

BOOKSHELF

THE FUTURE OF FOUNDATIONS

Edited by: Fritz Heimann

Background Papers for the Fortyfirst American Assembly at Arden House, Harriman, New York, November 2-5, 1972. (Englewood Cliffs, New Jersey, Prentice-Hall, Inc. 1973. v & 278 pages including Index.)

The American Assembly is a non-partisan educational forum which, since its establishment at Columbia University in 1950, has each year conducted meetings on various public policy issues confronting the government and people of the United States. The topics covered have included United State representation abroad (1956), relations between the United States and Canada (1964), the role of State Legislatures in United States politics (1966) and prison reform (1972). Each meeting calls together some sixty notable men and women for several days to discuss and consider alternatives for national policy in small, intensive study groups. At the close of these informal discussions participants adopt in plenary session a final report of findings and recommendations. The background papers for each assembly program are published in cloth and paper bound editions. Ten of the fortyfive volumes published in this way are now in their second editions.

The Future of Foundations contains the background papers to one of the programs held in 1972. The Assembly in that instance addressed itself to the problems of foundations in the United States. For the sake of the discussions which took place, "foundations" were defined as "privately managed sources of funds dedicated to public purposes". The principal concern was with foundations associated with private grant-making. The work consists of an introduction and nine papers prepared by the editor and eight other highly competent and knowledgeable people. After an opening sketch of the historical and factual perspectives of the foundation as an institution in the United States prepared by author Thomas Parrish, there are two chapters representing sides of a continuing debate over the degree to which foundations should be involved in public controversies. These were prepared by Jeffrey Hart, Professor of English at Dartmouth College, and John G. Simon, Professor of Law at Yale University. Two following chapters, one by John R. Labovitz of the American Bar Foundation project, the other by Boris I. Bittker, Sterling Professor of Law at Yale University, analyze the legal, i.e. tax law, structure governing the organization and conduct of foundations. Then there is a chapter on the relationship between private foundations and government prepared by Richard Friedmann, a Regional Director for the U.S. Department of Health, Education and Welfare. Two further chapters, one prepared by H. Thomas James, President of the Spencer Foundation of Chicago, and the other by Dr. Orville

G. Brim, Jr., who was President of the Russell Sage Foundation from 1964 to 1972, discuss the working of foundations. The book concludes with a short chapter by the editor, Fritz Heimann, Associate Corporate Counsel with the General Electric Company, which suggests perspectives for the future.

The original rationale for foundations was that they provided vehicles whereby a donor could dedicate money to a purpose in such a way as to escape taxation both of the pool of wealth so dedicated and the income it earned while yet continuing to exercise a significant measure of control over the donated assets. If a donor's contribution consisted of stock in a closely held corporation, he was able to maintain control of the corporation either by voting the stock given to the foundation or by classifying the foundation's stock as non-voting. Before the adoption of tax reforms in the United States in 1969, and certainly before the imposition of some restrictions in 1950, a donor could use a foundation as a sort of private bank. For people controlling large personal and family fortunes this offered an irresistible attraction. The primary reason for the preparation and collection of the papers now published clearly was to assess the future role of the foundation in light of the 1969 reforms which diluted that attractiveness.

With respect to tax policy, the chapter by Professor Bittker is very interesting from a Canadian viewpoint. Entitled, "Should Foundations be Third Class Charities?" Prof. Bittker's paper delves into the considerations affecting the tax treatment of foundations as compared to charities of the more active and independent type. At page 161 he summarizes the crux of the concern of government officials as follows:

The Treasury . . . speaks favorably of "the bents, the concerns and experience" of the foundation's creator but the other side of this coin bears a portrait that the Treasury finds less admirable: a rich man getting a tax deduction for a gift of stock of a family corporation that will be used to finance such charitable activities as his "bents" may suggest. A similar conflict can be perceived in the Treasury's reference to the foundation's "unique flexibility" in moving from one focus of interest to another: on the other face of this coin, the Treasury finds the distasteful picture of a person spending "governmental funds" (i.e., the value of tax deductions and exemptions) on programs that have not been approved by the appropriations committees of Congress. Finally, "the pluralism of our social order" is a value that must not be attacked head-on, but expenditures for the study of Bosnian tombstones, registration of minority voters, or litigation against welfare agencies reflect a diversity of preferences that evokes less approbation than the choice between cancer research and flood relief.

But, however unwelcome these manifestations of the private foundations' independence, flexibility, and originality may have been to

some critics of the institution itself, they were not so patently offensive or widespread as to induce a full-scale attack. Instead, they created . . . administrative and legislative misgivings that crystallized in the conviction that a series of propensities toward misconduct, plausibly illustrated by the specific acts of some foundations, were endemic to the whole species. Since other types of charitable organizations were viewed with less suspicion, their bad apples were either overlooked or regarded as exceptional. The net result was a strategy of isolating the private foundation from other charities, which began in 1950 and culminated in 1969.

In view of the apprehension that foundations will be used for unauthorized and undesirable private purposes effectively at the expense of other taxpayers, some of the factual revelations of this work are most interesting. Although it was not always the case, this apprehension seems to be directed mainly to the smaller foundation rather than the giants like Ford, Rockefeller and Carnegie. Interestingly, however, as Mr. Parrish writes in his chapter entitled "The Foundation: 'A Special American Institution'", private giving to foundations in the United States is less than two per cent of the gross national product of that country (which was estimated at 18.3 billion dollars in 1970), i.e. rather less than the annual gross of General Motors. Moreover, by far the greatest proportion of foundation wealth is concentrated in the hands of a few highly visible bodies. Thus, in 1972 it could be said that the foundations each with assets of less than one million dollars number 3275. Another 1830 foundations were in the one million to ten million dollar range. Only 331 out of the more than five thousand foundations listed in the *Foundation Directory* published by the Foundation Centre had assets of more than ten million dollars each. Even in terms of grants rather than assets twenty-six of the largest Foundations accounted for slightly less than one-third of the overall total dollar value of grants made. The problem therefore cannot be reckoned as one of exceptional financial magnitude from the tax evasion point of view.

The concluding chapter prepared by the editor entitled, "Foundations and Government: Perspectives for the Future", implies that the annual expenditures of foundations, being in the range of one and a half to two billion dollars, are relatively small change compared to a U.S. gross national product exceeding one trillion dollars. There must therefore be serious limits to what foundations can accomplish and they must be viewed essentially as institutions of modest resources which for a variety of reasons can exercise only limited influence in the public sector. It is, one supposes, for this reason that some U.S. proponents of the foundation as a charitable institution argue in favour of direct involvement in such matters as the registration of black voters in areas of racial strife, the decentralization of New York City public schools and the organization of protest movements by various minority groups. This argument in some ways is not surprising as it merely employs

in the social sphere the traditional free market concept of leverage, aiming to produce a larger effect in the community than the available capital would otherwise warrant in other spheres of endeavour. What does surprise, however, is that no effective and compelling case for the substitution of public for private enterprise in such sensitive matters is presented.

When the references to United States tax law are stripped away, the two most interesting general issues raised by *The Future of Foundations* are the limits to which private pools of foundation wealth can and should be active in contentious areas of public political activity and the correlative question of how governments should use their taxing power to control, mould and guide foundation operations. The first of these is not a question which has yet attracted much concern in Canada where there seems to be a greater proportion of government funding channelled to contentious social problems.

Perhaps the most striking single fact brought out by the book is the belief among some highly knowledgeable and sophisticated people both public and private in the United States that, despite the ravages of tax reform and the relative smallness of foundations when compared to other pools of wealth, there is still a significant place for them in national life. There is not only little concern in Canada about such issues and matters as are raised by these papers but we seem to lack any available comprehensive survey, even at the raw data level, which would permit the development of an informed body of opinion to ferret out and deal with them. For this reason, it is to be hoped that both government officers and those who control private foundations in Canada will read this book and decide it is time for similar appraisals of private charitable activity in this country.

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