEXT OF THIS SEMINAR. Think about your term paper topic now and plan to start researching it before spring break. That means that you should clear your topic with me no later than March 5<sup>th</sup>, the last class before spring break.

The weekly papers will be graded on a scale of 1 to 12, with 10 generally equivalent to an A. The grades will be recorded, along with one's presence or absence in class and the quality of one's contribution to class discussion. The term paper will also be graded, but on a scale that is in accordance with the grading system of Trinity, the Graduate School, or the professional school in which you are enrolled. Grades on the weekly papers and class participation will together constitute 75 percent of the term grade, and the grade on the term paper will supply the other 25 percent. Please note that, in the past, students have sometimes received grades as high as 12 for exceptional performance on the weekly papers. In prior years, when some students consistently received 11's and 12's on their papers, students who received an average grade of 10 on the weekly papers have not necessarily received an A or its equivalent for the course because overall grades for the course are required to be curved.

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# CHRONOLOGY

## I. WEDNESDAY, JANUARY 15, 2014 -- AN OVERVIEW OF THE COURSE

### Study Questions (Topical Issues Recurring Throughout the Course):

1. Should not-for-profit organizations, including foundations, be made more account able to the public than they are at present, and, if so, why and how? What are the arguments against too great an increase in accountability to government? From what source, if any, do foundations derive their legitimacy in general, as well as in efforts to effect change in public policy in particular?
2. Consider the pros and cons of the charge that foundations, which are substantially unaccountable to the public, disproportionately influence public policy. To what extent should the public encourage or discourage initiatives in policy-related fields by foundations, given their lack of accountability to the public? What are the arguments for and against? Are foundations viewed as more or less legitimate than other kinds of non-for-profit organizations? In this age of increasing lobbying to influence public policies of a variety of kinds by for-profit corporations and individuals of great wealth, does the charge of unaccountability against foundations and nonprofits ring hollow?
3. How effectively and efficiently do not-for-profit organizations, including foundations, perform their responsibilities? How can they or we measure their impact? Can metrics of impact be developed, and, if so, how? Are there ways of increasing the effectiveness of foundations without adversely affecting their freedom to benefit society according to their own views of what constitutes the public interest?
4. Should the minimum private foundation five-percent annual payout requirement be increased, and, if so, to what level? What are the criteria by which one can reasonably calculate what that payout rate should be?
5. Should financial services companies be restricted in creating public charities that compete with community foundations? Why and why not?
6. What are the arguments for and against placing a ceiling on nonprofit endowments? Should universities, foundations, and other endowed entities be permitted to increase their endowment in perpetuity with no limitation on size?
7. What are the relevant standards of propriety for the amount of compensation to be given to not-for-profit executives? What are the appropriate comparison groups for the salaries of large foundation, hospital, and university presidents? When is it appropriate to use for-profit salaries as comparisons? When are such salaries excessive?
8. How is the Internet changing the ways in which charities raise, maintain and deploy money and volunteers? Does the Internet offer better means of improving the accountability to the public of foundations and other not-for-profits?
9. By what decision rule can America decide which social functions should be performed by which sectors—public, for-profit, not-for-profit---either separately or in some combination of two or three?
10. What do we know about the percentage of giving by income group? What might be done to increase giving by the wealthier?
11. What are the pros and cons for extending income tax charitable deductions for non-itemizers?
12. In humanitarian crises, as in Haiti, there have been repeated conflicts between humanitarian organizations and governments. How does one decide on the proper roles of non-governmental organizations in countries governed by reportedly corrupt, inefficient or disabled governments?

### Main Questions To Be Discussed During The First Class Session:

1. Why are you interested in taking this course?
2. How does each of you perceive the role of the not-for-profit sector?
3. Why are you interested in learning more about the not-for-profit sector?
4. What kinds of experience have you had in working or volunteering for nonprofit organizations?

### Required Reading (89 pages):

- Fishman/Schwarz, 1-45. (45)
- Lee Christie, "Taxes on Big Gifts Slated to Soar," *CNN Money*, 12/13/12 (2)
- Ron Lieber, "As the Year Draws to a Close, Deciding How to Slice Your Charitable Pie," *New York Times*, 12/7/12 (4)
- Greg Dees, "Politics and Social Entrepreneurs," *Dowser*, 4/23/2012, (2)
- Nicholas Confessore, "Policy-Making billionaires," *New York Times*, 11/26/11, (4)
- David Brooks, "Sam Spade at Starbucks," *New York Times*, 4/12/12, (3)

- Nicholas Carnes, "Which Millionaire Are you Voting For?" *New York Times*, 10/12/12, (3)
- Nicholas Carnes, "Our white-collar rules are out of touch with most Americans," *News and Observer*, 10/10/2013 (2)
- Cheryl Loe, "U.S. Foundation Giving Reaches an Estimated \$50.9 Billion in 2012," *Foundation Center*, 10/1/2013 (2)
- Peter Singer, "Good Charity, Bad Charity," *New York Times*, 08/10/2013 (3)
- Peter Buffet, "The Charitable-Industrial Complex," *New York Times*, 07/26/13 (2)
- Phil Buchanan, "Peter Buffett is Right to Call for Philanthropic Change," *Chronicle of Philanthropy*, 08/05/2013 (7)
- Various, "Responding to Peter Buffett: What Philanthropy Experts Say," *Chronicle of Philanthropy*, 08/05/2013 (9)

### **Recommended Reading:**

- Elizabeth Lopatto, "Wealthier People More Likely Lie or Cheat, Study Says," *Bloomberg*, 2/28/12 (1)
- "One Thousand Points of 'Like'," *The Economist*, 1/7/12, (1)
- Kim Meredith, "2012 Letter," *Stanford Social Innovation Review*, 1/23/12 (4)
- "Chicago Aid Group Closes After More than 120 years," *Associate Press* 1/27/12, (1)
- Tammy Webber, "Hull House Closes Doors After More than 120 Years," *Associated Press*, 1/27/12, (1)
- "Fundraising Results Overall Stall Mid-Year," *PRWeb*, 11/13/12, (2)
- Olivier Zunz, "Philanthropy by the Rest of Us," *New York Times*, 12/22/11, (2)
- Samuel Freedman, "Loans Without Profit Help Relieve Economic Pain," *New York Times*, 12/2/11, (3)
- Ruth McCambridge, "An Important Study of High Net Worth Women and their Giving – What do you Think of the Implications," *The Nonprofit Quarterly*, 12/12/11, (3)
- Albert Foer, "The President of the American Antitrust Institute and Father of a Literary Brood on the Difficulty of Getting His Advocacy Group off the Ground," *Bloomberg BusinessWeek*, 1/15/12, (1)
- Kriss Deiglmeier, "Social Purpose Business, An International Perspective," *Stanford Social Innovation Review*, January 2012, (3)
- Walter Isaacson, "The America Ben Franklin Saw," *The Washington Post*, 11/22/12, (2)
- Ellen Barry, "Foreign Funded Nonprofits in Russia Face New Hurdle," *New York Times*, 7/2/12, (2)
- Ellen Barry, "Russian Legislators Approve Greater Government Control Over the Internet and Nonprofits," *New York Times*, 7/18/12, (2)
- Emily Gipple and Ben Gose, "How America Gives," *The Chronicle of Philanthropy*, 8/19/12, (2)
- William Foster and Susan Wolf Ditkoff, "When You've Made Enough to Make a Difference," *Harvard Business Review*, January 2011, (8)
- Bob Herbert, "Winning the Class War," *New York Times*, 11/26/10, (3)
- Nick Bunkley, "Debt Rising, a City Seeks Donations in Michigan," *New York Times*, 11/19/10, (2)
- James Gallagher, "Stalled Economy Offers Nonprofits Fiscal Pain," *Triangle Business Journal*, 10/29/10, (1).
- William D. Cohan, "The Power of Failure," *New York Times*, 11/26/10, (2)
- Ron Lieber, "Colleges Are Not Going Hungry, But Are In Need," *New York Times*, 11/29/08, (3).
- Stephanie Strom, "Wall St. Fraud Leaves Charities Reeling," *New York Times*, 12/16/08, (3).

### **For Further Reading**

- Elizabeth T. Boris and C. Eugene Steuerle, Nonprofits and Government, 2d ed., Urban Institute Press, 2006, 1-76, (79, double = 39).

## II. WEDNESDAY, JANUARY 22, 2014 – GOVERNANCE STANDARDS, PERFORMANCE SHORTCOMINGS, AND SCANDALS IN THE NOT-FOR-PROFIT SECTOR

**Topic for Paper Due on Sunday, January 19, 4:00 p.m.:** Discuss the major cases included in the assigned casebook readings (*Fitzgerald v. NRA* [p. 129-134], *Pepperdine* [p. 137-142], *Lynch v. John M. Redfield Foundation* [p.142-145], *Stern v. Lucy Webb Hayes* [p.145-150, 171-178], *Nixon v. Lichtenstein* [p 166-171], *Adelphi v. Diamandopoulos* [p. 178-184], *Northeast Harbor Golf Club, Inc. v. Nancy Harris* [p. 190-195], and *Herzog Foundation v. University of Bridgeport* [p.232-237]), and criticize and synthesize their holdings.

For non-law students, this assignment may be your first encounter with law cases. If so, in reading the cases, focus your attention on: 1) what the plaintiff (the one who brings the suit that led to the case) wants; 2) what the defendant (the one against whom the suit is brought) claims in response to the plaintiff's demand; 3) what the court decides as between the plaintiff's and defendant's claims; and 4) what the court gives as the reason for deciding as it did. Focus on what the court holds—the actual disposition of the case and the remedy the court imposes—and not so much on what the court says almost parenthetically about what it has held. If you have any questions about this, please consult one of the law students in the class or Professor Fleishman.

### **Study Questions:**

1. Against the background of the aspirations of the not-for-profit sector observed in the previous week, we also need to face the fact that the not-for-profit sector has significant recurrent performance shortcomings. How can we best understand the reasons for these shortcomings in order to formulate effective policies and penalties to diminish them?
2. Was it a scandal for the American Red Cross to decide to use for purposes other than victim relief some of the funds donated in the wake of 9/11 to the Liberty Fund?
3. Do recent scandals or abuses by not-for-profit organizations (e.g., Adelphi University, Bishops Estate, Minnesota Public Radio, The Common Fund, and New Era Philanthropy) reveal anything inherent in the nature or structure of the not-for-profit sector, or are such phenomena totally incidental to the nature of the sector?\*
4. Does the inherent nature or structure of not-for-profit organizations make abuses more or less likely?
5. Are the scandals the result of "human nature" (i.e., particular individual's inordinate desire for gain or personal power in any sector)? Are there organizational or governance aspects of the not-for-profit sector, which make that sector especially vulnerable to the schemes of such individuals?
6. Who is responsible for preventing scandals and abuses in the not-for-profit sector?
7. What are the relevant comparisons in determining whether compensation paid to executives of not-for-profit organizations is excessive? What reasonable limits, if any, should exist for such compensation?
8. Can regulatory or legislative frameworks prevent scandals and abuses without undermining the desirable autonomy of the not-for-profit sector? Would any such frameworks be desirable?
9. In the absence of heavy-handed regulation, how can not-for-profit organizations be kept accountable? To whom should they be accountable?
10. What have the courts held to be the differing standards of directors' responsibility?
11. By what criteria should foundation expenditures be measured so as to ensure some reasonable accountability to the law and best principles of stewardship?
12. What legal safeguards, if any, should be enacted to protect the not-for-profit sector from being abused for terrorist or improper political purposes?
13. Is it a "scandal" for foundations, universities and art museums to allow their endowments to grow without limits?

\* Use the Internet to find as many instances of not-for-profit improprieties as you can. Start with *Lexis-Nexis*.

### **Required Readings (118 pages):**

- Fishman/Schwarz, pp. 129-158; 163-184, 190-196, 232-237 (64)
- Nina Bernstein, "Hospitals Flout Charity Aid Law," *New York Times*, 2/12/12, (4)
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## A Variety of Questionable Decisions

### *Fannie Mae*

- *A Report to the Special Review Committee of the Board of Directors of Fannie Mae: Executive Summary*, Paul, Weiss, Rifkind, Wharton & Garrison, LLP, 2/23/2006, 1-31.

### *Getty Trust*

- Randy Kennedy, "Chairman of Getty Trust Resigns, Citing Workload," *New York Times*, 8/5/2006, B9.
- Harvy Limpan, "California Reprimands J. Paul Getty Trust and Appoints an Independent Monitor," *Chronicle of Philanthropy*, 10/12/2006, 27.
- Vicky Ward, "The Getty's Blue Period," *Vanity Fair*, March 2006, 218-35.

### *Baptist Foundation*

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### III. WEDNESDAY, JANUARY 29, 2014 – THE DISTINCTIVENESS AND DIMENSIONS OF THE US NOT-FOR-PROFIT SECTOR: CHARTER SCHOOLS AS A TOPICAL EXAMPLE OF NONPROFIT AND HYBRID CROSS-SECTOR PROBLEM SOLUTIONS

**CLASS GUEST SPEAKER: CHRIS NELSON, 1982 DUKE TRINITY GRADUATE AND LAW ALUM, PRESIDENT OF THE DONALD AND DORIS FISHER FUND**

**4:30PM FIRG GUEST SPEAKER: CHRIS STONE– PRESIDENT AND CEO, THE OPEN SOCIETY FOUNDATIONS, [WWW.OPENSOCIETYFOUNDATIONS.ORG](http://WWW.OPENSOCIETYFOUNDATIONS.ORG) RHODES CONFERENCE CENTER, 223 SANFORD.**

**6:30 PM BUFFET DINNER HONORING CHRIS STONE AND CHRIS NELSON AT PROFESSOR FLEISHMAN'S HOME. ALL MEMBERS OF THE CLASS WILL BE INVITED. BE SURE TO RSVP TO CASSIE LEWIS AT [cassie.lewis@duke.edu](mailto:cassie.lewis@duke.edu)**

**Topic for Paper Due on Sunday, January 26 at 4:00 p.m.:** What do you see as the proper role for not-for-profits compared to government in addressing problems that affect society? Should the not-for-profit sector focus on societal problems that the government already addresses? Should it endeavor to create and pilot new solutions to existing problems, or should it target whatever issues their founders, directors and managers choose? Should tax-exempt status be limited only to organizations that serve critical needs, such as food and shelter, or should tax-exempt status be available to a wide range of organizations, as it is today? Consider the costs and benefits of your opinion.

#### **Study Questions:**

- What is the essential nature of the Not-for-Profit Sector, Independent Sector or Third Sector? What different connotations does each of those descriptors of the sector have?
- How does it differ from, as well as most effectively relate to, the for-profit and public sectors?
- What roles do philanthropy and volunteerism properly play in it?
- What do we mean by “civil society,” and how, if at all, does it differ from what we mean by “not-for-profit sector”?
- What are the most pressing challenges facing the not-for-profit sector today?
- What is the meaning of civic engagement and what role does the not-for-profit sector play in facilitating it?
- How do the events of September 11 complicate or motivate the achievement of civic engagement?
- How much emphasis should charitable donors give to charities for the needy as compared with other charities?

#### **Required Readings (81 pages):**

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- Stephanie Strom, “Charitable Giving Rose Last Year for First Time Since 2007,” *New York Times*, 6/19/11, (2)
- **[READ 1<sup>st</sup> PAGE ONLY]** “U.S. Charitable Giving estimated to be \$307.65 billion in 2008” Press Release: Giving USA Foundation, 6/10/09 (1)
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- **[READ 1<sup>st</sup> PAGE ONLY]** “U.S. Charitable Giving estimated to be \$316.23billion in 2012” Press Release Giving USA Foundation 6/18/13 (1)
- Paul C. Light, “The Content of Their Character: The State of the Nonprofit Workforce,” *The Nonprofit Quarterly*, Fall 2002, 6-16
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- Robert B Reich, “Is Harvard a Charity,” *Los Angeles Times*, 10/1/07, (2)
- Stephanie Strom, “Big Gifts, Tax Breaks And a Debate On Charity,” *New York Times*, 9/6/07, (5).
- Zachary M. Seward, “Rich Alumni Stiff Elite Alma Maters, Give to Needier Colleges,” *Wall St Journal*, 8/28/07, (3).
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- Peter Orszag, “Nonprofits Are Growing. What Is It They Do?” *Bloomberg*, 09/03/2013 (2)
- Ellen Barry, “Russia Says Nonprofits Violate ‘Foreign Agent’ Law,” *New York Times*, 07/09/2013 (1)
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- Stephanie Banchemo, “Inside the Nation’s Biggest Experiment in School Choice,” *Wall Street Journal*, 09/29/13 (7)
- Staff, “Informing the Debate: Comparing Boston’s Charter, Pilot, and Traditional Schools.” *Boston Foundation*, 01/06/09 (3)
- [suggested readings from Chris Nelson]



## Recommended Readings:

- Warren Buffett Gift to the Bill and Melinda Gates Foundation
- Warren Buffett, letter to Bill and Melinda Gates, June 26, 2006, available at <http://www.berkshirehathaway.com/donate/bmgfltr.pdf>, (2).
- Timothy L. O'Brien and Stephanie Saul, "Buffett to Give Bulk of Fortune to Gates Charity," *New York Times*, 6/26/2006, A1, (2).
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- "Charity at Home", *The Economist*, 7/9/2011, pp.38-39. (2)
- Stephanie Strom, "Philanthropists Start Requiring Management Courses to Keep Nonprofits Productive," *New York Times*, 7/29/2011, (2)
- "Foundation Leaders Address the State Budget Crises," Foundation Center, September 2011, (4).
- Philip Gourevitch, "Alms Dealers," *New Yorker*, 10/11/10, (7)
- Geraldine Fabrikant, "For Yale's Money Man, a Higher Calling," *New York Times*, 2/18/07, (7).
- "Converting Donations and Good Intentions Into Meaningful Charity," Letter to the Editor: *Wall Street Journal*, 4/13/07, (2).
- Meghan Daum, "The Overshadowing 'I' in Charity Today," *Los Angeles Times*, 7/30/07, (2).
- Katie Zezima, "Food Banks, in a Squeeze, Tighten Belts," *New York Times*, 11/30/07, (3).
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## For Further Reading

- "Philanthropy's Awareness Deficit," PAI Digest on Harris Interactive survey findings, 4/22/08, (12).
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- Peter Panepento, "Nonprofit Workers Fall Short in Retirement Savings," *Chronicle of Philanthropy*, 2/8/07, (2).
- Peter Panepento, "Too Little Charity Goes to the Needy, Congress Told," *Chronicle of Philanthropy*, 10/4/07, (2).
- Suzanne Perry, "New Tally Shows Charity Role," *Chronicle of Philanthropy*, 10/4/07, (1).
- Aili McConnon, "Charities Go Begging," *Business Week*, 10/6/08, (2).
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- Nonprofit Capital Markets
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## Giving While Living

- Liz Skinner, "Fewer Clients Waiting Till Death to Part with Charitable Dollars," *Investment News*, 10/1/07, (2).
- "31% of Donations by Individuals Benefit the Poor, Study Finds," *The Chronicle of Philanthropy*, 7/26/07, (2).
- Mindy Fetterman, "Giving While Living' Alters Inheritances," *USA Today*, 8/23/07, (6).

## IRS Oversight

- Ben Gose, "IRS Official Says Tax Agency May Step Up Efforts to Identify Ineffective Charities," *The Chronicle of Philanthropy*, 11/12/07, (2).
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## The Economy's Impact on the NFP Sector

- Jeff Bailey, "Buffett Children Emerge as a Force in Charity," *New York Times*, 7/2/2006, A1, (4).
- "Billanthropy," *Economist*, 7/1/2006, (2).
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- Andrew Jack, "Manna from Omaha: A Year of 'Giving While Living' Transforms Philanthropy," *Financial Times*, 12/27/2006, 11, (3).

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  - Peter Finn, "Revised Russian Bill Governing NGOs Fails to Mollify Critics," *Washington Post*, 12/22/2005, A21, (2).
  - C.J. Chivers, "Kremlin Puts Foreign Private Organizations on Notice," *New York Times*, 10/19/2006, A8, (2).
  - Steve Gutterman, "Head of U.S.-Funded Group Fled Russia," *ABC News*, 6/29/07, (2).
  - "Lukashenko to Shut Down NGOs Funded by the US," *St. Petersburg Times*, 7/20/07, (1).
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- Nick Miroff, "Charitable giving in short supply in Mexico," *Washington Post*, 8/13/11, pp.3
  - Hillary Belzer, "Report on the Listening Post Project's Nonprofit Innovations Webinar," June 2011, (3)
  - "The Nonprofit Research Collaborative," *Foundation Center*, September 2011, (36).
  - "Community Foundation Giving Jumps 14 Percent, New Foundation Center Report Finds," *Press Release: Foundation Center*, 5/20/08, (1).
  - Janelle A. Kerlin and Supaporn Thanasombat, "The International Charitable Nonprofit Sector: Scope, Size, and Revenue," *Urban Institute Policy Brief*, September 2006, 1-6. (6)
  - Jacqueline L. Salmon, "A Mammoth Wealth Transfer Awaits the Area, Study Predicts," *Washington Post*, 7/26/2006, A1, (3).
  - Elizabeth Schwinn, "A Strong Showing—Increase of Donations to Charities in 2006," *Chronicle of Philanthropy*, 2/8/07, (5).
  - Kristi Heim, "In Person: Yang Lan Nurtures Philanthropy Among China's Newly Wealthy," *The Seattle Times*, 7/24/11, pp.3.
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  - Harvy Lipman, "Tax Data Shows Utah Donors are Most Generous to Charitable Groups," *Chronicle of Philanthropy*, 8/8/02, 11-12.
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  - Hollis A. Hope, et. al., "Philanthropy in the News: An Analysis of Media Coverage, 1990-2004," *Foundation Works: Philanthropy Awareness Initiative*, 2006, 1-22.
  - "Challenges Facing Philanthropy: A Summary of the 2004 Philanthropy Summit," conference convened by the Center on Philanthropy at Indiana University, April 13-14, 2004, 1-40.
  - Steven Lee Myers, "Putin Hits Hard at Plots," *Raleigh News and Observer*, 1/26/2006, 10A.
  - Woods Bowman, "Confidence in Charitable Institutions and Volunteering," *Nonprofit and Voluntary Sector Quarterly*, Vol. 33, No. 2, June 2004, ppp. 247-270.
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  - Wes Smith, "Foundations Pull Back," *Orlando Sentinel*, 7/7/03, (3 pages).
  - Stephen Kinzer, "As Funds Disappear, So Do Orchestras," *New York Times*, 5/14/03, B1, B9.
  - Sara Rimer, "Harvard is Returning Donation from Jane Fonda for New Center," *New York Times*, 2/4/03, A14.
  - John S. Griswold, Jr. and Geoff Phelps, "Private and Community Foundations Outperform Indexes with Average Annual Returns of -8.7% for Fiscal Year 2002," *Press Release*, *Commonfund*, 7/8/03, (5 pages).

- John Seely and Julian Wolpert, "The Financial Squeeze for New York City's Nonprofit Human Service Providers," New York City Nonprofits Project, Aug. 2004.
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- Interagency Task Force on Nonprofits and Government, "Partnerships For a Stronger Civil Society," 2000.
- David Hammack, ed., Making the Nonprofit Sector in the United States. Indiana University Press, 1998.
- Alan Reynolds, "The Size and Scope of Charitable Activities," in The National Commission on Philanthropy and Civic Renewal, Giving Better/Giving Smarter Working Papers, 1997, 19-30.
- Beth Breeze, "UK Philanthropy's Greatest Achievements," The Institute for Philanthropy, 2006.
- John Craig, "The New Financial Realities: The Response of Private Foundations," The Commonwealth Fund, 2008.

#### Identity of William J. Clinton Foundation Donors (25 PAGES, 8 READINGS)

- Don Van Natta Jr., et al, "In Charity and Politics, Clinton Donors Overlap," New York Times, 12/20/07, (5).
- John R. Emshwiller, "Bill Clinton's Complicated World," Wall Street Journal, 12/20/07, (3).
- Susan Schmidt, et al, "Clinton Reveals Donors," Wall Street Journal, 12/19/08, (4).
- Margaret Coker, "African and Middle East Donors to Clinton's Foundation," Wall Street Journal Online, 12/18/08, (2).
- "Clinton Foundation Got Big Lift From Hedge Funds," New York Times, Deal Book, 12/22/08, (2).
- Peter Baker and Charlie Savage, "In Clinton List, A Veil Is Lifted On Foundation," New York Times, 12/19/08, (3).
- Don Van Natta Jr. and Jo Becker, "Many Dealing of Bill Clinton Are Under Review," New York Times, 11/18/08, (3).
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#### Disaster Response and Charitable Giving

- \* "Donors' Guide to Gulf Coast Relief & Recovery," New York Regional Association of Grantmakers: Gulf Coast Recovery Task Force, May 2006, 1-68.
- "Donors Get a Second Wind After a Tough Year, Pumping Up Holiday Giving," Raleigh News and Observer, 12/15/2005, 7A.
- Alan Abramson, "Responding to the Tsunami Disaster: Challenges for Charities and Donors," The Aspen Institute: Snapshots, May 2005, 1-5.
- "The Response of Local Nonprofits to Hurricane Katrina," The Aspen Institute: Snapshots, August 2006, 1-5.
- Tony Pipa, "Weathering the Storm: The Role of Local Nonprofits in the Hurricane Katrina Relief Efforts, Summary," The Aspen Institute, 1-3.
- Elizabeth T. Boris and C. Eugene Steuerle, After Katrina: Public Expectation and Charities' Responses, Urban Institute, 2006, 1-29.

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- Mike Allen "Bush Presses 'Faith-Based' Agenda; President Proposes Regulations to Ease Federal Funding" Washington Post, 9/23/03, A10 (2 pages).
- E.J. Dionne, Jr., "Faith-Based Talk—Where's the Action?" Washington Post, 6/10/03, A21.
- Alan Cooperman "Faith-Based Charities May Not Be Better, Study Indicates" Washington Post, 5/25/03, A7 (2 pages).
- Dana Milbank "Bush Legislative Approach Failed in Faith Bill Battle; White House Is Faulted for Not Building a Consensus in Congress" Washington Post, 4/23/03, A1 (5 pages).
- Elizabeth Becker, "Bush is Said to Scale Back His Religion-Based Initiative: But He Hopes to Push for Full Bill Next Year," New York Times, 10/14/01, A18.
- Valerie Richardson, "The Future of the Faith-Based Initiative," Philanthropy, May/June 2001, 10-12.
- Patricia Zapor, "Wait and See: Religious Charities Aren't Rushing to Embrace Bush's Initiative," Philanthropy, May/June 2001, 13-15.
- Brendan Miniter, "Following the Money," Philanthropy, May/June 2001, 16-19.
- Bill Broadway, "Good for the Soul - and the Bottom Line: Firms Promote Spirituality in the Workplace and Find It Pays," Washington Post, 9/19/01, A1.
- Dana Milbank, "Bush Issues 'Faith-Based Initiative' Orders; Decrees Would Allow Religious Programs to Get Federal Money," Washington Post, 12/13/02, A4.

- Mike Allen and Alan Cooperman, "Bush Backs Religious Charities on Hiring; Hill is Urged to Ease Bias Rules on Groups that Get U.S. Funds," Washington Post, 6/25/03, A1, (3 pages).
- David Nather, "Faith Initiative Backer Backs Away from GOP," CQ Weekly, 6/7/03, 1355.

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- Paul Arnsberger, "Charities, Social Welfare, and Other Tax-Exempt Organizations, 2004," SOI Tax Stats – Charities & Other Tax-Exempt Organizations Statistics, available at <http://www.irs.gov/pub/irs-soi/04eochar.pdf>.

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**IV. WEDNESDAY, FEBRUARY 5, 2014 – DONOR MOTIVATION AND DONOR INTENT: THE GREAT PHILANTHROPISTS IN THEIR MAKING AND GIVING OF MONEY, AND THE AVERAGE AMERICAN**

**NO PAPER DUE ON SUNDAY, FEBRUARY 2! BUT DO STUDY CAREFULLY FOR CLASS DISCUSSION!**

**Study Questions:**

1. Carnegie, Rockefeller, Duke, Mellon, Scaife, Turner, Gates, Soros, Buffett: Why did they give away such large amounts of money? What were their motivations for doing so? What ideas influenced them to do so? Who influenced them to do so? Their parents? What role, if any, did their education play in motivating them to do so? What role did their religion play? What did their critics say about their intentions?
2. What is your reaction to the Gates and Buffett Giving Pledge?
3. Do wealthy people give a larger percentage of their income to charity than poor people do? Do founders of foundations give from income or from capital? Do they usually get a tax benefit from doing so? What is the nature of that tax benefit, if any?
4. Do large donors seek to make money in order to give it away, or do they accumulate wealth because of greed or ambition as an end in itself? How does the motivation of the wealthy towards giving differ, if at all, from that of people of lesser means?
5. Do the motivations of donors for their giving make any difference to you so long as their deeds accomplish good for others? If so, what difference do the motivations make? If they are scoundrels or crooks in the making of their money, does that affect how you view their giving?
6. As a wealthy parent, how should you think about the question of whether and how much to give of your wealth to your children?
7. As the creator of a foundation, how would you think about the question of whether to establish your philanthropy in perpetuity as opposed to one with a limited time-span?
8. What are the arguments for and against anonymous giving?
9. As the president of a university which is offered a large gift by someone known to have been convicted of securities fraud, would you accept the gift even if you know it was motivated by the donor's wish to gain or regain respectability? How does the motivation of such a donor differ from that of other donors who give similar gifts?
10. Is the virtue of donors that arises from their giving mitigated by the fact that they receive a tax deduction for making donations?
11. Is the purpose of making available tax deductions in any way undermined by donors' decisions to make gifts consonant with their tastes, substantive interests and backgrounds, rather than with those social ills thought to be more pressing?
12. Consider the different styles of giving by different foundations and individuals. Some prefer to think of themselves as social venture capitalists who prefer to start new initiatives. Others prefer to assist efforts already under way. Some choose to support those with greatest material needs. Others concentrate on helping scholars and artists. Some foundations prefer to avoid both politics and criticism, while others see their role as activating political criticism. Some foundations prefer to cooperate on grants (indeed, seek to draw in partners), while others prefer to go it alone. Some donors seek to gain legitimacy for themselves by giving to institutions or organizations which already enjoy high public regard, while other donors are oblivious to such concerns, and still others seek to put their money and prestige behind thoroughly controversial recipients. Some donors prefer to give to many different objectives, while some choose to concentrate on one field of need. Some prefer to give only in their own community while others choose to reach out nationally.
13. To what extent are projects that greatly benefit a few individuals as worthy as other projects that benefit many more people but diffusely?
14. Are there any objective criteria of worthiness that donors can use to choose among the many competing potential recipients, or are such choices ultimately always subjective? How do individuals make these choices? How do foundations make these choices?
15. To what extent do donors' religious, philosophical, economic or political views determine how and what they give?
16. How do donors choose between giving to a rich, well-endowed university, and giving to a struggling community organization striving to help the indigent?
17. Venture philanthropy—the new philanthropy of the twenty-first century: what does it mean?

**Required Readings (87 pages):**

**Philanthropists**

- Andrew Carnegie, "The Gospel of Wealth," and Barry Karl, "Andrew Carnegie and His Gospel," in Dwight

- Burlingame, ed., *The Responsibilities of Wealth*. Indiana University Press, 1992, (25 double pages, actual 49)
- Andrew Carnegie, Carnegie Corporation of New York biographical (8).
- Karen Theroux, "A Sacred Trust," *Carnegie Reporter*, Spring 2011, Vol. 6. No. 2, pp.40-45. (6)
- "The Centenarians Square Up," *The Economist*, 6/11/11, pp.64-66. (3)
- David Ehrlichman, "Money for Good: Deeply Understanding the Donor Mindset," *Monitor Institute*, 12/6/12, (4)
- Martin Morse Wooster, "A Philanthropist at Work: The Letters of Andrew Carnegie," *Philanthropy*, May/June 2001, pp.24-28. (5)
- Bill Gates, "Bill Gates: My Plan to Fix The World's Biggest Problems," *WSJ*, 01/25/2013 (5)
- Rabbi Jonathan Sacks, "Maimonides Ladder of Giving," pp. 37-38 (2)
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- Brendan Coffey, "A Billionaire's Friendly Foundation," *Bloomberg Business Week*, 05/13/2013 (3)

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- Joel Stein, "It's time to Give Back – to The Founder of my New Foundation," *Time*, December 2011, (1)
- Andrew Kelly, "Opening Up the University," *Philanthropy*, Vol. XXVI, No. 2, Spring 2012, (4)
- Andrew Carnegie: Special Features. Please browse the special features section of the PBS website on *American Experience: Andrew Carnegie*, including "Meet Andrew Carnegie" and "Philanthropy 101," available at <http://www.pbs.org/wgbh/amex/carnegie/sfeature/index.html>.
- Amanda Ripley and Amanda Bower, "From Rags to Riches," *Time*, 12/26/05, 72, (6).
- Julia Green, "Is N.Y. Mayor Anonymous Carnegie Donor?" *Chronicle of Philanthropy*, 6/10/04, (1).
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- Kerry Dolan, "Andy Grove's Last Stand," *Forbes*, 1/28/08, (4).
- "To Give, Divine," *Time*, 7/2/06, (1)
- Sally Beatty, "Art Patron's Gift Aids Morehead Scholarship," *Wall Street Journal*, 2/15/07, (2).
- Cartoon, *New Yorker*, 8/9/07, (1).
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**V. WEDNESDAY, FEBRUARY 12, 2014 – INDIVIDUAL GIVERS AND JOINERS: HUMAN AND SOCIAL IMPULSES TO CHARITY, PHILANTHROPY AND VOLUNTEERISM**

**CLASS GUEST SPEAKER: MICHAEL FAYE, FOUNDER AND BOARD CHAIR, GIVEDIRECTLY, AND PAUL NIEHAUS, CEO OF GIVEDIRECTLY; For More Information: [www.givedirectly.org](http://www.givedirectly.org)**

**4:30 PM FIRG SPEAKER: RIP RAPSON, PRESIDENT AND CEO, THE KRESGE FOUNDATION, [WWW.KRESGE.ORG](http://WWW.KRESGE.ORG); RHODES CONFERENCE CENTER, 223 SANFORD.**

**6:30 PM BUFFET DINNER HONORING GUEST SPEAKERS PAUL NIEHAUS SPEAKER AND MICHAEL FAYE, AS WELL AS FIRG SPEAKER RIP RAPSON, AT PROFESSOR FLEISHMAN'S HOUSE. ALL MEMBERS OF THE CLASS WILL BE INVITED. BE SURE TO RSVP TO CASSIE LEWIS AT [cassie.lewis@duke.edu](mailto:cassie.lewis@duke.edu)**

**Topic for Paper Due on Sunday, February 9, 4:00 p.m.:** Describe any of your activities that you regard as philanthropic or charitable, and analyze your motives for undertaking them. Describe how, at what age and at whose initiative you decided to get started doing them? Be precise about what you do, have done, or plan to do and why. Do you have any rules for your own guidance about whether to donate funds or volunteer time, and, if so, how do you decide how much? If not, how do you decide? Do you wait for someone to ask you, or do you seek out opportunities? Do you prefer to be asked? Describe the ways in which you think you have benefited by engaging in such giving and volunteering activities.

**TERM PAPER: If you have not yet obtained approval for the topic of your term paper, please do so this week. The last date when Professor Fleishman will authorize term paper topics is March 5th.**

**Study Questions:**

1. What does "philanthropy" mean?
2. What does the public response to the September 11 terrorism say about philanthropic motivation?
3. Why do we become involved in the lives of others, in mutual help activities, in altruistic community undertakings?
4. How do giving and volunteering vary with respect to racial, religious, ethnic and socioeconomic status? How might you account for the differences?
5. Why do people give money or donate time? Why do they say that they give? Why should they give? What justifications do non-givers use, and how persuasive are they? What do religion, philosophy, and psychology have to say about these questions?
6. How do different classes, races, ethnic and religious groups benefit differentially from different sub-sectors of the not-for-profit sector?
7. Consider how life events such as one's illness or the illness of a loved one attract individuals to give or raise money for various causes (e.g., disease research). Similarly, consider the notion of "give back," which attracts alumni to give to their institutions. What other such circumstances are particularly powerful incentives to give and raise money? Why?
8. What instinctive and learned motivations exist for giving? From where do these motivations come? To what extent, if any, can such activities reasonably be regarded as self-interested?
9. How much should someone give -- a minimum percentage of income or of accumulated wealth, or only as the spirit moves them?
10. What is your framework for thinking about whether or not to give to beggars who approach you on the street?
11. Do you utilize social media in your philanthropic pursuits? If so, how and how successful have they been?

**Required Readings (93 pages):**

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## **VI. WEDNESDAY, FEBRUARY 19, 2014—RATIONALES FOR TAX EXEMPTION OF FOUNDATIONS AND VOLUNTARY ORGANIZATIONS; GOVERNMENT EXACTIONS IN EXCHANGE FOR TAX EXEMPTION**

**Topic for Paper Due on Sunday, February 16, 4:00 p.m.:** Analyze the required readings in Fishman/Schwarz. In particular, consider the several theories that justify tax exemption and assess their persuasiveness. Consider how those theories apply to the National Collegiate Athletic Association, Bob Jones University, and other organizations. In that connection, discuss the *Sound Health Association v. Commissioner* (p. 328-329), *IHC Health Plans, Inc. v. Commissioner* (p.330-337), *Bob Jones University v. United States* (p.370-389) and *Holy Spirit Association v. Tax Commission* (p.416-427) cases. Should “charity” be construed more narrowly to aid the poor or, alternatively, should organizations aiding the poor enjoy more favorable tax treatment? Should charity be construed as broadly as it is to include gifts such as the maintenance of pets or other non-human benefiting purposes? And, if so, where would you draw the line between appropriate and inappropriate purposes of tax-exemption?

### **Study Questions:**

1. What are the policy objectives of legislation establishing tax-exemption of organizations and the deductibility of gifts to them?
2. How persuasive are these policy objectives?
3. What burdens, if any, ought government to be reasonably able to impose by way of reporting requirements, taxes, financial pay-out requirements, restrictions on lobbying, or other burdens?
4. Should the tax exemption for religious activities extend to organizations which advocate discrimination on the basis of race, anti-Semitism, anti-Islam, or other widely disfavored positions? Where should society draw the line?
5. How do we decide what type of “religious” organizations are entitled to charitable deductions? Issues have been raised relating to voodoo, Wicca and other “non-traditional religions.” Is there any definition of what a “religion” is that has ‘bite’?
6. In thinking about what an appropriate charitable purpose is under law, how would you define the limits? Are the limits appropriate? Refer to the Leona Helmsley and Henry George articles.

### **Required Readings (131 pages):**

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- Jonathan Weisman, “I.R.S. Scrutiny Went Beyond the Political,” *New York Times*, 07/04/2013 (4)

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- Peter Panepento, "Foundations Press Congress on Rules for Endowments," *Chronicle of Philanthropy*, 9/20/07, (1).

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- Victor Fleisher, "Congress's Role in the I.R.S. Focus on Conservative Groups," *New York Times*, 05/20/2013 (2)
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- John Colombo, "The NCAA, Tax Exemption and College Athletics," University of Illinois College of Law, 1/26/09.

**VII. WEDNESDAY, FEBRUARY 26, 2014 – THE NITTY GRITTY OF TAX EXEMPTIONS AND DEDUCTIBILITY; EFFECTIVENESS OF TAX POLICY IN INCREASING/DECREASING DONATIONS**

**4:30 P.M. FIRG SPEAKER DAVID BLUMENTHAL, MD, PRESIDENT AND CEO, THE COMMONWEALTH FUND; WWW.COMMONWEALTHFUND.ORG; RHODES CONFERENCE CENTER, 223 SANFORD.**

**Topic for paper Due on Sunday, February 23, 4:00pm:** Analyze and synthesize the required readings in Fishman/Schwarz, especially the major cases (*Church of Scientology* [p.446-454], *United Cancer Council* [p.249-256; 460-461], *Sklar* [p. 845-856], *Hernandez* [p.856-858], *Blake* [p. 868-873], and *Winokur* [p.881-886]).

**Study Questions:**

1. How would you restructure tax preferences to provide incentives for greater charitable giving without unduly benefiting the wealthy at the expense of the less-well-off?
2. How should we view tax-reduction-motivated charitable schemes proposed by financial advisors and salesmen?
3. What role should the needs of prospective recipients play in allocating charitable resources, as opposed to the goals of the donors?
4. Absent tax preferences, would foundations exist? Would individuals donate? To what extent should Congress stipulate a maximum term of years for the life of a foundation? Are there reasons a foundation should be limited in life while all other charitable organizations are permitted to exist in perpetuity?
5. When and why did the United States, either in federal legislation or in laws enacted by state governments, institute tax deductibility for charitable gifts?
6. It has been argued that both tax-exemption and tax-deductibility are forms of public subsidy. Do you agree? What are the arguments for and against such tax incentives for socially beneficial activities? What are the arguments for and against offering citizens leverage over the resources of others as an incentive to them to give their own resources to those purposes that serve the public interest?
7. How valid is the argument that, absent such an offer of leverage, individuals would not contribute private money to the same extent and thereby make society poorer by augmenting expenditures of tax revenues for the same purposes? What empirical data are relevant?
8. Is the true effect of tax deductions for charitable gifts to force some Americans to pay slightly higher taxes in order to subsidize the charitable giving of others? Why let some individuals determine how to spend the money of other individuals?
9. Would America be better off if citizens could not take tax deductions for charitable giving, preventing Congress from spending the tax savings on whatever it regards as the most pressing ills? Which kinds of institutions would suffer most from such a change?
10. What are the policy purposes of the estate tax? Should it be permanently repealed, and if not, why?
11. In view of the growing consensus that the cumulative national debt needs to be substantially reduced, we may well be faced with a situation in which tax expenditures are significantly reduced. How big of a threat is this to America's non-profit sector?

**Required Readings (156 pages):**

- Fishman/Schwarz p. 249-256; 446-454; 460-461; 703-734 828-858, 868-873, 881-886 (94)
- David Kocieniewski, "A Family's Billions, Artfully Sheltered," *New York Times*, 11/26/11, (8)
- Roger Colinvaux, Brian Galle, and Eugene Steuerle, "Evaluating the Charitable Deduction and Proposed Reforms," *Urban Institute*, June 2012 (21)
- Jill Lepore, "Tax Time: Why We Pay" *The New Yorker*, 11/26/2012, (6)
- "Who Claims Itemized Deductions and How Much Do They Claim," *Urban Institute / Brookings Institute*, 10/3/12(8)
- C. Eugene Steuerle, "Tax Reform and Charitable Contributions," *Testimony Before the Committee on Ways and Means, U.S. House of Representatives Hearing on Tax Reform and Charitable Contributions*, 02/14/2013 (9)
- Staff, "The Church of Scientology: In search of answers," *The Economist*, 02/09/2013 (2)
- Stephanie Strom, "Big Gifts, Tax Breaks, and a Debate on Charity," *New York Times*, 09/06/2007 (6)

**Recommended Readings:**

- "Defending The Charitable Deduction," *Reid and Riege, P.C.* Spring 2012, (4)
- Richard Schmalbeck, "Gifts and The Income Tax – An Enduring Puzzle," *Law and Contemporary Problems*, Vol. 73:63, Winter 2010,p.63-93. (31)
- Stephanie Strom, "In Hurricane Tax Package, a Boon for Wealthy Donors," *New York Times*, 10/27/05, A23. (1)

- Joseph Weber, "Deductibles: A Faith-Based Alternative to Tuition," *Business Week*, 8/1/05, (1)
- Ashlea Ebeling, "Stupid Tax Tricks," *Forbes*, 11/1/04, 86-87. (2)
- Elizabeth Schwinn, "IRS Gives Approval for New Kind of Gift," *Chronicle of Philanthropy*, 10/14/04., (1)
- "Gift of Violins Strikes a Sour Note," *News and Observer*, 5/2/04. (1)
- Daniel Altman, "If the I.R.S. Gets Less, Does Charity Get More?" *New York Times*, 5/8/05, B6. (1)
- Joseph Cordes, et. al., "Extending the Charitable Deduction to Nonitemizers: Policy Issues and Options," Urban Institute: Charting Civil Society, May 2000, (7)
- Diana Aviv, Memorandum Re: Congressional Reform, 11/18/05. (2)
- Anne Tergesen, "Tapping a School's Investment Savvy," *Business Week*, 7/23/07, (1)
- Dominic Kennedy, "Scientologists Set to Cash in on Tax Break," *Times UK*, 6/23/07. (2)
- Sally Beatty, "Survey Finds Giving by Wealthy Largely Immune to Tax Changes," *Wall Street Journal*, 10/26/2006, D3. (1)
- David Nasaw, "The 'Giving' Season," *The Nation*, 12/6/2010. (3)

### For Further Reading:

#### Private Benefit

- "Philanthropy, Fannie Mae Style," *Business Week*, 4/2/07. (2)
- Andrew Taylor, "Rep. Mollohan's Pet Projects Rejected," *Associated Press*, 4/2/07. (2)

#### Estate Tax Debate

- Diana Aviv and Robert Greenstein, "A Compromise on the Estate Tax," *Chronicle of Philanthropy*, 11/11/04. (4)
- Stephanie Strom, "Charities Are Silent on Loss of Estate Tax," *New York Times*, 4/24/05. (2)

#### Unrelated Business Income Tax

- Evelyn Brody and Joseph Cordes, "The Unrelated Business Income Tax: All Bark and No Bite?" Urban Institute, 4/20/01. (3)

#### Tax Credits for Contributions to Private School Scholarships

- Ben Gose, "State Tax Credits Let Donors Give Big for Much Less," *The Chronicle of Philanthropy*, 11/15/12, (4)
- Stephanie Saul, "Public Money Finds Back Door to Private Schools," *New York Times*, 5/21/12, (12)
- Robert Shiller, "Taxes Needn't Discourage Philanthropy," *New York Times*, 7/28/12, (3)

#### Endowing Your Annual Gift

- Maayan Jaffe, "Endowment Gifts Keep on Giving," *Baltimore Jewish Times*, 11/27/12, (3)

#### Topical Legislative Activity

- Peter Panepento, "Foundations Press Congress to Change Tax Rules for Endowments," *The Chronicle of Philanthropy*, 9/6/07.
- Jonathan D. Glater, "New Ties Found to Link Lenders and Colleges," *New York Times*, 9/5/07.
- Daniel J. Wakin, "Chairman's Kin Hired as Architect for Carnegie," *New York Times*, 10/11/07.
- *Provisions of Interest to Charitable Organizations and their Donors in H.R. 4, the Pension Protection Act of 2006*, Simpson Thatcher & Bartlett, LLP, 8/9/2006, 1-16.
- *New Charitable Giving Incentives and Exempt Organization Reforms: Pension Protection Act of 2006*, Ropes & Gray, 8/14/2006, 1-8.
- "Commentary on Current Philanthropic Issues," *NCRP Bulletin*, May 2003, (5 pages).
- Jacqueline L. Salmon, "Foundations Anxious Over Bill on Giving," *Washington Post*, 7/8/03, A3 (3 pages).
- Steve Levin, "Foundations Contend Proposal to Increase Giving is too Costly," *Pittsburgh Post-Gazette*, 6/9/03, (4 pages).
- Stephanie Strom, "Foundations Roiled by Measure to Spur Increase in Charity," *New York Times*, 6/19/03, (3 pages).
- Editorial Staff, "How Expensive Should Philanthropy Be?" *San Jose Mercury News*, 6/2/03, (2 pages).
- Editorial Staff, "The Life and Death of Foundations," *New York Times*, 6/8/03, (1 page).
- Memo to Members, *Independent Sector*, June 2002.
- Memo to Members, *Independent Sector*, December 2002.

#### Pension Protection Act of 2006

- “The Pension Protection Act of 2006: Detailed Summary of Charitable Provisions,” U.S. House Committee on Ways and Means, 7/28/2006, 1-4.
- Ashlea Ebeling, “The New Rules of Giving,” *Forbes*, 12/11/2006, 218-20.

#### History of Estate Tax Repeal

- “The Estate Tax and Charitable Giving,” Congressional Budget Office, July 2004, 1-10.
- David Cay Johnston, “Coping With a Tax That Has Nine Lives,” *New York Times*, 6/24/01, B1.
- Patrick Rooney and Eugene Tempel, “Repeal of the Estate Tax: Its Impact on Philanthropy,” Draft Paper, 11/1/00, a2-15.
- Thomas Billitteri, “A Taxing Dilemma,” *Chronicle of Philanthropy*, 7/27/00, 1, 17-19.
- David Joulfaian, “The Federal Estate and Gift Tax: Description, Profile of Taxpayers, and Economic Consequences,” *U.S. Department of the Treasury OTA Paper 80*, 12/98, 25-27.
- Joseph Cordes and C. Eugene Steuerle, “Death Taxes and Charity,” *Foundation News & Commentary*, 9-10/99, 36-40.

#### Gifts of Property (Including Stock) Rather Than Cash

- Pablo Eisenberg, “Congress Should End Special Tax Breaks for Art Gifts,” *Chronicle of Philanthropy*, 10/12/2006, 35.
- Evelyn Brody, ed., Property-Tax Exemption for Charities, Urban Institute Press, 2002.
- Carrie Coolidge, “The Price Is Right,” *Forbes*, 6/12/00, 402-404.
- Joan Oleck, “When Giving Means Getting Back,” *Business Week*, 4/10/00, 232.
- Robert Barker, “Lending A Helping Hand—With Stocks,” *Business Week*, 11/15/99, 292, 294.
- Council on Foundations, “170(e)(5) Is Permanent! (Finally!),” *Washington Update*, 10/23/98, 1-4.
- Daniel J. Wakin, “Chairman’s Kin Hired as Architect for Carnegie,” *New York Times*, 10/11/07

#### Charitable Deduction

- “IRS Confirms Deductibility of Contributions to Domestic Disregarded Entities,” *Caplin & Drysdale*, 8/3/12, (3)
- David Barstow and Diana B. Henriques, “I.R.S. Makes an Exception on Terror Aid,” *New York Times*, 11/17/01, B1.
- Charles Clotfelter, “The Economics of Giving,” in The National Commission on Philanthropy and Civic Renewal, Giving Better/Giving Smarter Working Papers, 1997, 31-51.
- David Cay Johnson, “Tax Study: The Richer, the Stingier” *News and Observer*, 12/19/05, 5A.
- Carol J. De Vita and Eric C. Twombly, “Charitable Tax Credits: Boon or Bust for Nonprofits?” *Charting Civil Society*, July 2004.
- Elizabeth Schwinn, “Write-Offs,” *Chronicle of Philanthropy*, 6/22/04.
- Adam Yarmolinsky, “The Charitable Deduction: Subsidy or Limitation?” *NVSQ*, 3/00, 173-178.
- C. Eugene Steuerle and Martin Sullivan, “Toward More Simple and Effective Giving: Reforming the Tax Rules for Charitable Contributions and Charitable Organizations,” *12 American Journal of Tax Policy* 399-447 (1995).
- Christopher Toppe, et. al., Deducting Generosity: The Effect of Charitable Tax Incentives on Giving, Washington: Independent Sector, 1-25.
- Diana B. Henriques and Leslie Eaton, “Once and Future Issue: Subtracting Donations From Damage Awards,” *New York Times*, 11/18/01, A33.

#### Tax-Savvy Charitable Strategies and Proposals

- Deborah L. Jacobs, “Donations that Suit the Taxman,” *Business Week*, 2/20/2006, (1)
- “SWRI Extended Report: 2003 Survey of Planned Giving Vehicles,” *Wealth and the Commonwealth*, 7/10/03.
- “The Strategic Uses of Philanthropy,” *The Bernstein Journal*, Spring 2004, 9-13.
- Ashlea Ebeling, “Designs for Giving,” *Forbes*, 10/29/01, 66-68.
- Ashlea Ebeling, “The Charitable Split,” *Forbes*, 11/24/03, 257-259.
- Survey of Planned Giving Vehicles, Social Welfare Research Institute, June 2003.
- John J. Havens, et. al., 2003 Survey of Planned Giving Vehicles, Social Welfare Research Institute, June 2003.
- “Bequests and Other Forms of Planned Giving,” *Giving USA Update*, Issue 2, 2002.
- Jennifer Pellet, Randy Myers, and C.J. Prince, “It’s Your Money,” *Chief Executive*, 10/1/99, 68-75.
- Janet Novack, “The New Giving Game,” *Forbes*, 9/20/99, 180-195.
- Council on Foundations, “IRA Rollover Survives,” *Washington Update*, 8/13/99, 1-3.
- Brigid McMenemy, “Trust Me: The IRS Drops Its Hard Line On Trusts,” *Forbes*, 12/27/99, 234.
- Jennifer Moore and Grant Williams, “North Carolina Beefs Up Charitable Tax Break,” *Chronicle of Philanthropy*,

11/5/98, 75.

- Ashlea Ebeling, "Going, Going, Deducted!" *Forbes*, 9/7/98, 228-229.
- James Allen, Jr., "The Charitable Remainder Trust As An Executive Benefit Tool," *Journal of Financial Service Professionals*, 7/1/99, 34-50.
- Jonathan D. Glater, "New Ties Found to Link Lenders and Colleges," *New York Times*, 9/5/07.

#### Supporting Organizations

- Thomas H. Pollack and Jonathan D. Dunford, "The Scope and Activities of 501(c)(3) Supporting Organizations," Urban Institute: National Center for Charitable Statistics, 5/31/2005, 1-17.
- Alyssa A. DiRusso, "Supporting the Supporting Organization: The Potential and Exploitation of 509(a)(3) Charities," 39 *Indiana Law Review* 207, 207-52 (2006).

#### Restrictions on Foundation International Grant-Making

- Garry W. Jenkins, "Soft Power, Strategic Security and International Philanthropy," 85 N.C. L. Rev. 773-846 (2007).

#### IRS-Related Issues

- "IRS Releases Study on Charitable Trusts," *Chronicle of Philanthropy*, 5/3/01. (1)
- Elizabeth Schwinn, "IRS Approves Unusual Investment Option," *Chronicle of Philanthropy*, 11/9/2006, 31.
- William Claiborne, "Supremacist Group's Tax Status Due Review," *Washington Post*, 7/13/99, A8.
- Grant Williams, "A Legal Setback for IRS," *Chronicle of Philanthropy*, 2/25/99, 37, 39-40.
- "Qualifying for Public Charity Status: The Section 170(b)(1)(A)(vi) and 509(a)(1) Test and the Section 509(a)(2) Test," Silk, Adler & Colvin, 6/23/97, 1-12.

#### Other Tax-Related Issues

- Sharon Reier, "When Establishing Charities, a Warm Heart Calls for a Cool Head," *The Herald International Tribune*, 5/26/01, (1)
- Mary Engel, Hospital's Charity Work Hard to Assess," *Los Angeles Times*, 12/14/07. (1)
- Diana B. Henriques, "Religion-Based Tax Breaks: Housing to Paychecks to Books," *New York Times*, 10/11/2006, A1.
- "Memorandum: Disaster Tax Relief for Individuals and Charities," Ropes & Gray, 1/24/02.
- Gerald Auten, Charles Clotfelter, and Richard Schmalbeck, "Taxes and Philanthropy Among The Wealthy," in Joel Slemrod, ed., Does Atlas Shrug? The Economic Consequences of Taxing The Rich, Harvard University Press, 2000.
- Eleanor Brown, "Taxes and Charitable Giving: Is There a New Conventional Wisdom?" Urban Institute: Seminar on Emerging Issues in Philanthropy, 4/29/99, 153-158.
- Evelyn Brody, "Charities in Tax Reform: Threats To Subsidies Overt and Covert," Draft Paper, 9/22/98, 1-101.
- Evelyn Brody, "Hocking The Halo: Implications of the Charities' Winning Briefs in *Camps Newfoundland / Owatonna, Inc.*," 27 *Stetson Law Review* 433-456 (1997).
- Harvy Lipman, "Tax Data Show Utah Donors Are Most Generous to Charitable Groups," *Chronicle of Philanthropy*, 8/8/02, 11.



**VIII. WEDNESDAY, MARCH 5, 2014– DEFINING THE NOT-FOR-PROFIT SECTOR: SIMILARITIES, DIFFERENCES, FUZZY BOUNDARIES AND COMPARATIVE ADVANTAGES AMONG THE SECTORS**

**SPEAKER TO CLASS: JACOB HAROLD, 1999 DUKE ALUM, PRESIDENT AND CEO OF GUIDESTAR; WWW.GUIDESTAR.ORG**

**6:00 P.M. BUFFET DINNER AT HOME OF PROFESSOR FLEISHMAN HONORING JACOB HAROLD; ALL MEMBERS OF THE CLASS WILL BE INVITED. BE SURE TO RSVP TO CASSIE LEWIS AT CASSIE.LEWIS@DUKE.EDU**

**Topic for Paper Due on Sunday, March 2, 4:00 p.m.:** Analyze and criticize the required Jim Collins and Michael Novak readings for today. What do you see as the distinctive strengths and weaknesses, respectively, of the for-profit sector, the not-for-profit sector, and the public sector? What does your analysis suggest as reasonable possibilities for cooperative cross-sector problem-solving which leverage the strengths and avoid the weaknesses of each sector?

**Study Questions:**

1. Assess society's allocation of functional missions to one sector, another sector, or several sectors jointly. Give reasons for your views.
2. How do the component fields of the not-for-profit sector differ from one another in the social and individual needs they fill, in their forms of organization and governance, and in their means of support?
3. What characteristics define the separate sectors, and distinguish one from another?
4. To what extent is it possible to identify a form of activity which is peculiarly appropriate to one or another sector?
5. Can you develop a theory that explains why particular kinds of activity are better located in the not-for-profit sector as opposed to the public sector? The for-profit sector?
6. Do differential salary levels among the not-for-profit, for-profit and public sectors help to illuminate the appropriate boundaries among the sectors?

**Required Readings (169 pages):**

**SPEAKER REQUIRED READINGS:**

- Davina Drabkin and William Meehan, "GuideStar Case" *Stanford GSB*, 01/02/13 (18)
- Jacob Harold, "Learning from the farmer's market," *Alliance Magazine*. 03/01/2009 (1)
- Staff, "Data & Information Flow in the Social Sector (Infographic)," *GuideStar*. (1)
- Staff, "GuideStar 2018: Building the Scaffolding of Social Change (Draft #18, Internal Strategic Plan), *GuideStar*. (31)
- Staff, "Markets for Good: Upgrading the Information Infrastructure for Social Change," *Gates Foundation/Hewlett Foundation/LiquidNet*, Fall 2012 (15)

**CLASS REQUIRED READINGS:**

- Collins, Good to Great and the Social Sectors: A Monograph to Accompany Good to Great. Jim Collins, 2005. 1-35 (35)
- Michael Novak, "An Essay on 'Public' and 'Private'," in Robert Payton et al., Philanthropy: Four Views, Transaction Books, 1988, 11-24 (15)
- Ben Gose, "From Mission to Movement," *Chronicle of Philanthropy*, 10/4/07, (7)
- Elizabeth Boris, "Contracts and Grants Between Human Service Nonprofits and Governments," The Urban Institute, 10/1/2010 (7)
- Carol J. De Vita and Pho Palmer, "Church-State Partnerships: Some Reflections from Washington, D.C.," Urban Institute: Charting Civil Society, September 2003, (5)
- Alan Abramson, "How Nonprofits, For-Profits, and Government Are Pushing Sector Boundaries," *Snapshots, The Aspen Institute*, May/June 2003, (3)
- Chester Finn, "One of You, Please Get Out of the Bed," *The Education Gadfly*, 9/3/2009 (3)
- Richard C. Morais, "The New Activist Givers," *Forbes*, 6/1/07 (3)
- Sarah Murray, "Social Entrepreneurship: Dividing Lines Are Becoming Blurred," *Financial Times*, 7/5/07, (3)
- William Foster and Gail Fine, "How Nonprofits Get Really Big," *Stanford Social Innovation Review*, Spring 2007, (7)
- Joseph Schumpeter, "Profiting from Non-Profits," *The Economist*, 7/15/2010, (2)
- Takaaki Iwabu, "McCrorry plan enlists private sector to aid NC development," *News and Observer*, 04/08/13 (3)

**Recommended Readings:**

- Laura D' Andrea Tyson, "Good Works—With A Business Plan," *Business Week*, 5/3/04. (1)

- William C. Symonds, "Leaving Harvard Greener," *Business Week*, 1/24/05. (1)
- John Markoff, "Mozilla Plans Faster Growth for its Browser," *New York Times*, 8/3/05. (1).
- Daniel Gross, "Philanthropy Smackdown," *Slate Magazine*, 9/18/2006, (2)
- Jacob Harold, "First 32 Weekly Notes at Guide Star," *Personal Correspondence*. (70)

#### Nonprofit-Public Sector Relations

- Arthur C. Brooks, "Charity for Charities," *Wall Street Journal*, 12/28/2006, (1)
- Justin Pope, "Colleges Resist For-Profit Schools," *Washington Post*, 5/8/05, (1)

#### Case Studies:

- Stephen Greene, "Big Fund Hits a Nerve in Vermont," *Chronicle of Philanthropy*, 4/22/99, (3)

#### Social Entrepreneurship

- Ryan J. Donmoyer and Alison Fitzgerald, "Robin Hood Nest Egg Draws Scrutiny From Congress," *Bloomberg*, 7/15/07 (3)

#### Nonprofit—For-Profit Sector Relations

- Stephanie Strom, "Rules Sought on Retailers' Ties to Charities," *New York Times*, 12/16/07, (2)
- Robert O'Harrow Jr., "Air Force Arranged No-Work Contract," *Washington Post*, 10/1/07. (4)
- Allen Grossman, "Philanthropic Social Capital Markets: Performance Driven Philanthropy," Draft, Harvard Business School, (12)
- Judith Sidel, "Dimensions of Interdependence: The State and Voluntary Sector Relationship," *NVSQ*, Winter 1989, pp. 335-347 (13)
- Andrew Jack, "Philanthropy: More May Not Be Better," *Financial Times*, 7/5/07 (2)
- Andrew Jack, "Corporate Citizenship: More Than the Sum of the Parts," *Financial Times*, 7/5/07 (3)
- Ross Tieman, "Good Causes: Building Capacity Is Still The Challenge," *Financial Times*, 7/5/07 (3)
- Sarah Murray, "NGO Evolution: Charities Look To Businesses," *Financial Times*, 7/5/07 (3)
- Roger Lohmann, "And Lettuce is Nonanimal: Toward a Positive Economics of Voluntary Action," *NVSQ*, Winter 1989, pp. 367-383 (17)

#### Profit-Oriented Behavior by Nonprofits

- Sharon Begley, "Why Nonprofits Fund For-Profit Companies Doing Drug Research," *Wall Street Journal*, 1/26/07. (2)
- Ben Gose, "Supporters Say Venture Philanthropy Still Thrives, Even If Reach is Limited," *Chronicle of Philanthropy*, 10/14/04, (3)
- Ben Gose, "New Report Details the Pros and Cons of Hands-On Philanthropy," *Chronicle of Philanthropy*, 6/24/04. (2)
- Pablo Eisenberg, "The Public Loses Out When Charities Become Too Businesslike," *Chronicle of Philanthropy*, 6/10/04, (2)
- Pagan Kennedy, "Careers: The Enlightened M.B.A.," *New York Times*, 11/7/04. (3)
- Robert D. Hof, "Doing Good—And Making Money, Too," *Business Week*, 5/5/04, (1)
- James E. Austin, et. al., "Capitalizing on Convergence," *Stanford Social Innovation Review*, Vol. 5, No. 1 (Winter 2007), (8)
- William Foster and Jeffrey Bradach, "Should Nonprofits Seek Profits?" *Harvard Business Review*, February 2005, (8)
- Stephanie Strom, "What's Wrong with Profit," *New York Times*, 11/13/2006, (5)
- Lavonne Kuykendall, "Insurers Find Religion, and Profit," *Wall Street Journal*, 1/7/2006, (2)

#### For Further Reading:

##### Privatization of Human Services

- Edward Skloot, "Privatization, Competition and the Future of Human Services," Address from Conference of the Council on Foundations, 4/21/99, (11)

- Eleanor Brown, "Assessing the Value of Volunteer Activity," *NVSQ*, 3/99, 3-17.
- Katherine O'Regan and Sharon Oster, "Nonprofit and For-Profit Partnerships: Rationale and Challenges of Cross-Sector Contracting," *NVSQ*, Supplement 2000, 120-140.
- Peter Frumkin and Alice Andre-Clark, "When Missions, Markets, and Politics Collide: Values and Strategy in the Nonprofit Human Services," *NVSQ*, Supplement 2000, 141-163.
- "Study Finds Faults For-Profit Dialysis," *New York Times*, 11/20/02, A8.
- Jacques Steinberg, "For-Profit School Venture Has Yet to Turn a Profit," *New York Times*, 4/8/02, A16.
- Joseph T. Hallinan, "Locking in Returns: A Charity Lends Prison World Hand on Off-Books Deals," *Dow Jones Interactive*, 5/1/2002, A1 (6 pages).
- Charles Haddad, "Private Prisons Don't Work," *Business Week*, 9/11/00, 95, 96, 98.
- Deanna Bellandi, "Conversion Hardly Means A Thing: New Study Says Community Benefits Are Not Threatened in Not-for-profits' Switch to For-Profit," *Modern Healthcare*, 9/20/99, 19-21.
- Domenica Marchetti, "With \$13-Billion in Assets, 'Conversion' Health Foundations Gain Influence," *Chronicle of Philanthropy*, 4/8/99, 12.
- Wire Reports, "Troubles Cited With For-Profit Dialysis Sites," *News & Observer*, 11/25/99, 1A, 21A.
- Denise Grady, "Treatment of Kidney Failure Is Flawed, 2 Studies Suggest," *New York Times*, 11/25/99, A18.
- Barbara Shumannfang, "Lock Out Free-Market Detention," *News & Observer*, 11/23/99, 19A.
- Gordon C. Winston, "For-Profit Higher Education: Godzilla or Chicken Little?" *Change*, Jan/Feb 1999, 13-19.
- Jon Jeter, "Firms Line Up in Maryland to Cash in on Welfare Shift," *Washington Post*, 5/27/96, A1, A4.

#### For-Profit Conduct By Not-for-Profit Organizations

- Community Wealth Ventures, Inc., Powering Social Change, 2003.
- Michael I. Sanders, Joint Ventures Involving Tax-Exempt Organizations, John Wiley & Sons, Inc., 2007.
- Jennifer Merritt, "A Syllabus Way Beyond the SATs," *Business Week*, 4/26/04, 70-72.
- John Rockwell, "For Profit or Not, It's All Showbiz," *New York Times*, 9/22/02, 2, 9.
- Stephanie Strom, "Nonprofit Groups Reach For Profits on the Side," *New York Times*, 3/17/02, 32.
- Vicki Lee Parker, "Nonprofit Buys Room to Expand," *News & Observer*, 8/7/02, 3D.
- Reed Abelson, "Demand, but No Capital, at Nonprofit Hospitals," *New York Times*, 6/21/02, C1, C12.
- Janne Gallagher, "Peddling Products: The Need to Limit Commercial Behavior by Nonprofit Organizations," Conference on Competing Visions: The Nonprofit Sector in the Twenty-First Century, 7/95, 49-72.
- Diane Brady, "When Nonprofits Go After Profits," *Business Week*, 6/26/00, 173, 174, 178.
- Paul Klebnikov, "Museums, Inc.," *Forbes*, 1/8/01, 69-72.
- John Deckop and Carol Cirka, "The Risk and Reward of a Double-Edged Sword: Effects of a Merit Pay Program on Intrinsic Motivation," *NVSQ*, 9/00, 400-418.
- Robyn Meredith, "Charity Group To Foreclose On 14 Homes," *New York Times*, 12/28/99, A14.
- Walter Goodman, "Perils of Nonprofit Profits: Et Tu, Tinky Winky?" *New York Times*, 4/23/98, B5.
- Newton Minow and Craig LaMay, "Public Television Needs More Than Virtue," *New York Times*, 1/11/98, B9.
- Staff, "Congress Orders IRS Review of Policies on Health Clubs," *Chronicle of Philanthropy*, 11/5/98, 75.
- Eugene Steuerle, "When Nonprofits Conduct Exempt Activities as Taxable Enterprises," *Urban Institute*, 5/25/01
- Leigh Gallagher, "Prairie Home Commercial," *Forbes*, 8/6/01, 54-55.
- Julian E. Barnes, "Cloning Colonial Williamsburg," *New York Times*, 6/13/01, C1.
- The Hauser Center, "When Exempt Organizations Conduct Exempt Activities as Taxable Enterprises," *Materials from Seminar on Emerging Issues in Philanthropy*, Harvard University, 11/30/00.
- Joshua Wallack, "Must Social-Purpose Businesses Break Even?" Report for Harvard Business School Professor M. Diane Burton, Spring 1999, 1-35.
- Steven Smith and Michael Lipsky, Nonprofits For Hire. Harvard University Press, 1993.
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**IX. WEDNESDAY, MARCH 19, 2014 – HYBRIDIZATION I: VENTURE PHILANTHROPY, SOCIAL ENTREPRENEURSHIP, MISSION INVESTING AND TRI-SECTORAL SOLUTIONS TO PUBLIC PROBLEMS (PART I)**

**Study Questions for both Hybridization I & II:**

1. Consider the many examples of hybrid for profit/not-for-profit institutions formed in the last 10 years. For example, the Omidyar Network makes grants to not-for-profits and supports for profit organizations that have socially orientated missions. Google also set up a billion dollar fund promoting social change, of which only 10% is allocated for not-for-profits. How far should this hybridization movement go? Are there any real boundaries between sectors?
2. Consider the many different forms of giving philanthropy: individual giving; giving to institutions such as churches, universities, United Ways, establishing private foundations; establishing family foundations; establishing donor-advised funds at financial institutions such as Fidelity; corporate giving either directly or through corporate foundations; “corporate social investments,” which are profit-oriented but are aimed to solve social problems; and community foundations. How do community foundations differ from private foundations and from United Ways?
3. How does corporate philanthropy differ from individual and foundation philanthropy?
4. Should corporations be permitted to make charitable contributions with what is essentially stockholder's money? Consider the differences, if any, between corporate foundations, philanthropic foundations, community foundations, and individual donors in this regard.
5. What are the arguments supporting and opposing the increase of foundation pay-out rates?
6. What right do unelectable, unaccountable foundations have to finance politically charged authors? What difference does it make whether or not foundations are accountable? Must foundations be accountable to justify supporting radical ideas of the political right- or left- wings?
7. Are there reasons why the Pew Charitable Trusts should not be permitted to transform itself from a group of charitable trusts, operating like a private foundation, into a public charity? What are the social consequences of its being permitted to do so?

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**X. WEDNESDAY, MARCH 26 2014 – HYBRIDIZATION / SOCIAL ENTREPRENEURSHIP II – NONPROFIT CAPITAL MARKETS AND HUMAN RESOURCES (PART II). ALSO, THE GROWING MOVEMENT TOWARDS FOUNDATION SPENDDOWN**

**SPEAKER TO CLASS—FRED KRUPP, PRESIDENT AND CEO OF THE ENVIRONMENTAL DEFENSE FUND**

**4:30 P.M. FIRG SPEAKER TUESDAY, MARCH 25, FRED KRUPP; RHODES CONFERENCE CENTER, 223 SANFORD.**

**6 P.M. TUESDAY NIGHT, MARCH 25, NOTE THAT THERE WILL BE A BUFFET DINNER HONORING FRED KRUPP AT PROFESSOR FLEISHMAN'S HOME; ALL MEMBERS OF THE CLASS WILL BE INVITED. BE SURE TO RSVP TO CASSIE LEWIS AT [cassie.lewis@duke.edu](mailto:cassie.lewis@duke.edu)**

**Study Questions:**

See Hybridization I

**Required Readings (90 pages):**

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- Bill Shore, Darell Hammond, and Amy Celep, "When Good Is Not Good Enough" *Stanford Social Innovation Review*, Fall 2013, (7)
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**Recommended Readings:**

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- Daniel Gross, "Fighting Poverty with \$2-a-Day Jobs," *New York Times*, 7/16/2006, (2).
- Victoria Murphy Barret, "Doing Well, Doing Good," *Forbes*, 4/23/07, (2)
- Alison Damast, "Narrowing the Nonprofit Talent Gap," *Business Week*, 8/11/08, (2)
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Social Problems,” *Social Entrepreneurship and Government*, 12/17/07, (58)

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#### Spreading Technologies as Accountability Mechanisms

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#### Perpetuity, Spending-Down, and Paying Out More than the Minimum

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- Letter to the Editor, “Foundations Should Stop Hoarding Their Assets,” *Chronicle of Philanthropy*, 11/15/07, (1)
- Amy Shiller, “When Foundations’ Days Are Numbered,” *Forward*, 11/27/12 (3)
- Mark Brown, “Littlewoods heir’s philanthropy to end after 50 years,” *The Guardian*, 12/03/2012 (3)

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#### Impact Investing:

- Dana Brakman Resier, “Benefit Corporations—A Sustainable Form of Organization,” *Wake Forest Law Review*, Fall 2011, (34)
- Kriss Deiglmeier, “When Did Philanthropy Become a Bad Word,” *Stanford Center for Social Innovation – Kriss’s Blog*, 03/08/2012, (1)
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- Johanna Mair, “Roundtable on Impact Investing,” *Stanford Social Innovation Review*, Winter 2012, (6)
- Anthony Bugg-Levine et al, “How Will We Unlock Philanthropic Capital,” *Impact Investing*, 09/13/2011, (15)
- Nancy Roob, EMCF President’s Letter: The True North Fund and the Power of Partnerships (1)
- Staff, “Proposed Regulations Providing Additional Examples of Private Foundation Program Related Investments,” *Simpson Thatcher Memorandum*, 04/19/2012 (6)
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- Nick O’Donohoe et al, “Impact Investing: An Emerging Asset Class,” *J.P. Morgan Global Research*, 11/29/2010 (96)



- “E.T. Jackson and Associates Ltd., “Accelerating Impact: Achievements, Challenges, and What’s Next in Building the Impact Investing Industry,” *Rockefeller Foundation Report*, 07/31/12, (63)
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- Steve Forbes, “Term Limits for Foundations,” *Forbes*, 7/24/2006, 27.
- John J. Miller, “Open the FloodGates,” *Wall Street Journal*, 7/7/2006, W11.
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- Aspen Institute, “Foundation Spend-Down and Perpetuity: Working Bibliography Draft,” 5/30/07.
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- John Thelin and Richard Trollinger, “Time is of the Essence: Foundations and the Policies of Limited Life and Endowment Spend-Down,” *The Aspen Institute*, 2009.

## **XI. WEDNESDAY, APRIL 2, 2014 – STRATEGY AND IMPACT MEASUREMENT**

### **Study Questions:**

1. What are some of the arguments for a wider understanding of how foundations achieve beneficial impacts on society through their grant making strategies?
2. How can such an understanding of foundation effectiveness be achieved? What are some of the ways foundations can more effectively and more persuasively tell their stories?
3. Are there political implications for effectively measuring the impact of foundations and publicizing those impacts?
4. Does the measurement of foundation impact through grant making affect the relationships between foundations and grantees?
5. To what extent does a focus on measuring impact tend to give incentives to foundations to make grants only for those efforts that are easily measurable?
6. Consider the various strategies foundations can employ in achieving their decided-upon goals. Also consider the range of tactics they can use in pursuing their strategies.

### **Required Readings (104 pages):**

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- Judith Rodin et al, "Shared Outcomes," *Stanford Social Innovation Review*, Summer 2012, (9)
- Staff, "Four Essentials For Evaluation," *Grantmakers For Effective Organizations*, 05/24/2012 (32)
- Fay Hanleybrown et al, "Channeling Change: Making Collective Impact Work," *Stanford Social Innovation Review*, Spring 2012 (8)
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- Stupski Foundation, "Strategy and Program Overview," July 2008.

## XII. WEDNESDAY, APRIL 9, 2014 - ATTAINING WIDER IMPACT ON SOCIETY THROUGH LOBBYING, ADVOCACY AND EDUCATION BY TAX-EXEMPT ORGANIZATIONS

### 4:30 P.M. FIRG SPEAKERS WEDNESDAY, APRIL 9, OLIVIA FARR AND GEORGE HATCH, BOARD OF TRUSTEES, THE JOHN MERCK FUND; RHODES CONFERENCE CENTER, 223 SANFORD.

#### Study Questions:

1. What is the rationale for limiting or barring lobbying and advocacy by tax-exempt organizations?
2. What are the similarities and differences between the treatment of lobbying expenses by organizations subject to taxes and that by tax-exempt organizations.
3. Is there a difference between advocacy by private foundations and public charities, between foundation and grant-receiving money, between donor institutions and recipient institutions?
4. What's the rationale for forbidding non-profit organizations from participating in elections involving candidates for public office?
5. In view of the Citizens United case, which allows corporations to fund and support individual candidates, is there a good reason to change the law that forbids non-profits and foundations from using their assets in a similar way? If not, why not?
6. We will focus the discussion on the rules of non-profit lobbying as well as the restrictions to engaging in political activity in view of what you have read in The Blueprint.

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- Editorial Board, "PAC Attacks in IOWA," *New York Times*, 01/03/12, (1)
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- Caroline Preston, "Philanthropy Must Do More to Influence Policy, Say Government Officials," *Chronicle of Philanthropy*, 02/13/13 (4)
- Charles Lewis, "Koch Brothers' Influence Spans Nonprofits, Government, and Business," *Chronicle of Philanthropy*, 07/14/13 (6)
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- Staff, "Corporate America's Trojan Horse in the States: The Untold Story Behind the American Legislative Exchange Council," *NRDC and Defenders of Wildlife*, 02/28/02
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- Dan Morain, "Campaigns Raise Stakes on Nonprofits," *Los Angeles Times*, 11/13/07, (4)
- Pablo Eisenberg, "Charities Should Remain Nonpolitical," *Chronicle of Philanthropy*, 6/28/07, (3)
- Peter Panepento, "Tax Lawyers Ask IRS to Clarify Election Rules for Nonprofit Groups," *Chronicle of Philanthropy*, 8/6/07, (3)
- Mike McIntire, "Even the City's Cultural Organizations Are Hiring Lobbyists Now," *New York Times*, 7/25/05, (2)
- Ruth A. Wooden, "Building Consensus, Not Partisanship," *Chronicle of Philanthropy*, 10/14/04, (2)
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- Suzanne Perry, "Campaign to Raise Issues," *Chronicle of Philanthropy*, 11/15/07, (5)

## Foundation Advocacy

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- "Corporate America's Trojan Horse in the States: The Untold Story Behind the American Legislative Exchange Council," *NRDC ALEC Report*, 2010, pp.48
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- Lester Salamon and Stephanie Gellar, "Nonprofit America: A Force for Democracy?" John Hopkins University, 2008.
- Marcia Egbert and Susan Hoechstetter, "Mission Possible: Evaluating Advocacy Grants," *Foundation News and Commentary*, 1/06.
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- Michael Selzer and Katherine Galvin, "Organized Philanthropy's Response to AIDS," *Nonprofit and Voluntary Sector Quarterly*, Vol. 20, No. 3, Fall 1991.
- "Funding Health Advocacy," *Grant Makers in Health Issue Brief*, No. 21, February 2005.
- Craig Jenkins and Robert Brulle, "Foundation Funding for Environmental Advocacy," The Aspen Institute, August 2004.
- Nikki Ortolani, "Foundation Giving and Nonprofit Advocacy," Baruch College The City University of New York, March 2006.
- James Ferris, "Foundations and Public Policymaking," University of Southern California, August 2003.

## Lobbying

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- Mark Rosenman, "Why Social-Service Groups Must Mobilize," *Chronicle of Philanthropy*, 10/16/03, (6 pages).
- Bob Smucker, "Why Lobbying is a Duty," *Chronicle of Philanthropy*, 11/13/03, (1 page).
- Thomas A. Troyer, "U.S. House of Representatives Passes Charity Grassroots Lobbying Provision," *Charity Lobbying in the Public Interest*, 9/17/03.
- Bob Smucker, "Charity Grassroots Lobbying Rules Simplified by Senate Finance Committee," *Charity Lobbying in the Public Interest*, 6/18/02.
- David Arons, et. al., "The 2002 Workshop and Retreat for Nonprofit Advocates," *Charity Lobbying in the Public Interest*.



- Kent Allen, "A Million-Dollar Ceiling, In Need Of a Lift?" *Washington Post*, 3/7/00, A15.
- Leslie Lenkowsky, "Congress: Revise Rules on Advocacy by Charities," *Chronicle of Philanthropy*, 2/25/99, 49-50.
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- M. Wheeler, "A Strategy that Pays Off," *Foundation News and Commentary*, 12/2002.
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- John Edie, "The Dobins Case: Can Congress Limit What Foundations Fund?" *Foundation News and Commentary*, 5/2002.

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- Bob Smucker and David Arons, "Important Facts About Lobbying With Foundation Grant Funds" and "Opportunities For Charities Involved in Initiatives And Referenda," *Charity Lobbying in the Public Interest Newsletter*, 4/6/00, 1-4.

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- Kent Allen, "The Foundations Of Expanded Giving," *Washington Post*, 4/4/00, A27.

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- Rob Witwer, *The Blueprint: How the Democrats Won Colorado* p.1-114, 177-204
- Roger Colinvaux, "Citizens United and the Political Speech of Charities: A Conservative Approach," Working Paper, 10/14/2010.
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- Jonathan Weisman, "Nonprofit Connects Murtha, Lobbyists," *Washington Post*, 12/25/2006, A1.
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### **XIII.FRIDAY, APRIL 18, 2014 – ACCOUNTABILITY: CHOICE-MAKING AND MANAGEMENT IN FOUNDATIONS AND NOT-FOR-PROFIT ORGANIZATIONS**

#### **Study Questions:**

1. How well-founded is the charge that most not-for-profit organizations are not accountable to anyone?
2. Are there accountability differences among subsectors in the not-for-profit sector, as well as different kinds of organizations?
3. Are foundations more or less accountable than is the press? If so, to whom are they accountable?
4. What are the mechanisms that maintain accountability in the not-for-profit sector?
5. How effective are boards of directors of not-for-profit organizations in maintaining accountability?
6. What accountability mechanisms exist for decisions about where to focus not-for-profit resources and on grants awarded to particular grantees?
7. What criteria would you use to determine whether a decision to make a grant is wise or not? Suppose the decision is not wise: what would you do about it?
8. Should the government second-guess donor decisions as to whether tax-exempt funds are spent in accordance with some public interest or public purpose requirement?
9. What, if any, ought to be the role of government with respect to ensuring accountability?
10. What other conceivable accountability-enhancing mechanisms can be invented?
11. Which organization is more easily held accountable: "donor organizations" which give away money to other non-profits or "recipient organizations" which receive those moneys?
12. What role do trustees play in ensuring accountability in universities, art museums, hospitals, local dance companies, soup kitchens, church boards?
13. What motivates one to accept (seek?) a role as a trustee? What can one say about the best and worst kinds of motivations to such ends?
14. How do the accountability responsibilities of trustees and executives differ?
15. What are the differences between general accountability questions and major criticisms of foundation behavior (e.g., the allegedly "excessive" directors' fees of the Duke Endowment and the Keck Foundation, the use of foundations as instruments to control privately held corporations, the taxation of unrelated business income, and the use of tax-exempt funds for political purposes)?
16. Can we formulate any appropriate rules for establishing salary levels for not-for-profit executives?
17. What can be done to facilitate the combination of organizations trying to achieve the same purposes? Are there lessons to be learned from the for-profit sector with respect to the encouragement of mergers as well as the discouragement of continued operations of organizations which are inefficient, ineffective or have outlived their usefulness?

\* Pick a not-for-profit organization. Use the Internet to find its 990 form and Guidestar page. Be prepared to discuss the differences and shortcomings of each.

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