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Charity Begins At Home: Generosity and Self-Interest Among the Philanthropic Elite

By Teresa Odendahl

Published by Basic Books, 1990, \$29.95

REVIEWED BY EDWARD J. WAITZER

Stikeman, Elliot, Barristers and Solicitors, Toronto

It is curious that every major culture and every major religion has, in one way or another, encouraged and institutionalized philanthropy. What accounts for this dedication of private wealth to seemingly public purposes? Isn't such behaviour contrary to the proclaimed instincts of Economic Man? Having an anthropologist address these issues through interviews with a broad range of philanthropists, foundation executives, and professional advisers holds forth the intriguing promise of some new insights. Perhaps my expectations were high because of the paucity of material available on the subject, most of which tends to be either the self-congratulatory output of the philanthropic sector or the ill-informed dogma of its critics. To get at the underpinnings of philanthropy is not easy.

The results, as reflected in Ms Odendahl's book, are disappointing. She begins and ends with a succinct (but not fully developed) statement of her biases. Philanthropy, in her view, is an elitist culture, encouraged by inequitable tax policies and dedicated to conserving wealth and power amongst the wealthy and powerful. The consequence is the perpetuation of upper-class institutions (particularly schools and cultural organizations), as well as other opportunities, for privileged people or those with whom they identify (for example, an orphan who succeeds economically may eventually help fund an orphanage). In short, contemporary American philanthropy is, in her view, "a system of generosity by which the wealthy exercise social control and help themselves more than they do others".

Philanthropy of this sort might be tolerable (particularly if made more accountable), in Ms Odendahl's view, if governments were adequately funding basic social services and if tax policies were used to achieve "equitable" wealth redistribution. By implication, the failure of other institutions and regulatory instruments to realize Ms Odendahl's social objectives becomes the basis for her condemnation of the culture of philanthropy.

Having outlined her thesis, the author proceeds with the anthropological task of classifying the hierarchy of the “elite philanthropic culture” through a series of interviews which are neither focussed nor, in her treatment of them, particularly illuminating. While in her organization of the material she differentiates between inherited and self-made wealth, as well as noting different feelings about, and approaches to, philanthropy based on sex or religious background, the material is largely anecdotal with little effort made to extract meaning therefrom. In her discussion of “feminist” philanthropy, the author dedicates seven pages to the events surrounding her brief, unhappy tenure as Executive Director of the Women’s Foundation of Colorado. This contrasts with the 14 pages at the end of the book in which she outlines her vision for the “restructuring of elite philanthropy”. In these few pages she purports to develop an agenda of reforms to promote equitable taxation, accountability, and representativeness, as well as making some closing observations on the relationship between philanthropy and democracy.

Perhaps because of the lack of disciplined analytical effort in the book, I found myself with ample time as I worked my way through it to wonder why I found the exercise so disturbing. It was certainly not because of concealed biases. Perhaps it was my sympathy (if not agreement) with some elements of her critique of philanthropy which made her lack of analysis and her mere scratching at the surface of policy issues so frustrating. This is deep water that few have navigated, hence the disappointment when an ambitious explorer takes shortcuts and goes astray.

Philanthropic institutions tend to be controlled by members of the business elite. Upon this incontestable fact, the author erects her syllogism: philanthropy is part of a class-structured society and dominated by the same capitalistic elements that dominate that society. Philanthropy must therefore consistently serve the interests of the upper class and must also be opposed to any basic reforms in the existing system of privilege and exploitation. The only chink in this deterministic armour is an acknowledgement (again undeveloped) that philanthropy can (or might possibly) serve as an agent of change in more than a purely cosmetic sense. Having so conceded, the author fails to address (or explain) the zeal with which, for example, the corporate sector has thrown itself into projects that embrace the entire social agenda.

There is nothing in Ms Odendahl’s critique which is new. For example, the U.S. Commission on Industrial Relations reported in 1915 that:

The domination by the men in whose hands the final control of a large part of American industry rests is not limited to their employees, but is being rapidly extended to control the education and social survival of the nation. This control is being extended largely through the creation of enormous privately managed funds for

indefinite purposes, hereafter designated “foundations”, by the endowment of colleges and universities, by the creation of funds for the pensioning of teachers, by contributions to private charities, as well as through controlling or influencing the public press. . .

The disappointment of Ms Odendahl’s book is her failure to penetrate beneath the surface of the questions she poses. Opening up a debate about the motivations of donors or the contribution of philanthropy to our society is a welcome initiative. Clearly, there is much room for improvement in the philanthropic sector. In both quantitative and qualitative terms, it might be argued that private philanthropy as it now operates is not an institution of high productivity or of critical social relevance. Unfortunately, Ms Odendahl does not even attempt to substantiate (or frame properly) these arguments, but rather joins the chorus of those who, proceeding from ideological biases, would prefer to see the incentives for philanthropy constrained.

In her stridency, Ms Odendahl gets caught up in the mythology of philanthropy. For example, her critique of the transfer function it performs might better be aimed broadly at the ideological matrix from which private philanthropy emerged—private property, religious and ethical values, and democracy. For better or worse, the quantitative scope of charitable giving is relatively marginal and does not merit the scale (leaving aside the substance) of criticism she levels at it. Her discussion of the innovative and creative qualities of grant making is inferential and unfocussed in defining the “problems” and, not surprisingly, even less rigorous in considering “solutions”.

One stumbling point for many critics of the philanthropic sector may lie in the fact that its regulatory framework is still rooted firmly in the nineteenth-century political and social concepts which held that the role of government is limited and which marked off broad areas such as welfare, medicine, science, culture, and much of education, as well as religion, as the domain for the private sector. This static model (which, for example, still serves as the basis for the legal definition of charitable objects) was never as neat in reality as it was in theory and has long since been overtaken by social, economic, and political changes. Unfortunately, insufficient effort has been dedicated to re-examining the institutional purpose of philanthropy and defining appropriate measures of its performance. Those such as Ms Odendahl who bring an ideological bias to the effort often lose sight of their true target (or fail to define it properly at the outset).

For all its shortcomings, it is clear that private philanthropy has unique possibilities, inspired at times by motivations other than (or, at least, in addition to) material self-interest on the part of the “ruling class”. Despite many failings, it has provided resources to challenge, criticize and, on

occasion, provide a creative spark for the other institutions which dominate our lives. For the best of such purposes, most often there was no readily available alternative. Racial and gender equality are two of many issues in respect of which philanthropic institutions have served as agents of change.

Fortunately, increasing attention is being focussed on the ability of philanthropic institutions to reform and energize themselves as well as on their potential contribution to humanizing and advancing other democratic institutions. The efforts of groups such as the Center for Responsive Philanthropy, the National Charities Information Bureau, the Independent Sector, the Foundation Center, the Yale University Program on Non-Profit Organizations, and here in Canada, The Canadian Centre for Philanthropy and the IMAGINE campaign, are beginning to generate awareness of, as well as constructive proposals for, self-reform and self-renewal in the philanthropic sector. It did not take Ms Odendahl's book to convince thoughtful students of the philanthropic sector of the need for such introspection and advancement. Nor, unfortunately, does her work offer much assistance for such efforts.

The Law of Charitable and Non-Profit Organizations

By Donald J. Bourgeois

Published by Oxford University Press, Markham, Ontario, 1990, pp. 256.

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Canadian legal writing is approaching what might be thought of as maturity, now that most of the major topics have been treated in books. Donald Bourgeois has staked out one of the remaining unoccupied fields with this work on charities and nonprofit organizations. As the only work on the subject in Canada, the book will find its way onto the shelves of a good many lawyers and a good many charities. Most will find it useful, but many will find it limited and to some extent frustrating as well.

Bourgeois has set himself to write a handbook rather than a treatise, and the work has to be judged on this basis. We do not find here an academic discussion on the law of charities, trusts, corporations or other forms of organization. Since the book does not go beneath the surface of the matters with which it deals, it omits philosophy and policy. The book that will do these things remains to be written, perhaps in part by the Ontario Law Reform Commission in its forthcoming report on the law of charities.

As a handbook, *The Law of Charities and Non-Profit Organizations* has a number of strengths. It is logically organized. It is quite comprehensive, which is perhaps the most important criterion for such work. It reviews the legal structures available to people wishing to operate a charity or a nonprofit group, sketching the advantages and disadvantages of each. It then describes in more detail how a corporation is created, both for governmental purposes (the letters patent) and internally (the by-laws). The requirements of both Ontario and federal corporations statutes are listed; however, references to the legislation of other provinces are occasional rather than systematic.

The book then turns to the legal obligations of carrying on the activities themselves. It first describes the liability of directors and officers of corporations and trustees of charitable trusts. It then outlines the laws and bodies that oversee their activities, with a separate chapter understandably devoted to tax issues, notably the requirements set by Revenue Canada to enable an organization to qualify as a charity. A significant part of that chapter deals with the Goods and Services Tax, an area still in evolution.

Finally, Bourgeois focuses on three crucial aspects of the life of the organization: bookkeeping, functions of the board of directors, and fund raising. He attempts a layperson's guide to all three in a way designed to demystify them and underline the contribution proper practices in these areas will make to the success of the organization.

The text of these discussions occupies just about half the book. The rest is devoted to lists and precedents. The incorporating authorities of all the provinces and the federal government are listed, along with other resources available to charities. A concordance of relevant legislation will help readers situated outside Ontario. A checklist of procedures will ensure that steps are not omitted by those following the narrative of the first half of the book. The author then reproduces forms of documents that can be followed as precedents for the paperwork required to start and continue charitable organizations. This material will save readers a great deal of time and worry, even if they take seriously the author's warning that the precedents are to be used as guides and not as authorities.

The book concludes with a reading list that may be the most useful part of the whole work, extending as it does from basic organizational material to tax guides and fund-raising primers, from law through accounting to social relations, and from pamphlets to academic tomes.

In short, the book has the essential basic information anyone needs to know to get a charity or nonprofit organization up and running. My reservations about it come from how the skeleton is fleshed out. Perhaps I can put these

reservations globally by saying the book seemed to me to be unfinished, in both senses of the word: it lacks details it should have had, and it lacks polish.

On a number of issues, the book stops too soon. Even a handbook should help the reader confront typical questions that may arise in the process of becoming or operating a charity. For example, many charities have difficulty knowing when their activities become improperly “political”. Some groups serving particular parts of the community have been refused registration by Revenue Canada on the ground that their objects would necessarily be political. Bourgeois’ text says only that the scope of political activity is one of the “fine distinctions” that make “public interest” hard to define. (p.15) The sole discussion of the limits of political activity appears in the taxation chapter, with a footnote reference to an *Information Circular* from Revenue Canada, Taxation that does not appear again in the reading list.

Another difficult problem is the amount of for-profit activity allowed to a charity. This is rated another “fine distinction”, with even less help elsewhere in the text. Current case law is hardly definitive, but it does allow some examples to assist organizations and their lawyers. (See, for example, Professor Donovan Waters’ “Case Comment” in (1989), 9 *Philanthrop* No. 1 pp. 3–23.)

The remuneration of directors for acting otherwise than as directors is another topical issue that gets unsatisfactory treatment. The *Fox* case (*Harold G. Fox Education Fund v. Public Trustee* (1989), 69 O.R.(2d) 742) is mentioned (p. 71) as authority for the statement that directors may be paid for such services if the court approves. The reader is not warned that this case is only one in a series of such cases and that the rulings are not consistent. Nor are readers warned that the facts in *Fox* were unusual, and that the Public Trustee may have a role to play in Ontario. (See Dona Campbell’s “Comment” in (1989), 9 *Philanthrop*. No. 1, pp 36–42.) The law of other provinces relating to this point is not mentioned.

Sometimes the omission is more glaring. The author states that “certain fund raising techniques should be avoided”, without listing them or providing examples.

Aside from these omissions, the book contains a number of small inaccuracies that reflect on its credibility. It says that a drawback to incorporation is the subsequent need to file annual returns. This is true of federal, but not Ontario, corporations. It says assets on winding up must go to another registered charity, though *any* charity will do. It discusses exemption from local property tax assessment without indicating that not all charities qualify, registered or not, and that only land owned by the charity, not leased premises, can benefit

from the exemption. It speaks of “enforcing the standard of care” of directors, where it would be more accurate to say “enforcing the *duty* of care” by measuring actions against standards.

The Law of Charitable and Non-Profit Organizations is addressed to both lawyers and lay readers. Some parts of the text may leave both groups perplexed. For example, the discussion of the evolution of trusts from the medieval “use” through Tudor statutes to the Statute of Elizabeth I is too short and technical to be relevant to lay readers, while lawyers will not find enough information to increase their technical understanding (if the matter is relevant at all except as a curiosity). The author tells us that charities benefit from an exemption from the rule against perpetuities but his definition of the rule, “contingent interests [must] vest within a prescribed period of time”, is bound to be opaque to non-lawyers. The next paragraph deals with “the rule against inalienability”. Does anyone but lawyers know what this means? (The author quite properly refers to outside texts for details of the rules themselves.)

None of the legal points is covered in such detail that it could not economically have been made understandable for all. Even on topics other than law, the demands on the reader vary greatly. The discussion of bookkeeping requirements goes from basic to difficult in the flip of a page.

The language of the book could use simplification. It tends to be convoluted or verbose, with the result that the text is harder to read than it needed to be. The problem is not lapses into legalese but a failure to write plain English. Examples are all minor in themselves, but they add up to a feeling of fuzziness rather than precision. The author speaks of directors being “liable for a breach by the corporation”, as if a breach were a wrong in itself. It proceeds to speak of breaches “under” rather than “of” the *Corporation Act*.

“The basic question of what the objects of the corporation are must be clarified at the beginning of the process.” Here, nine out of 20 words are superfluous. “The budget is used . . . to provide the basis for budgetary control.” Is our understanding advanced? In the precedents, I am disappointed to find “this deed witnesseth” —in the 1990s!

As mentioned earlier, the book is divided logically into chapters dealing with the separate stages or concerns to be considered by a charity or nonprofit organization. Each chapter has a useful summary. However, this organization has the drawback of its virtues: a reader may have to read every chapter in the book in order fully to understand any particular topic. For example, many chapters mention the special rules for social clubs with “social” objects, but only late in the book do we find a discussion of the scope of those objects.

The whole book would have benefited from a final editing to ensure that it would be accurate, comprehensive, and easily understood by all its intended readers.

Despite these weaknesses, Bourgeois has done useful work towards clearing and surveying the ground. A number of people will benefit from his efforts. No doubt by the next edition he will be in full control of the territory.