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Poets have poems, statesmen have history books, and lesser mortals have progeny. So **HOW** do the very rich keep their memories alive for future generations? The wealthy have something of their own to deploy against the eraser of time: money. ¶ To ensure their **LEGACIES**, rich Americans are increasingly turning to the modern-day equivalent of the pharaohs' pyramids: the private foundation. Sufficiently endowed, these vessels of immortality **GET** to dispense beneficent memories of the founder long into the future. Over time however, the original focus can be **LOST**, or even subverted, when those who administer the largesse embrace different philanthropic values. »

BY JOHN SEDGWICK

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» THE ISSUE HERE IS DONOR INTENT, MEANING A DONATION'S guiding purpose as set down in the foundation charter, be it to display the donor's art collection or to provide scholarships for the donor's high school. The recipient, of course, is obliged to recognize and fulfill the donor's wishes. That may seem like a matter of simple common sense. But the relationship between past and present, the duty of the living to the dead, can be complicated by foundation trustees who have values that differ from those of the donor—values, even, that the donor would have found repulsive.

In 1999, for instance, alumni of the Hershey School in Pennsylvania, founded by chocolatier Milton Hershey, began an ongoing effort to force their alma mater to comply with the original purpose of the school's trust—to educate orphans—instead of becoming something closer to a standard prep school.

You could even make a Rorschach test out of the issue: What do your sympathies lead you to see? The wisdom of the accomplished elder who wants to leave posterity with some Good Thing to be remembered by? Or do you see the vision of the younger beneficiaries of the gift, or the professionals who administer it? They are a part of posterity and surely know its needs better than a dead man. Therein, of course, lies generational warfare.

Donor intent, however, is not merely an academic exercise. Stephen Johnson, one of three trustees of the Kelsey Trust, a $5 million private foundation set up by his mother with proceeds from the sale of the family business, the G.S. Blodgett Company, is resolutely determined that the mission she set for her foundation be maintained. The trust is for the benefit of the inhabitants and the environment of the Lake Champlain Basin, where his mother's ancestors came from. "My mother wants to give something back [to that area]," he says. "It is extremely important to her. And I consider this trust to be a memorial to family members who have gone before, to the residents of the Basin generally, and one day to my mother," Johnson says. "Believe me, there's a full and complete buy-in by the present generation of trustees" to the purpose of the gift. The possibility of betrayal at some point down the generations is an uncomfortable thought.

In the past 20 years or so, conservatives have been loudly asserting that beneficiaries and administrators honor donors' intentions. One recent case involves the $8 billion David and Lucile Packard Foundation, which has come under attack for spending to develop slow-growth economic policy initiatives. David Packard, who passed away just five years ago, was not a slow-growth sort of guy, according to conservative Neal B. Freeman, a donor adviser who heads the Foundation Management Institute in Vienna, Virginia. The case is "so open-and-shut that it just takes my breath away," he says. "The largest supporter of the sustainable-development movement is the Packard Foundation."

Another story of conflict is the $4.7 billion John D. and Catherine T. MacArthur Foundation, progenitor of the famous "genius" awards but also of various leftist environmental projects that John D., an insurance magnate turned real estate developer, was known to detest. A much-cited conservative text—*The Great Philanthropists & the Problem of "Donor Intent,"* by Martin Morse Wooster, published by the Washington, D.C., think tank Capital Research Center—recounts a tale of Patrick Noonan, later president of the Nature Conservancy. Noonan once approached MacArthur in the Palm Beach coffee shop that served as his office to ask him to give some land for a nature preserve. "Young man," MacArthur is said to have snapped, "I've never given anything away in my life, and I'm not about to start now." He ordered Noonan to pay for his coffee on his way out. Yet after MacArthur's death, Noonan was made a MacArthur fellow, and in 1989, the land that he sought from MacArthur became the John D. MacArthur State Park.

Ironies of that sort are delicious for liberals but unacceptable for the Capital Research Center. The CRC, founded in 1984, joined a batch of like-minded institutions, including the Heritage Foundation, the Cato Institute, and the American Enterprise Institute, in efforts to roll back big government. Terrence Scanlon, president of the center, is critical of what he perceives as foundations' disregard of the free-enterprise, small-government, antiregulatory precepts of their creators.

It all stems, he believes, from the tendency of heirs to be more liberal than the ancestral moneymakers. "It's guilt," he says. "There's lots of guilt that they're not working. They are often liberals living off their trust funds, skiing, and having a nice life. If you haven't built a company, you're not likely to be as concerned about the free market."

Liberals, for their part, are relatively quiet in the donor intent controversy. Their oxen are not being gored, for one thing. Or not yet. It's certainly possible to imagine a liberal donor—Ted Turner, for example—one day having his desired support for various progressive causes thwarted by a foundation administrator.

WELL OVER HALF OUR CURRENT STOCK OF FOUNDATIONS have been created in just the past 20 years, and more than a third in the past decade. "I've talked to hundreds of people who are newly arrived to philanthropy, and without exception they're there to put their names on programs, projects, and buildings that reflect their values down through the years," Freeman says. In the matter of donor intent, the law treats donors with the same fawning respect that it bestows on all other testators. Since the Middle Ages, Anglo-American law has recognized that individuals have sovereign rights over their property. They can do with it, through will, testament, or trust, whatever they want for as long as their writ shall run. Imagine any absurd cause you like—a museum for the collection and display of dust bunnies—and you can leave your money to support it. Ditto the delights of posthumous punishment for your children: Go ahead, disinherit them. (The *Code Napoléon,* however, a version of which is still alive in the state of Louisiana, recognizes the right of inheritance by the children.) There are no time limits: Foundations can go on forever (unlike, say, trust funds for one's descendants, which in most states can go on for only 21 years plus lives in being). Yes, foundations (and grants) must serve charitable purposes, but these are extended to just about every type of human endeavor that is not explicitly for profit: scientific research, social services, religion, education, and the arts.

Charles Cheever, a trusts and estates attorney with the venerable Boston firm of Choate, Hall & Stewart, says that, as a rule, lawyers never attempt to dissuade their clients from doing anything they want to do with their money, provided it's not illegal or totally impractical. "We don't try to talk clients out of strongly held beliefs," Cheever says. "What we will do is point out the impact their gifts might have on the beneficiaries—when the money might overwhelm the object of their charity, for example."

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Lawyers generally do, however, offer one piece of advice that might provide a bit of wiggle room for someone who's really determined to subvert a donor's intent. As Cheever puts it, "We try to help give the trustees of a foundation some flexibility in interpreting the donor's wishes—enough anyway so that down the road, if circumstances call for it, they won't have to go to court to expand its charitable purposes. Narrow purposes, unless they are completely practicable under any contingency, are to be avoided."

But if the scales of justice are so loaded in the donor's favor, and if many foundations, especially the older ones, are supporting causes that the founder would have found appalling, why aren't the courts resounding with the angry arguments of lawyers for the ghosts of tormented benefactors? Most donors, most of the really big ones anyway, recognized the difficulty of imposing narrow wishes on posterity and deliberately left their instructions open-ended. Even the cantankerous John D. MacArthur endorsed a charter for his foundation that could scarcely be broader: "To operate exclusively for charitable, religious, scientific, literary, and educational purpose." The charter goes on to offer "by way of illustration but not in limitation thereof" the possibility of offering tips for streamlining government, but it does so with such obvious hesitation as to recognize that the prospect of exerting any control from the grave was remote. Indeed, MacArthur himself seemed to recognize as much. "I figured out how to make the money," he once told his directors. "You fellows will have to figure out how to spend it."

Today's rich may not want to be quite so expansive, however. Judging from the kind of micromanaging that Silicon Valley benefactors are up to these days, the newly wealthy seem to think they know exactly what the world needs their money for. If so, how might they determine that their wishes are carried out? First of all, they should avoid dying. Failing that, they should be as clear as possible about their intentions. It is not easy to craft a document that is specific enough to be clear without being so specific as to be impractical, but it can only help to try. Dorothy Ridings, the president and CEO of the Council on Foundations, cautions against, for instance, devoting all a foundation's resources to combating a single disease—and neglecting the possibility that the disease might someday be cured. Leave some wiggle room, she advises.

Beyond that, donors are learning the importance of selecting board members who share their vision. According to Freeman, too many founders have acted too much like the entrepreneurs they were on the for-profit side, going for diversity and a "full-360 vision" instead of confining their boards exclusively to like-minded members who'll stick up for them when they're gone. If the foundation is to benefit a certain breed of spaniel, as one of Freeman's clients desired, the founder should stuff its board with spaniel buffs. "The board should run the gamut from A to B," Freeman advises. In this context, MacArthur may have blown it by including his son Roderick on a five-member board that was otherwise stocked with solid midwesterners such as radio commentator Paul Harvey. Roderick opposed most everything his father stood for. He advocated expanding the board to dilute the influence of the original pro–John D-ers and succeeded in turning the MacArthur Foundation into an organization that his father, despite his permissive envoi to "you fellows," most likely would have hated.

Finally, Freeman advises clients to establish an independent third party to review the board's work after a set period, perhaps 10 or 20 years, and empower that individual or institution with the right to replace the board members if they haven't come through. As it is, since the deceased cannot sue, only state attorneys general can enforce the original trust documents, and chances are remote that these busy officials would take up such cases.

THE SUREST WAY TO DODGE BETRAYAL OF DONOR INTENT, of course, is to forget about building a monument like Ozymandias's and spend it all in the here and now. George Soros's many foundations all operate on this principle, being funded annually without any permanent endowment. Peter Frumkin, assistant professor of public policy at Harvard's Kennedy School, believes the do-it-now urge lies behind the current growth of Fidelity's Charitable Gift Fund and other donor-advised funds offered by financial institutions such as Vanguard and Schwab. With these funds, the donors have a mechanism by which they can decide for themselves exactly how the money is to be spent. "The donors get to do their philanthropy in their own way," Frumkin says, "with minimal intervention of any professional staff." And they create no self-perpetuating institutions when they die.

Donors in gift funds like Fidelity's, however, are not likely to be in the $100 million class, still less in the $1 billion class. Donor intent may not be the only issue, in fact, in the case of really large donations. Philanthropy is hard work, sometimes even harder than making the money in the first place. According to biographer Ron Chernow, John D. Rockefeller Sr. never exhibited any strain in the ruthless creation of his massive Standard Oil empire; but when he started to disperse his gains in his fifties, creating the University of Chicago, among many other institutions, he nearly collapsed from all the stress. It's not surprising that donors might seek to avoid this agony by passing their bucks to functionaries to dispense in their name after they're gone. Those donors will create a monument, sure; but they must take care to assure that it be a monument to a durable good. ■

Contributing editor John Sedgwick's last piece for Worth *was a profile of philanthropists Steve and Michele Kirsch that appeared in the December/January 2001 issue.*