DONORS’ DEMOCRACY:
PRIVATE PHILANTHROPY AND POLITICAL MORALITY

Theodore Michael Lechterman

A DISSERTATION
PRESENTED TO THE FACULTY
OF PRINCETON UNIVERSITY
IN CANDIDACY FOR THE DEGREE
OF DOCTOR OF PHILOSOPHY

RECOMMENDED FOR ACCEPTANCE
BY THE DEPARTMENT OF POLITICS

Advisers: Charles R. Beitz & Melissa S. Lane

September 2016
ABSTRACT

We commonly believe that citizens of a liberal democracy should be free to donate private property, particularly when those donations serve public purposes. The fact that philanthropy releases resources to the public benefit may support the thought that the state should afford it wide discretion, if not affirmative subsidy. Support for donor discretion faces numerous challenges, however. Since the claims of need demand special moral urgency, some argue that the state must steer donations toward a society’s least well-off members. From this perspective, the fact that contemporary policies subsidize donations on an indiscriminate basis appears counterintuitive, if not unjustified. Another problem lies in the way philanthropy can convert wealth into public influence. Donations are a valuable way of expressing one’s identity and advocating for conceptions of the common good. However, when donations serve to amplify the voices of those with greater resources, they appear to clash with a sacred democratic norm: that citizens are entitled to equal influence over their common affairs. Finally, making donations beyond one’s lifetime can be a valuable way of caring for the interests of future generations. But it is also a way of imposing the wills of the past upon future persons, and restricting their own choices. Under what conditions, if any, must future persons honor the philanthropic intentions of the past? As a contribution to the political theory of philanthropy, this dissertation shows how the political morality of liberal democracy provides resources for resolving these conflicts, both in principle and in practice.
ACKNOWLEDGMENTS

Many of my thoughts about this material developed through coursework, precepting, and conversations with Chuck Beitz on the nature of our duties to strangers. It may come as some surprise that what Chuck actually believes the right answers to be still remains something of a mystery to me. Let there be no mistake, however, that this reflects a distinctively valuable feature of Chuck’s approach to advising. He cares more about helping one to grasp the fundamental substantive controversies and to appreciate the challenges to resolving them than he does about promoting his own theories or cultivating disciples. As much as I have learned from him on substance, I have learned more from studying his virtues as a teacher.

I had initially intended this project to include an historical dimension, and Melissa Lane’s early counsel was indispensable in steering me through the history of political thought and its sociological contexts. Once that historical dimension faded from view, I continued to rely on Melissa for incisive challenges and an encyclopedic knowledge of alternative perspectives. Without Melissa’s generous, steady guidance many sections of the dissertation would not have come together until the final hour, if at all.

Some may know Philip Pettit as the leading systematic philosopher of our time. The dazzling range, ingenuity, and coherence of his views are matched only by the eloquence he marshals in presenting them. I certainly know Philip in this way, and I have tried to borrow as much as possible from his analytical arsenal. But I also know Philip as the person whose warmth and reassurance buoyed my spirits when I was at my lowest ebb. And for this I am most grateful.

Particularly during the project’s later stages, Des Jagmohan’s penetrating questions and advice about the writing process proved essential assets. Eric Beerbohm introduced me to normative political theory in 2007 and has remained a source of inspiration, wisdom, and

My first encounter with the subject matter occurred in connection with a research assignment I received while working at the Social Science Research Council in 2009. I am grateful to Sarah Burd-Sharps and Kristen Lewis of the Measure of America project for fostering my intellectual curiosity. I have also learned much from exchanges with political theorists who began working on these problems long before I did. Rob Reich, Chiara Cordelli, and Emma Saunders-Hastings offered me particular encouragement.

I received valuable feedback from presentations at the Princeton Politics Department’s political theory graduate research seminar (several times), the University of Brighton’s “Why Charity?” conference in July 2014, the Princeton University Center for Human Values’s Laurance S. Rockefeller Graduate Prize Fellowship research seminar in November 2014, the Western Political Science Association’s annual meeting in April 2015, the Harvard Graduate Conference in Political Theory in October 2015, the Northeast Political Science Association’s annual meeting in October 2015, the Princeton-LSE Workshop on Democracy in Theory and Practice in May 2016, and the Yale Global Justice Program’s conference on “The New Philanthropy” in May 2016.

This project could not have come to fruition without the financial support of some generous benefactors and their trustees: the UCHV’s Laurance S. Rockefeller Graduate Prize Fellowship, the UCHV’s Political Philosophy Graduate Student Research and Travel Fund
(endowed by Amy Gutmann), the Politics Department’s Stafford Fund, and the Graduate School
Dean’s Fund for Scholarly Travel. Additional travel assistance came from the Boston College
Law School Forum on Philanthropy and the Public Good and the Yale Global Justice Program. I
was also the blessed recipient of a “Grandchild Education Fund,” endowed by the late Bonnie
and Lloyd Kozloff, who firmly believed that the pursuit of knowledge should never entail interest
payments.

Invaluable assistance of other kinds came from Femke DeRuyter, Jennie Gambach,
Debbie Greenberg, Maureen Killeen, Dan Kozloff, Dana Lau, Jane Milrod, Jonathan Pastor,
and Rick Salvatore.

Many comrades took up arms beside me in the trenches of graduate school, where
together we fought valiantly against invisible enemies—Doubt, Procrastination, and Moral
Skepticism, to name a few. Though the odds were often against us, Thursdays somehow proved
reliable exceptions. For their companionship and commiseration, special thanks go to Brookes
Brown, Jennie Ikuta, Yu-Chi Kuo, Michael Lamb, Trevor Latimer, Erin Lin, Lucia Rafanelli,
Anna Schrimpf, Simon Shogry, Geoff Sigalet, Jenn Soong, Johan Trovik, Caleb Yong, and Jake
Zuehl. Isi Litke, Amy Hondo, Ross Petchler, and Yaas Bigdeli deserve extra special thanks for
supporting me during the final stretch.

I dedicate the dissertation to my parents, Sarah Kozloff and Bob Lechterman, and my
brother, Jeremy Lechterman, who sustained my soul throughout and came to my rescue time
and again, each in their own way. Their love could underwrite many dissertations. I am so lucky
they chose mine.
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INTRODUCTION

Looking the Gift-Horse in the Mouth

I. PHILANTHROPY AND POLITICAL THEORY

The term “philanthropy” has several recognized meanings. In ethical theory, “philanthropy” refers broadly to a moral virtue, what is otherwise called “beneficence” or “charity.” As a virtue it directs us to make others’ ends our own, often in specific circumstances and specific ways. Social scientists diverge from philosophers, and from each other, on the meaning of “philanthropy.” British sociologists maintain that “philanthropy” refers narrowly to the wealthy patronage of the arts.1 American historians insist to the contrary that it refers to financing research into the root causes of social problems.2 Apparently against all academic advice, common speech often uses “philanthropy” to refer to the activity of a particular corporate form, the private grant-making foundation. (Thus, the Chronicle of Philanthropy is a trade publication for the foundation world, and the “Atlantic Philanthropies” is the name of a fading New York-based foundation.) I use the term “philanthropy” in another recognizable sense that is nevertheless different from all of these. By “philanthropy” I mean to refer to a general social practice, a pattern of social interaction that is not necessarily regulated by a particular virtue nor tied to a particular historical period or geographic region. As I understand it, the social practice of philanthropy can be distinguished initially by the particular type of economic transaction that sustains it: the donation.

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Further reflection reveals that not all donations operate within a distinguishable practice of philanthropy. Interpersonal gift-giving and contributing to a private club of which one is a member represent different and non-philanthropic forms of donation. I take it that what renders the practice distinct is the particular kind of donation on which it relies. In technical terms, this might be called “the impersonal gratuitous transfer” of private property.\textsuperscript{3} Put somewhat more melodiously, it is \textit{the voluntary commitment of private property for public purposes}. An individual engages directly in philanthropy when she donates resources that she owns to a public purpose or works for an organization that serves as an agent of these donated resources.\textsuperscript{4}

Defining the practice in these bare structural terms broadens the range of possibilities regarding the values it might serve and institutional forms it might take. Most obviously, we may wonder what kinds of purposes counts as “public,” or whether a society ought to prioritize certain purposes over others. We may wonder if all members of a society ought to be equally entitled to transfer property in this way, or whether it matters if some persons possess much more donatable property than others. We may wonder whether or to what extent we should honor the constraints that previous generations’ have attached to their transfers. We may also wonder what principled considerations apply to our own philanthropic decisions. We may wonder many more things, too.

Rather than import answers to these questions from familiar historical manifestations of the practice, this study proceeds from the conviction that a judgment about the regulative ideals

\textsuperscript{3} The gratuitous transfer is a recognized concept in the theory of property. However, to my knowledge, no one else has seen fit to attach the modifier “impersonal” to “gratuitous transfers” in order to distinguish philanthropic donations from interpersonal gift-giving. I think it a useful distinction. On gratuitous transfers generally, see (e.g.) Stephen R. Munzer, \textit{A Theory of Property} (Cambridge: Cambridge University Press, 1990), pp. 380ff.

\textsuperscript{4} I assume that this definition also includes labor as a form of donatable property. Volunteer labor does not significantly implicate the main issues of this study, however.
of philanthropy must be the conclusion of an argument, rather than a premise. Similarly, while the project certainly entails implications for the evaluation and regulation of foundations, it does not focus directly on foundations. (This is partly because I believe that much normative controversy surrounding philanthropy would remain if foundations did not exist.) Before we can address narrower questions of institutional design, we need further clarity on the moral status of practice itself: what ends it ought to serve (if any), and by what means it ought to serve those ends. We need, in other words, a political theory of philanthropy.

So far, one might accept that we need a normative theory of the practice of philanthropy but wonder in what sense such a theory counts as “political.” After all, a defining feature of philanthropy is that it selects ends based on individual decisions—rather than the preferences of voters or the dictates of legislators. It pursues those ends through voluntary transactions rather than by commands backed by the threat of force. Because it provides a way of promoting the common good that supplements or rivals the state’s machinery, it may seem immune to political analysis and evaluation.

The simplest reply to this initial skepticism is that formal political institutions necessarily circumscribe and structure any recognizable practice of philanthropy. The practice depends for its existence on laws of property and contract that determine what may be owned, how it may be owned, who may own it, and how it may be transferred. If not also authorized by states, these laws must inevitably be enforced by them. A normative theory of philanthropy is political, then, at least insofar as we think that the state should design or enforce these laws according to good reasons. What is more, a theory of philanthropy is in some ways a theory about where the appropriate limits of state control lie. It offers to explain whether or why we ought to pursue

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5 As it turns out, I conclude that the virtue of beneficence or charity, at least as commonly understood, plays only a minor role in an account of the norms that apply to the practice.
certain common ends without immediate recourse to centralized decision-making and coercive enforcement. Finally, in many modern societies, it turns out that the state generously promotes the practice of philanthropy and steers it in particular ways. Using tax privileges, matching grants, relaxed oversight, and special legal devices, the modern state gives the practice of philanthropy its particular strength and texture. Citizens and public officials may very well wonder whether these laws and policies are justified.

A more complex reply to the initial skepticism is to challenge the common tendency to identify the “political” with centralized or official power. As I understand it, one principal purpose of political theory is to consider how systems of social rules (“institutions,” or “practices”) can be justified and appraised. Like any practice, philanthropy will give rise to conflicts of interest regarding the distribution of its various benefits and burdens. It will benefit and empower some while depriving and disempowering others. Those who are affected by this practice are entitled to justification of its existence and of the particular shape that it takes. This would hold true even if philanthropy had little to do with formal political institutions.

II. COMMON VIEWS AND THEIR LIMITS

In Anglo-American societies, we are accustomed to regard donations as belonging to a protected realm of personal liberty. Deciding to donate, and for what purpose, belongs to the donor and the donor alone. A citizen’s after-tax disposable income is her personal property, to be spent more or less as she wishes. A prospective donor could permissibly choose to consume her

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6 If one prefers, one can add to this definition that a moral theory becomes political when it operates within the political circumstances of moderate scarcity, limited altruism, and abiding disagreement.

7 Some may detect in my methodological orientation a similarity to what Aaron James calls the constructive interpretation of social practice. I have learned much from James’s discussions. However, I do not intend what follows as an explicit application of that approach. Compare Aaron James, “Political Constructivism,” in *A Companion to Rawls*, ed. Jon Mandel and David A. Reidy (New York: Wiley-Blackwell, 2013), 251–64.
disposable income personally or gift it to a family member. Precisely because citizens are under no obligation to donate, the act of committing one’s property to the public benefit strikes us as self-sacrificing and thus praiseworthy. The greater the opportunity costs for a donor, the more noble the act of public giving appears. We are thus particularly impressed by large-scale giving. Our adulation for philanthropy grows when donors apply their gifts not merely to their preferred objects of cultural enrichment, but to the resolution of thorny social problems, such as poverty, disease, and ignorance.

Incipient challenges to the common view have gathered considerable steam in the past few years, following on the heels of certain historical trends. Industrial transformation, gaping inequality, and a retreating welfare state have exposed the practice of philanthropy to new leaders, larger investments, and more controversial tactics. With rare exception, however, the criticism that follows tends to apply rather superficial criteria of normative appraisal: it evaluates the personal character of the particular donor, the efficacy of the particular initiative, or the accountability of an intermediary organization to the existing laws.

What critics fail to appreciate sufficiently is that the attitudes that underlie the common view stand in tension with other liberal-democratic norms. Though we may agree that individuals should enjoy a liberty to make unilateral transfers, the absence of limitations on the rate or direction of those transfers threatens other basic values. For instance, as free and equal members of a polity, we tend to think that the satisfaction of our basic interests should not depend on private judgments and erratic gestures of goodwill. When I must depend on you for my access to medication, and you can decide whether or not to give it to me, I fall under your power. In such cases we do not relate to one another as free and equal citizens. Our admiration for private magnanimity thus runs up against our conviction that the establishment of a just social minimum is among a society’s most urgent public duties. In a similar vein, we tend to think
that democratic citizens are equally entitled to participate in decision-making about the polity’s common features. Whatever else it may be, philanthropy is a way of shaping those features. The decisions that donors make help to determine important social outcomes. But in the absence of sensitive regulation, opportunities to influence these decisions will be distributed asymmetrically. Richer citizens will enjoy greater prospects of fashioning society according to their private conceptions of the common good. Given these kinds of challenges, can philanthropy and democracy harmoniously coexist?

### III. A PREVIEW OF THE ARGUMENT

Perhaps the most fundamental question for a political theory of philanthropy is whether individuals should be allowed to make gratuitous transfers at all. Certainly, philosophical views that entirely reject property in productive assets will effectively eliminate private philanthropy as a consequence. If individuals cannot permissibly own productive resources, it is hard to see how they can permissibly give such resources away. Thoroughgoing skepticism of donation is not limited to critics of individual ownership. Prominent defenders of private property have sometimes doubted whether donation is a permissible incident of ownership. Nevertheless, in what follows I take as given that individuals may own productive assets and donate those assets to others. Rather than focus on whether a society ought to allow private ownership or its donation, I am concerned with what it would take for familiar practices of philanthropy to be justified. Temporarily setting aside more foundational questions allows us to make progress on narrower puzzles that are particularly relevant to contemporary practice. With this in mind, I have chosen

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[8] For instance, Sreenivasan interprets Locke as inimical to gratuitous transfers. This is because for Locke the principal basis for acquiring property rights is labor. Receiving property through exchange preserves the value of labor. However, receiving property as a gift undermines that value. See Gopal Sreenivasan, *The Limits of Lockean Rights in Property* (New York: Oxford University Press, 1995), p. 110.
to coordinate my inquiry around three central questions that strike me as central to advancing our understanding.

The first question a political theory of philanthropy must settle is what purposes a society ought to reserve for voluntary and discretionary finance. As a way into this question, Chapter One begins by noting a striking feature of contemporary practice. Not only do states commonly license impersonal gratuitous transfers of all kinds, but they subsidize the making of such transfers. And they apply these subsidies more or less indiscriminately. Whether and how such policies can be justified is controversial. Drawing on a long tradition of thought, a number of commentators contend that a society should encourage citizens to make donations specifically in response to material disadvantage. Chapter One argues that while such views contain some essential insights, they are ultimately misguided. They either endorse an unattractive conception of distributive justice, or they single out the wrong mechanisms for satisfying justice’s demands. At the same time, I argue that pluralistic support for donations can be justified on other grounds.

Even as I accept that donors should enjoy a degree of discretion regarding the ends of their gratuitous transfers, the following chapters explore two ways in which this discretion must be constrained. Chapter Two considers whether the distribution of opportunities to make donations is a matter of moral concern. One especially compelling account of political legitimacy holds that democratic citizens are entitled to equal opportunities for influencing their common affairs. Leading interpretations of this account hold that it entails particular regulations on political donations. However, they deny that such principles extend to the case of philanthropic donations more generally. I argue that political egalitarian concerns bear more directly on the practice of philanthropy than we may realize. The argument also implies that certain strategies for regulating political spending might also apply to certain types of philanthropic donations.

The dissertation’s third chapter addresses the intergenerational ethics of philanthropy.
Conventions around recognizing the wills of the dead are a common feature of the practice. Leading accounts argue that these conventions support several demands of justice. I complicate this picture by noting how intergenerational philanthropy can objectionably subject future generations to control by the dead hand of the past. Taking the demands of generational sovereignty seriously requires certain limitations on the duration of charitable trusts, or so I argue.

These chapters combine to express a particular perspective about the place of philanthropy in a liberal democratic order. But they are also meant to operate somewhat independently of one another. For instance, a reader does not need to accept my conclusions about philanthropy’s relationship to distributive justice in Chapter One in order to appreciate my conclusions about procedural equality in Chapter Two. Nor must one accept my claims about procedural equality in Chapter Two in order to find value in the position I take on generational sovereignty in Chapter Three.

Finally, I wish to note that the questions I address here hardly exhaust the range of principled problems within this area of study. For instance, the moral status of the private grant-making foundation is a controversial question that the dissertation addresses only obliquely. I have nothing at all to say about the challenges raised by giving by commercial firms or the forms of “social enterprise” that bear some relation to it. Also, although it is no secret that private donations now cross national borders in large amounts, bringing an array of controversies in their train, this project adopts a domestic focus. For better or worse, I leave these and many other problems for future work.
CHAPTER 1
A Farewell to Alms

I. PRIVATE GIFTS, PUBLIC SUBSIDIES

In a property-owning society, we tend to agree at least that individuals should be generally free to give property away. When it comes to various uses to which we might put our assets, the ability to donate them to others is a distinctly valuable option. This is most obvious in the case of interpersonal gift-giving, which facilitates our ability to perform favors and show concern for friends and family. In their impersonal variety, gratuitous transfers also enable us to sponsor agencies that respond to the needs of strangers or express our conceptions of the common good.

Appreciating the value of making donations does not entail that a society must enforce or protect donations for all possible ends, or in all possible forms. Most would agree, at least, that a state should not enforce or protect the decisions of its members to make transfers for clearly unjust purposes. Donations to criminal enterprises, for instance, should enjoy no legal protection. As I discuss in the next chapter, regulations of certain kinds might also be necessary for preventing the conversion of differences in wealth into forms of public power. And, as I consider in the chapter that follows, we might have good reasons to limit the duration of respect for a donor’s intentions over long periods of time.

The question I consider presently addresses an issue from the opposite direction: whether citizens of a liberal democracy ought to provide affirmative support to one another’s donative decisions. That is, under what conditions, if any, are we justified in using public resources to promote private gift-giving?

Such a question becomes more pressing when we realize that many contemporary
societies do in fact sponsor private philanthropy in significant ways. Typically, the state provides public subsidies to citizens’ gratuitous pursuits when the intermediaries of donation satisfy the legal definition of charity.¹ The basis of this definition is not entirely obvious. Statutes typically enumerate a list of sample charitable purposes, alongside certain disqualifying conditions.² In practice, however, officials tend to determine eligibility for state support according to a simplified standard. Particularly in Anglo-American legal contexts, the main eligibility criterion is that the intermediary of a donation confer benefits to an “indefinite number” of persons.³

This standard helps to distinguish charitable enterprise from the more general category of “nonprofit” enterprise. An organization is “nonprofit” if its net revenues do not redound to those who finance it.⁴ A charitable enterprise must be non-profit-seeking in this sense, but not all non-profit-seeking enterprises must be charitable, in the sense of conferring benefits to an indefinite

¹ Though I focus on familiar Anglo-American contexts, the practice is not exclusive to these contexts. For instance, Brazil, France, Hungary, and Portugal subsidize charitable activity in similar ways. For a comparison of several subsidy schemes, see Calum M. Carmichael, “Doing Good Better? The Differential Subsidization of Charitable Contributions,” Policy and Society 29, no. 3 (2010): 201-17.

² Strictly speaking, the legal definition of charity is a laundry list of particulars, rather than a general principle. Note how Title 26 of the United States Code defines a “public charity” at Section 170, 501(c)(3):

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Though I won’t reproduce it here, the United Kingdom’s statement of charitable purposes (as revised by the U.K. Charity Act of 2011), looks similar in many respects.


number of persons. Clubs, trade associations, and insurance cooperatives are nonprofit organizations that are nonetheless not charitable.\(^5\) Charitable and non-charitable nonprofits alike commonly enjoy exemption from certain forms of taxation. Some argue that exemption from taxation also constitutes a form of public subsidy. However, this assessment remains somewhat controversial.\(^6\) I focus here on charitable organizations in part because they receive an additional, and more obvious, source of public support. That is, charitable groups, and charitable groups alone, are eligible for subsidized donations.\(^7\)

The way in which the state subsidizes donations takes two main routes. In the U.S. model, a citizen may reduce her income tax payments by the amount of her donations (or some portion thereof).\(^8\) In the U.K. model, she may report her donation to the state, which then contributes a matching grant to the identified charity.\(^9\) These two forms of administering the subsidy are functionally equivalent in important respects, however. Both make public subsidies available to a wide range of purposes. They do so without any attempt to prioritize some purposes ahead of others. And the level and direction of subsidies depend entirely on citizens’ individual choices.

This policy treatment of impersonal gratuitous transfers raises numerous principled

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\(^5\) “Donations” to such groups are not impersonal gratuitous transfers, but rather membership dues or insurance premiums.


\(^7\) In truth, some also dispute whether the policy of deducting the value of donations from income tax assessments in the United States and elsewhere constitutes a form of public support, rather than an artifact of the way that the tax code defines income. This kind of skepticism clearly does not apply to the matching grant scheme that is used in the United Kingdom, however. See below.


\(^9\) Although this is not well known, the U.K. also allows tax deductions for high-income earners. See “Giving to charity through Gift Aid,” H. M. Revenue and Customs Web site, [http://www.hmrc.gov.uk/individuals/giving/gift-aid.htm](http://www.hmrc.gov.uk/individuals/giving/gift-aid.htm).
questions. As I consider in the next chapter, one potentially troubling function of the policy is to allow wealthier citizens greater opportunities for directing public subsidies and giving effect to their charitable preferences. Another potential problem is that charitable purpose statutes typically treat religion as a valid charitable purpose. Whether collective support of individuals’ religious preferences can be justified in a liberal democracy is a particularly tendentious question. It is not a matter that I propose to take up directly in this study, however. Rather, in what follows below I address another potential problem with the policy that has drawn critical attention. Namely, common strategies of supporting philanthropic donation make no special allowance for the purpose that many people consider to be the best potential justification for such policies of public support.

Scholars and laypersons alike often claim that if the state is to subsidize charitable giving, it ought to do so specifically for the purpose of relieving poverty. Certain sentiments behind this “eleemosynary rationale” for donative subsidies are not difficult to appreciate. To lack access to the means of a minimally decent life is a cruel fate anywhere, and it is especially cruel in societies that are relatively affluent overall. Nonetheless, sizeable portions of the population in many affluent societies live below the poverty line. In these same societies, large numbers of people are comfortable enough to be in the position to give money away. Many of the other causes that they might support—amateur sports leagues, the performing arts, Philosophy Bites podcasts—

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10 Note that support for religion appears to be inconsistent with the legal definition of charity. If we regard churches as mutual benefit organizations designed to advance the interests of their members, support for religion violates the “public benefit test.”


12 Literally, “eleemosynary” means “alms-dispensing,” and is derived from the Ancient Greek term for alms.

reflect no particular moral urgency. It can therefore seem disturbing for the state to support leisure pursuits and high culture precisely at the same rate that it subsidizes donations to necessities like homeless shelters and programs for at-risk youth.

The sense of indignation only becomes more palpable when we confront statistics about this policy’s effects. Less than one-third of tax-privileged charitable donations in the United States have any discernible redistributive consequence.\(^{14}\) The majority of these donations support churches, public interest groups, educational institutions, and cultural organizations.\(^{15}\) Nor is the non-redistributive character of philanthropy a singularly American phenomenon. In response to similar challenges, a recent High Court ruling in the United Kingdom determined that philanthropic organizations must demonstrate that they do not exclude disadvantaged populations from their benefits.\(^{16}\) For instance, to be eligible for state subsidies, a music hall might need to reserve a portion of seats at each performance for low-income patrons. But if we believe that philanthropy ought primarily to serve the poor, provisions to prevent the least well-


\(^{15}\) “Giving USA Highlights 2013,” Indianapolis: Lilly School of Philanthropy (2013). Note that these statistics consider religiously-sponsored service-delivery entities separately from churches.

\(^{16}\) In Independent Schools Council v. Charity Commission, the High Court concluded that “a trust which excludes the poor from benefit cannot be a charity. There is no case which decides that point, but we consider it is right as a matter of principle, given the underlying concept of charity from early times” (para. 178). Independent Schools Council v. Charity Commission, [2011] U.K.U.T. 421 (T.C.C.). The Court’s decision has been incorporated in the Charity Commission’s current guidelines. See U.K. Charity Commission, “Analysis of the law relating to public benefit,” September 2013, available at http://www.charitycommission.gov.uk/media/94849/lawpb1208.pdf.
off from being excluded from the benefits of philanthropy amount to superficial concessions.

In what follows I contend that, contrary to its appearance, the failure of current policy to prioritize the claims of need is not unjust. It might be misguided in numerous ways, but its indifference to poverty is not one of them. This is not because the claims of the least well-off citizens lack strong foundations. Nothing could be further from the truth. Rather, it is because the nature of those claims demands an entirely different kind of collective response. Meanwhile, as I show, the state has reasonably strong independent reasons to subsidize philanthropic pursuits in a way that respects citizens’ diverse judgments of value.

The chapter proceeds, in Section II, by further exploring some recent normative arguments for what I call the “eleemosynary rationale” for subsidizing philanthropy. Section III contends that the view of justice that underpins these arguments does not support a role for donations in meeting claims of need. A right to a decent social minimum is a basic component of any plausible view of social justice. But a policy that made part of the finance of this minimum voluntary and discretionary would be self-defeating. It could not reliably effect the required transfer of resources. Separately, it would subject the least well off to forms of control and subordination that are particularly odious among equal citizens. Moreover, as Section IV shows, subsidizing a plurality of voluntary pursuits has at least three plausible rationales. Subsidies assist individuals with minority preferences in overcoming collective action problems in the production of certain kinds of goods. They help to expand the range of valuable options available to citizens generally. And they facilitate a diverse and vibrant associational life that many regard as essential to a well-functioning democratic order. Section V concludes with a cautionary note about endorsing the eleemosynary rationale as a pragmatic compromise under non-ideal conditions.
II. THE ELEEMOSYNARY RATIONALE

Several theorists of political morality doubt whether a subsidy policy that ignores claims of need can be justified. As Rob Reich writes, “the philanthropic sector in modern society is justified at least in part because of its redistributive or eleemosynary aims.” This eleemosynary focus is warranted, in Reich’s view, in part because the conventional meanings of the terms “charity” and “philanthropy” refer to assisting the vulnerable. Common usage distinctly associates these terms with caring for the least well off. Besides the words we use to describe it, Reich notes that the historical role of the practice has often taken a redistributive shape. The origins of the philanthropic sector lie in the practice of almsgiving, which began in churches but gradually evolved into a secular form. Reich takes these facts as evidence of a principled justification. It would be surprising if our inherited understanding of the practice of charity was wildly out of step with the demands of justice.

Legal scholar Miranda Perry Fleischer proposes that we apply principles of distributive justice directly to policies toward philanthropy. Because state support for philanthropy triggers distributional consequences, she believes that this support must be defended in light of a theory of distributive justice. Though she endorses no particular theory, she explores how we might apply subsidies to charitable organizations based on their contributions to a utilitarian welfare function.


18 Reich, “Philanthropy and Its Uneasy Relation to Equality,” p. 27. Reich’s more recent work has to some extent moved away from this view. Still, the position seems to contain a certain degree of intuitive appeal.

19 Reich, “A Failure of Philanthropy,” p. 27

or their value within a scheme that promotes capabilities thresholds, or their tendency to maximize the economic position of the least well off in accordance with a Rawlsian difference principle. She believes that this exercise is the first step in properly identifying the regulative ideals of policy toward philanthropy.

Writing with particular reference to the policy of deducting charitable contributions from one’s income tax, Liam Murphy and Thomas Nagel note, “The word charity suggests that this deduction is a means of decentralizing the process by which a community discharges its collective responsibility to alleviate the worst aspects of life at the bottom of the socioeconomic ladder.” But the justification for such a policy is not merely verbal, in their view. “Since there is disagreement about what the exact nature of that responsibility is,” they continue, “and about which are the most efficient agencies, it is arguably a good idea for the state to subsidize individuals’ contributions to agencies of their choice rather than itself making all the decisions about the use of public funds for this purpose.” Because, in effect, the current policy does not satisfy this collective responsibility to the least well off, Murphy and Nagel conclude that it is not justifiable on these grounds.

Criticism that charity fails the least well off would enjoy limited appeal if we could not point to feasible alternative policy schemes that would do better in this respect. But the criticism gains support from an abundance of reform options. For instance, the state could take a rather

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22 Ibid.
23 The authors leave open whether it might be justifiable on other grounds. But if it is justifiable on other grounds, they contend, “the argument would be very different, and ‘charity’ is hardly the right word.” Ibid.
extreme position and limit nonprofit incorporation only to those associations that proclaim an eleemosynary mission. Alternatively, it could adopt a policy of blanket incorporation but limit additional subsidies to eleemosynary organizations, as some propose. Or, it could require philanthropic organizations to demonstrate that their goods and services serve the least well-off in some meaningful way. Instead, it could require such organizations to demonstrate at least that they do not exacerbate unjust inequalities. These examples do not exhaust the range of possibilities. Surely we can imagine others.

Though some of these reform proposals possess attractive elements, the explicit arguments on their behalf lack much strength. Certainly, we might take some counsel in the observations that the common dictionary definition of charity and the historical role of charitable enterprise both point toward special concern for the least well off. But what should we take away from these facts? The words we use in common speech have ambiguous definitions and messy genealogies. Often our moral convictions advance more swiftly than developments in language. It would not be too surprising if the current common meaning of charity reflects crude evaluative notions or makes sense only in the context of a primitive sociology.

Unfortunately, the claim that the historical role of charity constrains the contemporary role of charity fares no better in this regard. Whether and to what extent history can serve as a source of moral authority is itself a contentious question. But even if we accept the premise, we


face some additional problems. One is that the historical role of charity has varied considerably across time and place. There is no such thing as the historical role of charity. Another is that the role of charity within a given historical setting has not necessarily rested on solid moral principles.

Peter Brown’s research on the Christianization of Roman philanthropy is instructive here.\(^\text{27}\) According to Brown, Roman philanthropy had traditionally focused on gifts to the city and its citizens, rather than the poor as such. In the late classical period, Church entrepreneurs effected a shift in attitudes toward charity. They mounted a concerted campaign to appoint the poor as the proper objects of donation. Though the rhetoric was moral, the motivations were more prudential. By proclaiming itself steward of the poor, and accepting donations in their name, the Church succeeded in consolidating its own power in relation to the declining empire. The story suggests that what a society regards as the proper object of donation is not immutable. The story also cautions us about assuming that a particular version of the practice embodies a principled justification: it might depend as much on competition for power as it does on religious or ethical commitments. Thus, the claim that we must use history as our guide to policies regulating charity is both incomplete and ill-advised. On its own, it cannot tell us which among the various historical charity regimes we ought to model. And it fails to appreciate that our nostalgia for past models may presuppose an idealized image of how those models actually operated.

Fleischer’s claim that public policy toward philanthropy must be defended in light of the demands of distributive justice invites no objection, especially when the choice of the particular theory is left open.\(^\text{28}\) But it remains to be explained how exactly distributive considerations bear


on this domain. For theories of distributive justice need not hold that principles of justice must be applied directly to each individual policy. In some cases, applying a general principle to an individual act or policy works against that principle’s aims. Consider the way that a utilitarian would evaluate criminal punishment, for instance. Policies defining who endures which punishments clearly have distributive consequences. However, few utilitarians are likely to endorse the notion that punishments should be distributed directly according to their tendency to maximize utility. This might very well require putting less socially useful persons in jail, while letting highly useful murderers go free. A utilitarian is more likely to say that we should apply a principle of utility with regard to the wider institution, or set of institutions, rather than to each policy falling under it. The set of institutions that maximizes utility most likely requires particular policies that take no direct concern with utility at all. This example indicates that a conclusion in favor of an abstract principle of justice generally underdetermines the conditions of its application. With this in mind, we should at least be wary of blaming the persistence of economic inequality on policies toward charitable giving.

Recall Murphy and Nagel’s alternative proposed justification, that support for charitable enterprise can be justified as a way of discharging the collective responsibility to the least well off under conditions of disagreement about the nature of that responsibility. Their statement suggests the principle that decentralization is the legitimate policy response to conditions of disagreement. But if this were true, it appears to stand in contradiction with Murphy and Nagel’s overall view of taxation, in which this discussion of charitable subsidies takes place. When it


comes to taxation, disagreement is hardly limited to duties to the least well off. Citizens disagree profoundly about the purposes of taxation, how to implement it fairly and effectively, and everything in between. In spite of this, Murphy and Nagel do not consider decentralizing other decisions about public finance and administration. Indeed, their general argument mounts a spirited defense of liberal egalitarianism and a particular way of institutionalizing it. If there is something special about the disagreement that surrounds poverty, the authors give no indication as to what that might be.

The eleemosynary critique nevertheless contains some valuable observations. It rightly acknowledges that better-off citizens have a collective duty toward their less well-off compatriots. It also recognizes accurately that most societies woefully fail to appreciate or discharge this duty to the extent that justice requires. In my view, the critique’s mistake is to see policies toward philanthropic donations as a fitting response.

III. VOLUNTARINESS, DISCRETION, AND THE SOCIAL MINIMUM

Part of what makes this general line of criticism philosophically interesting is that it issues from scholars who appear to share a broadly liberal-democratic view of distributive justice. A basic tenet of such a view is that individuals, qua free and equal citizens, have a right to the material conditions of a minimally autonomous life. Encouraging individuals to respond to circumstances of disadvantage in a voluntary and discretionary way seems more at home in rival philosophical perspectives, perspectives that do not consider poverty a matter governed by justice.31 For instance, in its most prominent version, libertarianism denies that individuals are entitled to a social minimum.32 This is because it considers justice to be a function of respecting

31 For an overview, see Kymlicka, “Altruism in Philosophical and Ethical Traditions.”
natural rights to property. Attempts to require property owners to compensate victims of misfortune would seize from them what is rightly theirs. If this is so, responding to suffering or disadvantage can only take the form of an exercise of personal liberty. Certain Christian perspectives reach a similar conclusion from a different origin.\(^{33}\) Besides its formal legal definition, “charity” is also a cardinal virtue for individuals, which requires making sacrifices for those in need. On the Christian view, caring for strangers is a particular way of demonstrating love for God. Only direct acts of care allow individuals to cultivate the necessary dispositions. When the state removes personal discretion from the process of redistribution, it removes the means available for standing in a proper relationship to the divine.

These kinds of arguments are generally not available to a liberal-democratic perspective. A liberal-democratic view regards individuals as free and equal citizens, to whom a society’s major institutional arrangements must be justified. The prevalence and magnitude of poverty is, if not entirely a consequence of institutional arrangements, overwhelmingly sensitive to those arrangements. Institutional choices determine the way a society assigns ownership over resources, the way it rewards contributions to social production, the way it makes scarce opportunities available, and the way it insures against misfortune. A determination not to regulate institutions in some way is no less an intentional social decision than an affirmative state program. Those who are directly subject to these institutional arrangements are entitled to a justification of their distributional consequences. As Waldron stresses, in the absence of a compelling justification, subjects of social institutions lack good reasons to respect the outcomes of these arrangements, particularly when those outcomes assign them significant burdens.\(^{34}\) The level and specification


of the social minimum is a matter of particular urgency, as it protects some of citizens’ most vital interests. Rawls notably treats the establishment of a social minimum as a “constitutional essential,” a status that he withholds from more expansive distributive demands covering access to desirable positions and the range of inequalities. He notes that securing a social minimum is an essential demand in a liberal democracy because without certain guarantees individuals cannot participate in society as citizens at all. As many others have noted, formal protections of liberties such as freedom of speech and association offer negligible value to someone who is seriously ill, starving, or shelterless, or at significant risk of facing such conditions.

From a liberal-democratic standpoint, the Christian rationale also suffers from the fact that it is based on controversial metaphysical doctrines about which free persons may reasonably disagree. It would be unfair to nonbelievers to base fundamental policy decisions on the particular views of certain religious traditions. But even if this were not the case, it is difficult to see how the interests of the well-to-do in cultivating a particular virtue could outweigh the interests of the less well off in security against the threat of abject poverty. In any event, cultivating a virtue of charity can arguably be accomplished in ways that do not treat needy citizens as means.

Thus, from a liberal-democratic perspective, the eleemosynary rationale for charitable subsidies appears paradoxical. On the one hand, by emphasizing the claims of the least fortunate, it acknowledges the special urgency of assuring a social minimum. On the other hand, it suggests

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37 Barbara Herman proposes that the virtue of charity (beneficence) governs our responses to need in cases of intimacy and emergency. For Herman, the paradigm case of beneficence is not making a donation to benefit strangers but driving an ill neighbor to the doctor. Barbara Herman, “The Scope of Moral Requirement,” *Philosophy & Public Affairs* 30, no. 3 (2001): 227–56, p. 249.
that duties to the least well off are to some extent matters of personal discretion.

To be sure, a liberal-democratic picture contains much room for debate about the nature of the social minimum and how best to administer it. For instance, should the social minimum be set at a threshold of sufficiency, or should it be maximized in accordance with a difference principle?\textsuperscript{38} Another challenge concerns whether the minimum should insure against all possible causes of deprivation, even when they are the result of irresponsible behavior.\textsuperscript{39} An undifferentiated policy risks the possibility that able-bodied citizens may take excessive risks or refuse to contribute to the social product. A further challenge pertains to whether the minimum ought to accommodate the fact that persons require different amounts of resources in order to achieve the same level of functioning.\textsuperscript{40} That is, we might suppose at first that the fairest standard would entitle each person to an equal share to an index of social resources. But it soon becomes apparent that the same package of resources buys radically different outcomes depending on a person’s handicaps and abilities. The dilemma hardens when we realize how demanding it might be to raise all individuals to the same level of functioning. For instance, applying the difference principle to persons with severe disabilities appears to require able-bodied persons to make tremendous if not impossible sacrifices.\textsuperscript{41}

Perhaps Murphy and Nagel have these kinds of challenges in mind when they advocate decentralizing the collective duty to the very least well-off members of society. Clearly, resolving


\textsuperscript{40} This type of concern motivates a persistent criticism of Rawls’s use of social primary goods as the currency of justice. See, e.g., Martha Nussbaum, \textit{Frontiers of Justice} (Oxford: Oxford University Press, 2006).

these challenges at an abstract level is not an easy task. Designing policies to reflect the chosen principles also requires complicated empirical assessments regarding likely effects of various alternative packages. But I think it would be a serious mistake to infer simply from the complexity of the issues that the solution must lie in philanthropy. It would be mistaken for at least three reasons, which I stipulate presently and elaborate in what follows. First, the presence of disagreement does not entail that every position is equally valid, or that giving free rein to a variety of competing positions is a harmless concession. Second, whatever justice requires of the social minimum, voluntary and discretionary donations are an unreliable mechanism of administration. Third, making citizens dependent on largesse subjects them to forms of treatment that stand in marked tension with democracy’s presumption of equal citizenship.

With the first mistake in mind, note that delegating a social decision to individual discretion is appropriate in a variety of circumstances. Chief among these is when the value of the decision lacks an independent standard: the goodness or justice of an outcome depends primarily on the particular preferences of those affected by it. The value of a new stadium might be “choice-sensitive” in this way. Whether the stadium is valuable depends largely on how many citizens desire this option and plan to take advantage of it. By contrast, the value of “choice-insensitive” issues reflects independent standards. Their value does not depend on individual preferences. Certain matters of justice, at least when it comes to fundamental rights, duties, and opportunities, are choice-insensitive. The wrongness of murder does not depend on individual preferences. It is wrong regardless of how many people approve of it. Notice that precisely what constitutes murder and precisely why it is wrong might admit of reasonable debate. But controversies regarding the specification of the principle would not lead us to

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conclude straightaway that rights and duties in this area are matters of personal discretion. Part of the explanation for this would be that not all positions on murder are reasonable, even when they are well-meaning. Another part of the explanation would be that a society needs settled, public standards of justice in order to coordinate behavior. For practical purposes at least, a citizen cannot be both guilty and not guilty of a crime. The same things are true of the social minimum. Certain standards of specifying a social minimum are within the realm of reasonable disagreement. Others clearly are not. And while there might be room for principled debate and policy experimentation, outsourcing the definition of the principle itself is not an option. A citizen is either entitled to a heart transplant, or she is not.

I do not undertake to offer a particular conception of the social minimum here. My aim, rather, is to make a structural point that would apply to virtually any reasonable conception of that standard. That is, whatever one takes the social minimum to be, delegating the finance and administration of that principle to voluntary and discretionary donations would be an entirely unreliable way of satisfying it.43

Focus first on the fact that a donative system allows individual citizens to determine the amount of their contribution to the satisfaction of the basic minimum. With each choosing his level of contribution (including no contribution), it is doubtful that the amount of resources transferred will consistently resemble what the minimum requires.44 Next consider the fact that a donation-based system allows individual citizens also to determine the direction of their contributions toward

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43 Though some use the terms “voluntary” and “discretionary” interchangeably, I intentionally keep them distinct. “Voluntary” here means that a contribution is not coercively extracted. “Discretionary” means that the donor enjoys choice over the direction and currency of a contribution. In principle, a contribution can be voluntary without being discretionary, and vice versa.

44 As Bentham observes bluntly, private charity, as a response to misfortune, “will experience daily vicissitudes, like the fortune and the liberality of the individuals on whom it depends. Is it insufficient? Such junctures are marked by misery and death.” Jeremy Bentham, Theory of Legislation (London: Kegan Paul, 1908), p. 130.
the social minimum, with each choosing based on his own assessment of where needs lie.

Without coordination, it is difficult to imagine that contributions will spontaneously reach each person in need in proportion to his or her legitimate claims. Consider also that such a system encourages individual citizens to determine the currency of their transfers to the least well off. Donors, however, are not generally in a position to understand the particular interests of strangers they may wish to assist or the strategies that are most sensitive to those interests. Their judgments of means will often diverge from the judgments of experts or of recipients themselves. In short, however we set the social minimum, a system of voluntary and discretionary financing offers little confidence that the amount, direction, or currency of transfers will correspond to the targets specified by that minimum.

Against these odds, let us suppose for the moment that some kind of voluntary scheme did in fact prove relatively efficient at effecting the requisite degrees of transfer, in the right directions, and in the most appropriate currencies. Even if it could do this, recipients within this scheme would still have grounds for a strong objection, which is that such a system consecrates asymmetries of power and status between citizens of different fortunes. Because the scheme is voluntary, receipt of critical benefits partially depends on the goodwill of better-off citizens. The wealthy can withdraw these benefits if they please. To guard against this, beneficiaries of donations face pressure to ingratiate themselves to the wealthy, by genuflecting, flattering, and dissimulating. Criticizing or contesting the decisions of the wealthy risks cutting off the flow of benefits. This places the better off in a position of domination with regard to persons in need.46

45 Anna Schrimpf presents empirical evidence demonstrating that transnational donations tend to be biased toward novel problems and in service of persons most similar to the donors themselves. We might expect something similar of domestic donations. See Anna Schrimpf, “The Politics of Empathy: A Study of INGO Attention and Neglect” (Ph.D. diss., Princeton University, 2016).

Relatedly, because the scheme allows donors discretion over the direction and currency of their donations, it effectively places recipients on trial, subject to invasive investigations of their conditions. It forces the unfortunate to plead their case to wealthy benefactors, who sit in judgment of their honesty and worthiness. This casts recipients in an arbitrary position of social inferiority.\textsuperscript{47} These kinds of asymmetries of power and status are objectionable in many circumstances. But they are especially objectionable among citizens of a democracy, where no one is assumed to be inherently worthier of consideration or wiser in judgment. Thus, even if satisfying the social minimum on the basis of voluntary and discretionary transfers somehow proved to be an efficient strategy, it would subject victims of misfortune to forms of control and hierarchy that have no place among free and equal citizens.

A few qualifications are in order. First, one might agree that attempting to assure the social minimum entirely through subsidized donations would be unacceptable but nonetheless contend that donations could work to supplement other strategies. Conceivably the social minimum must set a cut-off point, beyond which citizens are not required to take further measures as a matter of collective duty. Beyond that cut-off point there are likely to be persons who would greatly benefit from additional resources. For instance, some persons may suffer from debilitating health conditions for which no cure is available. Others, lacking in self-control, may be inclined to waste their socially-guaranteed resources at any level of provision. I take these possibilities to indicate why it might be wrong for the state to discourage eleemosynary donations that aimed to supplement what justice requires in these cases. Notice, however, that these considerations do not equally provide a justification for subsidizing these supplementary donations. For once the duty to contribute to the social minimum is satisfied, citizens cannot be

\textsuperscript{47} See Niko Kolodny, “Being Under the Power of Others” (unpublished manuscript).
forced to contribute additional resources, through subsidies or otherwise. Once justice has been established, the apparent basis for using social resources to support particular charitable contributions collapses.

A second qualification is that the case against decentralized financing of the social minimum does not necessarily affect the case for decentralized administration of social services. State-run service provision faces a number of well-known criticisms. For instance, it lacks the incentives to run efficiently or creatively. It offers one-size-fits-all solutions that are insensitive to local contexts. The tendency of such programs to engage in means-testing may also be corrosive to the self-respect of their beneficiaries.48 Those persuaded by these criticisms may argue that the provision of the social minimum should not occur primarily through direct state services, but rather through a variety of decentralized mechanisms. But it would be a mistake to presume, in turn, that decentralized provision also requires voluntary donation. These two aspects of a social minimum policy are not inherently connected. For instance, publicly-financed income-support schemes can enable recipients to purchase needed goods and services in the market. Offering state contracts to private organizations to provide certain services can work to introduce certain incentives and harness the knowledge of local practitioners. Both practices decentralize the provision for basic needs without also decentralizing responsibility for their finance.

As it turns out, contemporary social policy tends to reflect this division between finance and provision. According to historian Peter Hall, the size of the nonprofit sector in the United States is a direct consequence of the Johnson Administration’s “Great Society” program.49 That program, and its successors, aimed to address poverty in large part by contracting out the

48 This last aspect reflects part of Rawls’s case against welfare-state capitalism more generally. See Justice as Fairness, pp. 139–40.
provision of goods and services to charitable organizations. Many eleemosynary organizations formed precisely in response to the availability of government funds. What proponents of the eleemosynary rationale for charitable subsidies may fail to realize is that donations compose only a small portion of the revenue of charitable organizations. (The share of revenue from donations was less than 13 percent in 2011.)\textsuperscript{50} The vast majority of revenue comes not from donations but from fees paid by recipients directly and from government contracts to provide specific goods and services. I mention these facts not to endorse these policies, but to underscore that criticism of private finance need not imply any particular position about the legitimacy of private provision itself. In turn, arguments on behalf of private provision need not entail endorsement of the eleemosynary rationale for charitable subsidies.

\textbf{IV. ALTERNATIVE SUBSIDY RATIONALES}

The foregoing considerations put some pressure on the thought that the state ought to subsidize donations as a way of satisfying justice’s requirement of a social minimum. Later on I consider whether subsidized eleemosynary donations might offer a pragmatic compromise in the event of certain non-ideal conditions. Before considering that question, though, I want to explore whether alternative justifications for subsidizing citizens’ philanthropic donations might cast current policy in a more positive light.

I see at least three potential justifications for general state support for charitable enterprise. The first is that indirect subsidies allow citizens to satisfy their diverse preferences for a certain category of goods. The second is that general subsidies allow the state to support a flourishing culture in a way that is sensitive to reasonable disagreement about evaluative

questions. The third is that subsidies of this type promote public deliberation and the stability of a
democratic order. This list is not intended to be exhaustive, and the particular rationales need
not be mutually exclusive. As it turns out, I suspect that the case for general state support for
philanthropy may be somewhat over-determined.51

A. Efficient Provision of Collective Goods

Economists have long noted that certain types of economic goods exhibit some peculiar
qualities.52 Though the good may be highly desirable, or desired by many people, ordinary
market mechanisms fail to provide it in proportion to demand. One class of such goods is “public
goods.” In the classic case, a good is “public” if it possesses the qualities of non-rivalry and non-
excludability. A good is non-rival if one person’s consumption of it does not diminish its
availability for consumption by others. A good is non-excludable if non-payers cannot be
prevented from consuming the good. A lighthouse is the paradigmatic example. One boat’s
consumption of light does not diminish the availability of the display to other potential
consumers. Likewise, a lighthouse’s service is hard to withhold from passing boats who have not
contributed to its maintenance. It is difficult to convince any particular boat to pay for lighthouse
services, since each knows that it can get the service for free so long as one boat pays. A
predictable consequence of this is that no profit-seeking firm will find it sufficiently lucrative to
erect lighthouses. Though all boats would prefer a lighted coastline, the market fails to satisfy this
demand. “Merit goods” provide another example of market failure.53 Here, the idea is that

51 Albeit not for all the same reasons, Pevnick seems to reach a similar conclusion. See Ryan Pevnick,
52 The locus classicus is Paul A. Samuelson, “The Pure Theory of Public Expenditure,” Review of
53 The concept originates in Richard A. Musgrave, The Theory of Public Finance (New York: McGraw-
consumers may desire or otherwise “merit” a certain good but be unable to pay the market rate. Museums are a case in point. Museums can exclude visitors and thus charge fees for entrance. But a museum that tried to subsist on fees alone would either need to charge exorbitant ticket prices, such that only the wealthiest consumers could afford to enter, or else provide cut-rate exhibits in order to keep ticket prices affordable. As in the case of lighthouses, profit-seeking firms will not generally find it lucrative to erect and operate high-quality museums. Those who desire such goods must turn to alternative, non-market mechanisms for providing them. That is, they must either enlist the state to contribute public funds or convince individuals to contribute private donations.

Though some still use the term “public goods” to refer to both types of goods, many economists now prefer the umbrella term “collective goods.”54 “Collective goods” is a helpful improvement partly in recognition of the fact that “publicness” is neither a binary quality nor indicative of a natural kind. For many such goods, rivalry is a matter of degree. Virtually every good becomes rival at some point. If too many boats clog the harbor, not everyone can see the lighthouse’s beams. Similarly, excludability is to some extent subject to social control. For instance, the owner of a lighthouse could employ floating security officers to deter non-payers, or it could set the lighthouse’s beams to a particular frequency, visible only to boats equipped with technology purchased from the lighthouse itself.

The terminological shift to “collective goods” is an attempt to accommodate some of these conceptual challenges. It also helps to head off a common fallacy in discussions of public goods. Many assume that the “public” in “public goods” refers to the identity of the provider of the

good. That is, something is a public good if and only if the state provides it. Or, if something is a public good, then the state has a duty to provide it.\footnote{For instance, Rawls reflects this ambiguity when he writes, “the provision of public goods must be arranged for through the political process and not through the market.” Rawls, Theory of Justice, p. 236.} These statements are understandable, given that the theory of public goods emerged from the study of public finance, and has sometimes been used to justify a particular role for the state.\footnote{According to the “economist’s theory of the state,” the existence of a state is justified entirely as a function of its ability to solve market failures. See Geoffrey Brennan, “Economics,” in A Companion to Contemporary Political Philosophy, ed. Robert E. Goodin, Philip Pettit, and Thomas W. Pogge (Oxford: Blackwell, 2007), 118–52.} However, both statements beg the question. A good can exhibit the technical qualities of “publicness” whether or not anyone is in fact providing it. More importantly for my purposes, the fact that a certain good exhibits “publicness” underdetermines whether any particular entity is morally permitted or required to provide it.

It is not difficult to see why the state might have a duty to provide a society with certain “essential” collective goods.\footnote{The distinction between “essential” and “discretionary” public goods belongs to Klosko. See George Klosko, “The Obligation to Contribute to Discretionary Public Goods,” Political Studies 38, no. 2 (1990): 196–214.} Members of such a list typically include national defense, the rule of law, physical security, certain public health measures, and basic infrastructure for communication and transportation. One way of justifying a particular list of state-provided collective goods would be to show that the provision of such goods is instrumentally necessary for the realization of principles of justice. This appears to be Rawls’s view.\footnote{Rawls, Theory, pp. 235, 246.} For instance, police protection is necessary for enjoying equal access to a scheme of basic liberties. Since police protection is thus instrumentally required by justice, there is no trouble in saying that the state is required to provide police, and to tax citizens in order to do so. Goods necessary for satisfying the social minimum provide another case in point. The challenge to this and related views comes when we turn to “discretionary” collective goods, goods that are undersupplied by markets, but
not entirely justifiable as instruments of justice. Many such goods are “choice-sensitive” in the
sense that I noted earlier. Examples include historical preservation, fireworks displays,
exploration of outer space, radio broadcasts, and many others. Many citizens may prefer these
goods. Perhaps even a majority of them will. But at least some citizens will not prefer these goods,
or prefer them in precisely the same way. When the state endeavors to provide goods that only
certain citizens prefer, the dissenters deserve a justification for why they must contribute tax
dollars to pay for such things.\textsuperscript{59} Rawls puts the point starkly when he writes, “There is no more
justification for using the state apparatus to compel some citizens to pay for unwanted benefits
that others desire than there is to force them to reimburse others for their private expenses.”\textsuperscript{60}

The solution that Rawls suggests is to appoint a special “exchange branch” of
government that will adjudicate proposals for discretionary collective goods on the basis of an
unanimity criterion. If a proposal secures the unanimous approval of all citizens, then the state
may provide the good in question. Though he does not address this proposal in detail, he
registers the worry that “very real difficulties stand in the way of carrying this proposal
through.”\textsuperscript{61} Obviously enough, the number of proposals that might secure unanimous approval is
extremely small. Another potential solution to the problem (that Rawls does not consider) is
simply to allow citizens to make donations to organizations that provide the discretionary
collective goods that they prefer. Such a proposal does not “compel some citizens to pay for
unwanted benefits that others desire,” and it does not give rise to the various implementation
problems that beset the idea of an exchange branch. But the proposal also leaves some things
wanting. In the first place, it does not offer a complete solution to the problem of market failure.

\textsuperscript{59} Alan Patten makes this case particularly clearly in, “Liberal Neutrality: A Reinterpretation and
\textsuperscript{60} Rawls, \textit{Theory}, p. 250.
\textsuperscript{61} Ibid.
For instance, collective goods often have high fixed costs that make them difficult to provide unless they can attract donations from a large number of donors. But without the assurance that sufficient others will contribute to the good that a donor desires to produce, each faces pressure to withhold her donation. Such goods will tend to be underprovided in proportion to their demand. Another problem is that simply leaving the provision of collective goods up to donation will favor certain citizens and disfavor others. That is, the main beneficiaries of such a scheme will be citizens who prefer relatively popular collective goods, or collective goods that are relatively cheap to provide.

An alternative solution may lie in another proposal of Rawls’s, made for a slightly different purpose. Besides the exchange branch, Rawls also proposes an “allocation branch.” One of its primary functions lies in “identifying and correcting, say by suitable taxes and subsidies and by changes in the definition of property rights, the more obvious departures from efficiency caused by the failure of prices to measure accurately social benefits and costs.” The passage is ambiguous as to what counts as an “obvious departure from efficiency” as well as the standard for assessing “social benefits and costs.” But it provides some modest support for the thought that subsidies in particular provide the state with another potential tool to deploy in the case of market failures. On this reading, subsidizing citizens’ charitable donations is a desirable way of facilitating the efficient satisfaction of preferences for collective goods. Amplifying the value of donations can increase the chances that donors reach the threshold required to provide the collective goods that they prefer. And it allows individuals to win public support for their preferences without needing to clear the impossibly high hurdle of securing unanimous approval through the exchange branch.

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62 Ibid., p. 244.
But it is not immediately clear that such a proposal escapes the problem that the unanimity criterion of the exchange branch is meant to solve. Namely, a consequence of applying subsidies to philanthropic donations is that some are compelled to pay for the satisfaction of others’ preferences for collective goods. One potential response might be to borrow the logic of a common argument for the legitimacy of majority rule. According to this argument, losers of majoritarian decisions have reason to comply with the outcomes of those decisions out of a sense of reciprocity: they are likely to be in the majority on a future decision and desire the compliance of the minority. Particularly over time, the burdens of being on the losing side cancel each other out. In a similar vein, if I am subsidizing your preference for collective goods, and you are subsidizing mine, the burden that each of us bears cancels out, particularly over the course of many iterations. These kinds of argument face a familiar foe, however, which is that certain individuals may be persistently on the losing side of a majority decision. In the case of subsidies, certain individuals may be net subsidizers of others’ preferences. Individuals who forswear ever making philanthropic donations gain nothing from a scheme that uses tax revenues to subsidize donations. It is unclear how such a scheme can be justified to them.

I will not pursue this line of thought further here, except to note that this kind of “persistent minority” or “net loser” complaint would appear to apply far beyond the case of philanthropic donations. It seems to apply to any use of subsidies to resolve market inefficiencies. And if we think that subsidies are at least sometimes justified as a solution to market failures in other parts of the economy, the challenge for the critic of applying subsidies to philanthropic donations is to show what makes this case special.

B. Interests in Valuable Options

Of course, a way out of the foregoing problem is to argue that a state’s role is not limited
to respecting citizens’ existing preferences for collective goods. Rather, in some cases it may have a duty to ensure that citizens possess an adequate range of valuable options. For Dworkin, this aspect of the state’s role owes to a requirement of intergenerational justice. In his view we owe to future generations to leave the stock of ideas and experiences no less enriched than we found it, and preserving the richness of a cultural language requires investment in and expansion of its components. For Raz, controlling aspects of our lives in accordance with our own choices is a large part of what gives value to life. However, exercising this control depends not only on the permission to choose for oneself, but also on the presence of an adequate range of options. Both worry that democratic majorities and market forces are insufficient to provide a robust and diverse range of valuable options. Consequently, claims Raz, “The government has an obligation to create an environment providing individuals with an adequate range of options and the opportunities to choose them.”

A challenge for both positions is that citizens disagree profoundly about questions of value. If the state were to decide on citizens’ behalf what count as valuable options, it would risk denying the equal respect it owes to each of them. A policy of that subsidizes citizens’ own choices with regard to these questions offers a way out of this dilemma. It allows the state to enrich the cultural language and expand the range of options without imposing a particular vision of the good.

65 Ibid., p. 414.
66 Although Raz offers no concrete proposal, Dworkin proposes that the duty to expand a society’s cultural language allows the state to engage directly in funding cultural projects. But, as Harry Brighouse charges, this proposal risks violating the doctrine of liberal neutrality, particularly as Dworkin himself defines it in his other work. Subsidizing donations appears to sidestep the thrust of Brighouse’s critique. Compare Harry Brighouse, “Neutrality, Publicity, and State Funding for the Arts,” Philosophy & Public Affairs 24, no. 1 (1995): 35–63.
C. Democratic Stability

Indirect state support for philanthropy may also be defended on a different plane. The concept of civil society emerged in the modern period, first as a way of distinguishing a law-governed condition from a state of nature (as in Locke), and then as a way of describing the community constituted by a scheme of private law (as in Hegel). The concept reemerged in the late twentieth century, this time as a reference to organized non-market activity outside of the state. Several commentators have argued that a robust and manifold civil society provides indispensable infrastructure for a stable democratic order and creates the possibility of a more thoroughly deliberative process of self-government. As Habermas defines it, “Civil society is composed of those more or less spontaneously emergent associations, organizations, and movements that, attuned to how societal problems resonate in the private life spheres, distill and transmit such reactions in amplified form to the public sphere.” The public sphere, for Habermas, refers to the communicative space in which a society registers and debates matters of common concern. It is where citizens formulate public opinions, articulate conceptions of the public interest, formulate social norms, and debate ideals. Critically, it is also a primary way through which citizens can influence the political agenda and contest state action.

Civil society is able to serve these purposes because it is not coordinated primarily by the logics of exchange or command. Rather, as Iris Young notes, it is governed by the logic of

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69 Young explains the resurgence of interest in the topic in Iris Marion Young, Inclusion and Democracy (New York: Oxford University Press, 2000), pp. 154ff.
communicative interaction. It depends, furthermore, on donation for much of its sustenance. But the spontaneous donations it receives may not be sufficient to maintain it. Habermas warns that “the network of associations can assert its autonomy and preserve its spontaneity only insofar as it can draw support from a mature pluralism of forms of life, subcultures, and worldviews.”

This network of associations risks colonization by market forces, state authorities, or dominant groups within civil society itself. Though Habermas does not argue specifically for affirmative state support for civil society, he worries whether legal freedoms are sufficient for its protection. As he writes, “Basic constitutional guarantees alone, of course, cannot preserve the public sphere and civil society from deformations.” It would seem that affirmative support would provide an important supplement to these constitutional guarantees. And yet, in order to “assert its autonomy and preserve its spontaneity,” civil society must remain at critical distance from the state. Were the state to sponsor particular organizations directly, it risks challenging the sector’s independence.

We can see indirect subsidies emerging as a solution to Habermas’s dilemma. They provide a way for citizens collectively to strengthen civil society while preserving its diversity and autonomy.

V. CONCLUSION

As we have seen, the fact that, and the way in which, the modern state subsidizes impersonal gratuitous transfers puzzles many observers. Using public funds to subsidize private decisions stands in need of justification. A seemingly obvious way of justifying this policy would

71 Young, Inclusion and Democracy, p. 158.
72 Habermas, Between Facts and Norms, p. 368.
73 Ibid., p. 369.
74 Ibid.
be if it facilitated the satisfaction of one of a society’s most basic duties. A basic component of justice in a liberal democracy is a social minimum that protects against the worst forms of disadvantage. An eleemosynary rationale for subsidizing donations seems compelling in light of the many aspects of the nonprofit sector that are associated with responding to disadvantage. The word “charity” that lingers in our description of the major class of subsidized nonprofit corporations reflects an historical connection to almsgiving, both as a virtue and as a practice. A large number of such organizations continue to play a significant role in providing various forms of support to persons in need. The discovery that the state makes subsidies formally available to a wide range of pursuits may stoke suspicions that the policy has been captured or perverted in some way. The fact that the effects of this policy ultimately steer a greater amount of resources to non-eleemosynary aims may work to confirm these suspicions.

I have argued, however, that the eleemosynary rationale does not hold up to scrutiny. Precisely because the provision of a social minimum is a matter of basic justice, the parameters of that minimum must be publicly established, rather than delegated to personal discretion. Whatever those parameters turn out to be, attempts to satisfy them on a voluntary and discretionary basis would be entirely unreliable. By making recipients dependent on the largesse of more fortunate citizens, such attempts would also expose recipients to asymmetries of power and status that undermine their standing as equal citizens.

Meanwhile, I suggested that the case for the eleemosynary rationale becomes considerably less compelling when we consider alternative rationales for subsidizing philanthropic donations. I proposed that generalized support for citizens’ donative choices might be justified as a way of solving a common failure of markets. The state might also subsidize donations as a way of strengthening or expanding a society’s cultural language. A third possible rationale for subsidizing citizens’ donative decisions is to encourage forms of deliberation and
A proponent of the eleemosynary rationale might nonetheless respond that the foregoing arguments apply only within the context of a form of ideal theory. They presuppose a well-ordered society in which citizens agree upon and comply with particular principles of justice. Few if any actual societies are like this. In particular, most citizens are simply not willing to accept the rate of taxation or the shift in state expenditure that would be necessary for realizing a just social minimum. However, a majority of citizens might be willing to accept reforms of the charitable subsidy that would steer greater resources toward the disadvantaged. Given these circumstances, should we not endorse the eleemosynary rationale as a tragic “second-best” policy on grounds of feasibility?75

The challenge raises several complex issues that require a more thorough response than I can offer here. But I want to note two reasons for caution. The first point to make is that we lack a priori grounds for believing that reforming charitable subsidies constitutes the unique second-best option. In principle, a large number of reform options vie for our support, and it would be surprising if reforming charitable subsidies happened to sit alone at the top of the list. A number of other options might be equally feasible. When compared to a range of alternatives, the eleemosynary rationale might look more like the fourth-best or nineteenth, rather than second.

The second point is that I am not optimistic that this option will rank particularly highly, given the following considerations. On one attractive way of thinking about non-ideal theory, we should prioritize the second-best policies that exhibit a transitional character. That is, we are not to select policies based simply on whether they improve upon the status quo in a certain way.

75 Though not referring to subsidies, Kymlicka suggests that voluntary responses to disadvantage might be “second-best” approaches to injustice. Kymlicka, “Altruism in Philosophical and Ethical Traditions,” p. 94.
Rather, as Simmons contends, “A good policy in nonideal theory is good only as transitionally just—that is, only as a morally permissible part of a feasible overall program to achieve perfect justice, as a policy that puts us in an improved position to reach that ultimate goal.” If we endorse this way of identifying policies in non-ideal conditions, I think we see that reforming subsidies in accordance with the eleemosynary rationale exhibits some striking tendencies to shift the state of affairs even further away from what justice requires. Endorsing policies that decentralize and make voluntary the administration of justice can simply reinforce the wealthy’s unwillingness to concede and undermine the poor’s drive to demand. This threat of a vicious cycle appears especially likely given the common understanding of “charity” and the inherited role of private philanthropy in responding to disadvantage. Endorsing a greater role for philanthropy here expresses, or may easily be taken to express, the mistaken presumption that citizens are not entitled to guaranteed shares of the social product.

To conclude, in arguing that general public support for citizens’ philanthropic donations may be justifiable, I have not meant to claim that existing policies are in fact justified. Many have pointed out that whatever the justification for existing policy, its particular design is seriously flawed. Some charge that the state exercises insufficient oversight over the process of incorporation, such that a large number of fraudulent or borderline-fraudulent organizations are able to extract public resources. Others dispute whether religious causes ought to be included among the list of purposes eligible for public support. In the next chapter I consider an additional critique, that by permitting wealthier citizens greater say over the collective features of

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society, existing practice offends notions of procedural equality. Here, my aim has simply been to show that at least one particular element of common practice is consistent with the political morality of liberal democracy.
CHAPTER 2
Donations and Democracy

I. DEMOCRATIC DOUBTS

For all of their virtues, private acts of public beneficence frequently rankle those who profess allegiance to democratic ideals.¹ The claim that philanthropy and democracy stand at odds with one another has been a recurring theme in public discourse at least since the dawn of the twentieth century, when the Walsh Commission mounted a high-profile investigation of philanthropic foundations in the United States. In our own time, handwringing over the role of large donors in public affairs is an almost daily ritual in the opinion sections of major news outlets.

The mechanisms through which philanthropy has wielded influence over education have yet garnered the most scrutiny.² A consortium of extremely well-endowed donors has pioneered strategies for reforming public schooling in line with a particular conception of national education.³ Generally, these strategies appear to cluster into four types: electioneering, lobbying, advocacy, and independent provision. When it comes to electioneering, members of this consortium have financed campaigns of sympathetic candidates for public office. In a lobbying capacity, donors have offered sizable resources to public schools in exchange for implementing their favored policies. In the mode of advocacy, the movement’s financial backers have funded a

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³ In calling this movement a consortium I do not mean to imply that the various participants are engaged in conspiracy. Rather, I mean to note simply that they converge on remarkably similar perspectives on the regulative ideals of education.
bevy of sympathetic academic researchers, created think tanks to develop and promulgate policy
advice, and forged alliances among activist organizations. These funders have also chartered
alternatives to public schooling to operate in place of, or alongside, the publicly provided schools.

One might level a variety of different critiques at these strategies. For instance, one might
oppose the conception of national education that inspires the reform movement. Or, one might
concede the educational philosophy but doubt that the implementation strategies can succeed.
One might also contend that education is a matter of basic justice whose provision simply cannot
be outsourced to private parties. Critics who invoke the mantle of democracy, however, seem to
indicate a distinctive and no less fundamental objection.

Many people have the sense, particularly when confronted with such cases, that there is
something morally troubling about the use of economic power to influence public affairs.
Though we may admire the donors’ civic commitment, and even agree with some of their
positions, these cases grate against our sense of fairness in making collective decisions. Still, we
find it hard to specify exactly why this is so.

A natural place to look for answers would be the theory of democratic decision-making
that is primarily concerned with preventing the conversion of economic power into political
power. The family of views traveling under the label political egalitarianism holds that rights of
political participation are governed by a principle of equal substantive opportunity for political
influence. Individuals do not treat one another as democratic citizens unless they prevent
background resource inequalities from contaminating their collective decision-making. A society
that permits differences in wealth to be converted into differences in political influence runs a foul

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4 For an argument along these lines, see Eric Beerbohm, “The Free Provider Problem: Distributive
Reich, Lucy Bernholz, and Chiara Cordelli (Chicago: Chicago University Press, forthcoming).
of this principle and fails to live up to the democratic ideal.

Democratic critics of philanthropy may be surprised to learn, however, that authoritative explications of political egalitarianism provide only tepid support for their claims. This is because the standard interpretation of political egalitarianism holds that a principle of political equality applies only to official processes. For those who hold this official proceduralist view, the demands that political equality makes on property are exhausted by regulations on the availability of electoral and administrative influence. If and when inequalities in wealth do not translate into differential opportunities to control electoral and administrative outcomes, political equality imposes no further conditions on attempts to shape public affairs. Thus, official proceduralists would join the objection to major donors’ electioneering and lobbying activities, but their view prevents them from objecting to the use of economic power to manipulate conditions in civil society.

In what follows, I argue that while political egalitarianism serves as an attractive ideal, the official proceduralist interpretation of it is unsound. This is so because it relies upon (i) an unstable conception of the value of equality and (ii) a crude picture of the way influence can manifest outside of official processes. Overcoming these deficiencies leads us to an alternative position on the subject of political equality. According to what I call the deliberative proceduralist view, principles of political equality extend to the process of public deliberation that precedes and encircles electoral and administrative processes. This account maintains that while insulating official procedures from inequalities in wealth may very well take moral priority, a well-ordered democratic society cannot permit inequalities in property ownership to colonize civil society. Furthermore, the view suggests that regulatory strategies often taken to apply to political spending might also apply to certain kinds of philanthropic donations.
II. POLITICAL EQUALITY AND POLITICAL DONATIONS

A. Political Egalitarianism

In a democracy, the legitimacy of political decisions is due in significant part to the equal distribution of rights to participation. Collectively-binding decisions cannot be legitimate unless those subject to these decisions enjoy equal rights to contribute to them. In other words, the fact that we enjoyed the same chances to contribute to a decision is part of what makes it permissible for those executing the decision to compel our compliance. Relatedly, this fact about the equality of decision-making procedures is part of what vests decisions with authority, what gives us reason to comply with the outcome of a decision even when we disagree with its substance. Few believe that procedural equality is all that matters in determinations of legitimacy or authority. One might insist, for instance, that no matter how egalitarian the procedures that led to it, a decision to violate citizens’ most vital substantive interests without good reason (such as massacring an ethnic minority for sport) could not be remotely legitimate. One might also insist that decisions exhibit certain virtues associated with the rule of law, such as consistency and publicity. But at least for certain theorists, equality in the distribution of political power is what gives a legitimate decision a distinctively democratic flavor: it is the signal contribution that democracy makes to


6 Some political egalitarians build in additional conditions to the criteria of legitimacy. Rawls, for instance, requires that the outcomes of decisions respect a constitution that is reasonably acceptable to those it governs. See Rawls, *Political Liberalism*, p. 137.
legitimate governance.\footnote{See especially Viehoff, “Democratic Equality and Political Authority,” and Kolodny, “Rule Over None II.”}

The conception of political equality that I wish to challenge below roughly reflects the positions of John Rawls and Joshua Cohen. (Cohen takes himself in large part to be elaborating and refining Rawls’s view, which, despite its influence, is maddeningly terse and gestural.) Though their general position does not enjoy universal support, it both reflects widely shared intuitions among ordinary citizens and serves as a frequent point of departure for numerous philosophical explorations. Indeed, casual usage of the term “political egalitarianism,” it seems to me, tends to pick out the particular commitments of this particular conception.

Though every democratic theory incorporates some conception of political equality, not all such theories earn the label “political egalitarian.” Explaining some ways in which political egalitarianism differs from other conceptions of political equality will serve to clarify why it holds a certain appeal.

Conceptions of political equality differ across several dimensions. In the first place, they differ in what they take the grounds of political equality to be. On some views, egalitarian political procedures are valuable instrumentally because they tend to produce substantively just outcomes. As a matter of empirical tendency, it turns out that assigning participants equal say in political decisions happens to result in high-quality outcomes, across numerous conceptions of what counts as a “high-quality” outcome. If some other inegalitarian procedure could reliably generate better outcomes, those who accept the instrumental justification for democracy are committed to endorsing it. For political egalitarianism, however, egalitarian procedures are valuable not (only) because they tend to produce good outcomes, but because of qualities inherent in the procedures themselves. Democratic citizens, in other words, have rights to equal participation in collective decisions.
decision-making. These rights constrain the choice of decision-making procedures.

Conceptions of political equality also differ on what they regard as the currency of equality. One might hold that the relevant distribendum in rights to participation is a citizen’s impact on collectively-binding decisions. Impact can be understood as the contribution one’s preferences make to a political outcome. For example, equality of impact obtains in the ideal of simple majority rule: when a group assigns each member an equally weighted vote and awards victory to the option that gains the support of a majority, each voter enjoys equal impact over the resulting decision. However, if certain common conditions obtain, two individuals who enjoy the same formal impact on a decision may still enjoy vastly unequal power over outcomes. Suppose that these two individuals are permitted to express opinions publicly before the vote, or to lobby the implementers of the decision after the vote. If one of the two individuals possesses greater resources to engage in these activities, her preferences will enjoy an extra advantage. The consistent supporter of impact as the currency of political equality faces an intractable dilemma. The impact-theorist must say either that these extra advantages do not matter, or that engaging in political activity outside of voting is impermissible. Political egalitarianism, meanwhile, claims that citizens must enjoy equality of influence over political outcomes. This is understood to mean not only an equally-weighted vote, but also roughly equal resources to expend on informal political activity.

Another way conceptions of political equality differ lies in how they accommodate variation in citizens’ motivation and talent. For one might note that even if citizens enjoy equal external resources to contribute to political decision-making, some will possess greater motivation to engage in political contestation and some will possess greater talent in identifying and

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marshalling convincing political arguments. On certain views, the potential advantages that accrue from greater motivation or talent are unfair: citizens are not responsible for their motivational sets or their abilities. Such views are particularly compelling against a backdrop of wide resource inequalities, which heavily condition chances to develop and express motivations and abilities. Even so, taking this view seriously entails some troubling implications. At the limit, it makes it nearly impossible to justify representative government. The ideal of representation principally depends on the permissibility of sorting motivated and talented citizens into leadership roles. Declaring leadership unjust involves sacrificing the various benefits of representation. Taking the unfairness of inequalities in motivation and talent seriously would also make it difficult to justify public deliberation. Deliberation favors participants who express the best arguments. Those who express the best arguments are frequently more enthusiastic and more rhetorically skilled. If these advantages are unjust, skilled deliberators must either have their liberties curtailed, or other participants must often be encouraged to ignore what they believe to be the best arguments, lest those arguments issue from someone who is unfairly brilliant.

What does equality demand here? Cohen argues, with some force, that a principle of political equality ought to screen out unequal advantages in access to the political process only insofar as they are “irrelevant to performance.” In his view, the motivation to engage in politics and the talent to persuade others are qualities that are relevant to the performance of a citizen’s

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10 Representation based on lottery might avoid this objection. But lottery-based representation also sacrifices certain purported gains of expertise. Space forecloses a thorough treatment of these issues here.

role. These qualities are not therefore appropriate objects of social control. Wealth, by contrast, is an arbitrary advantage. Differences in wealth are irrelevant to the performance of a citizen’s role and thus appropriate objects of social control.

In sum, political egalitarianism holds that procedures for making collectively-binding decisions must observe a principle of *equal opportunity for political influence*. Behind this principle lie the following judgments: egalitarian procedures are valuable apart from the contribution they make to substantively just outcomes; the currency of equality cashes out in terms of influence, rather than impact; and sources of influence that are irrelevant to the performance of active citizenship deserve the most scrutiny.

For those who hold this general view, regulating the flow of resources into the political process is essential for assuring equality of opportunity within that process. Political egalitarians warn that unequal opportunities for financing electoral campaigns and lobbying officials distort fairness in political participation, thereby undermining the legitimacy of subsequent exercises of state power.

B. *The Official Proceduralist Interpretation*

Because political egalitarianism regards economic advantage as an unjustified source of political power, it would seem to provide principled support to criticism of philanthropy’s influence on public policy. This appearance is partly misleading. For both Rawls and Cohen, the principle of political equality applies exclusively to the formal mechanisms of decision-making: elections and administrative procedures. The selection of representatives, the passage of ballot

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12 Ibid., p. 51. While Cohen rejects the idea of leveling down individuals who are particularly motivated and talented, he does believe that a society ought to take other measures to redress socially caused differences in motivation and talent.
initiatives, the lobbying of officials—these are the types of mechanisms to which the principle of political equality applies. When economic advantage distorts equal opportunities to contribute influence in such processes, these political egalitarians condemn it. Arguably, then, they would condemn the efforts of wealthy individuals to pressure school boards. However, according to this position, political equality does not apply to mechanisms that operate at further remove from the electoral and administrative processes, mechanisms that shape the background political culture. This brand of political egalitarianism would therefore turn a blind eye to more insidious efforts to sway public policy: the use of economic advantage to shape civil society.

The insistence that we confine procedural equality to official procedures may certainly seem strange. We typically think that political outcomes depend considerably on influence from a society’s background public culture. Indeed, because the background culture heavily conditions the political agenda, processes of public opinion formation would appear to exercise greater ultimate control over the direction of collective decision-making than campaigns and lobbying. Whatever objections there are to unequal opportunities to influence elections might therefore seem to apply even more strongly to unequal opportunities for shaping the background public culture. The narrow interpretation of the scope of political equality can nevertheless prove tempting when one considers three claims available on its behalf:

1. *The value of equality is expressive.* A main reason for regulating official processes by a principle of equal opportunity for influence is that this publicly and firmly expresses respect for each member of the polity as an equal citizen. The existence of differences

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in opportunities for influence outside of the official processes does not undermine the public recognition of equal citizenship.

2. **Positions of official authority are unique.** Official procedures deserve to be singled out because they distribute inherently scarce goods, namely positions of coercive authority (and access to positions of coercive authority). The goods that unofficial mechanisms distribute are not inherently scarce, nor do these mechanisms have direct recourse to coercive enforcement.

3. **Regulatory strategies must be workable.** Even if it were true that inequalities in the availability of influence over civil society were unjust, a constitutional democracy has no workable way of regulating these inequalities. Applying political egalitarianism to civil society would entail intolerable costs to our other significant interests in liberty or prosperity.

However, as I explain below, these claims fail to vindicate the official proceduralist view.

## III. THE VALUE OF POLITICAL EQUALITY

### A. Expressive Equality

One argument for confining a principle of equality to the electoral and administrative processes is that doing so simply exhausts our reasons for caring about political equality in the first place. The main interest we have in enjoying equal access to public influence is the interest in being publicly recognized as an equally valuable participant in deciding collective affairs.\(^\text{15}\) At

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the extreme, to be excluded entirely from processes of decision-making can express, or appear to express, profound disrespect. It can express the proposition that one’s judgment is worthless, or that one’s interests count for nothing. Relative exclusion improves upon this situation only by a matter of degree. To be afforded fewer opportunities for influence than others can be taken to express that one’s judgments are inferior, or that’s one’s interests count less.

If the main interest in equal opportunity for public influence consists in this recognition of equal moral status, equal availability of input into official processes may appear to be both necessary and sufficient for satisfying it. This is due in part to the fact that official processes are highly visible focal points for political activity. They constitute the final stages in the determination of laws or in the determination of the identities of those who will make the laws. They are terminals on which all effective input must eventually converge. The contours of these processes have distinct boundaries. What is more, the outcomes of these processes are determinate: someone gets elected, a law gets passed. Arguably, these qualities combine to render official processes the appropriate subject of procedural equality. Inclusion in the decisive and consequential processes that everyone can plainly see cements one’s status as an equal citizen.

Meanwhile, inclusion in background processes of public discussion make only trivial additional contributions to that status. The focal points of these processes are many, varied, and constantly in flux. (The locus of debate on a given issue might be a Sunday talk show, an internet discussion board, or an outdoor rally.) The processes through which public influence travels lack clear contours. (Contrast the boundaries of, say, social media or print and broadcast journalism with the boundaries of an administrative agency.) In addition to this, the outcomes of the processes of public opinion formation are indeterminate. Whereas one can identify at any given

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moment which party holds the balance of power, what the public thinks shifts constantly and is
difficult to track. The indeterminacy of public opinion diffuses any sense of injury that one might
experience as a result of exclusion from the processes that shape it. Thus, one might think it
redundant to extend a principle of equal influence to a wider range of decision-making processes.
Doing so would contribute little or nothing more to the establishment of a public status of equal
respect.

Though this argument exposes some potentially important distinctions between narrowly
political processes and others, it ultimately undermines itself from within. For there are good
reasons to believe that the interest in equal recognition does not actually require equal
opportunity for influence over official processes. Niko Kolodny wonders why, if the interest in
political opportunity is merely a symbolic one, we don’t simply send a flag to each citizen when
he or she reaches the age of majority.17 Sending a flag to each citizen would express that he or
she is considered an equal member of the polity. Surely this would be less costly than regulating
access to political processes. Though the flag proposal is probably not meant to be taken
seriously, the point remains that there may be other relatively inexpensive methods for securing
the public status of equality.

David Estlund challenges the relationship between political equality and equal public
status more directly.18 He argues that political inequality need not express any disrespect in the
first place. In his view, differences in relative influence only signify expressions of disrespect when
they are in fact owed to disrespect. Justifications for exclusion based on the proposition that some
citizens are inherently wiser than others, or that the interests of some citizens count more than
others, are “invidious comparisons.” They are invidious because they rely on utterly contestable

premises. Justifications to exclude citizens from opportunities for influence based on their race or class, for instance, depend on the dubious proposition that race or class determines one’s ability to make sound political judgments, or on the contemptible proposition that the interests of persons of certain races or classes count for less. But justifications for political inequality that do not rely on invidious comparisons express no disrespect and do no damage to the interest in public recognition. Estlund thinks, moreover, that there is at least one powerful justification for political inequality that survives this test. To permit wealthier citizens to buy proportionally more political influence leads to a situation in which greater overall input enters into decision-making processes. The greater the quantity of input, the more likely that the truth about justice sees the light, and the more likely that political outcomes are substantively just. Recognizing political equality, meanwhile, requires limitations on the amounts that wealthier citizens are allowed to spend. This reduces the overall quantity of political input and renders outcomes that are, if not substantively unjust, less substantively just than they could otherwise be. From this, one might conclude that substantive political equality not only fails to protect the interest in equal recognition but also undermines other vitally important interests.

B. Social Equality

If substantive political equality is not even a requirement of official processes, a fortiori it cannot be a requirement of unofficial processes. Or at least, this would be a natural implication of the criticism we have been exploring, if the interest in public recognition of equality actually does underlie the principle of equal opportunity for influence. Recent work by Daniel Viehoff, Niko Kolodny, and others indicates however that principles of political equality are best
understood in different terms.\textsuperscript{19} We have reason to care about egalitarian procedures not because they express a public status but because they facilitate distinctive kinds of relationships.

Viehoff observes that being in an egalitarian relationship, such as friendship, marriage, or citizenship, requires that we exclude certain reasons from the domain of eligible reasons when making joint decisions. One important category of excluded reasons are differences in power. A friend or spouse who uses his greater physical strength as a bargaining chip during arguments fails to treat the other party as an equal. The same is true of a citizen who uses her greater wealth as a relevant consideration in political deliberations. Securing an egalitarian relationship requires taking such inequalities of power off the table. Obeying egalitarian procedures prevents us from acting on considerations that would undermine the egalitarian character of our relationships.

I take this idea to show that what is valuable about political equality is not that it \textit{expresses the idea} that members of the polity are equal citizens, but that it \textit{establishes the fact} that citizens do stand in relation to each other as equals. When wealthier citizens leverage their greater financial means to win for themselves greater chances of determining political outcomes, they subject the less wealthy to their power and treat them as inferiors. Moreover, a simple disposition to refrain from taking advantage of this power is generally insufficient to prevent the development of these objectionable social hierarchies. For it makes the deployment of power depend only on the whims of those who possess it. When available, institutional mechanisms that take this option off the table more firmly protect the standing of each person as a social equal.

This explanation of political egalitarianism in terms of social equality has two important implications. First, it sidesteps Estlund’s critique of accounts of political egalitarianism that take

\textsuperscript{19} Viehoff, “Democratic Equality and Political Authority;” Kolodny, “Rule Over None II.” Viehoff and Kolodny inherit a tradition of thinking about equality that counts Elizabeth Anderson and Samuel Scheffler as major contributors.
their cues from the interest in equal public recognition. Though Estlund’s argument for encouraging substantive inequalities in political input might not offend the value of expressive equality, it surely would offend the value of social equality. Second, it reopens the possibility that principles of procedural equality apply not just to official procedures but to other ways of influencing social phenomena as well. If using one’s greater power to sway elections objectionably treats one’s fellow citizens as social inferiors, it is hard to see how using one’s unequal resource advantages to control civil society would not constitute the same form of objectionable treatment. Conceivably, the degree of the injury might be weaker, but the form of the objection is equivalent.

IV. SCARCITY AND COMPETITION

A. Scarcity of Offices

Classically understood, the circumstances of justice are conditions that create conflicts of interest in the distribution of power over resources.20 As such, they make principles of justice both possible and necessary. The existence of moderate scarcity is one such condition. Resources in abundant supply provide no basis for conflict over their distribution. Your enjoyment of the sunset does not diminish the quantity or quality of my enjoyment of same (unless, of course, we desire to enjoy it from precisely the same vantage point). It would be a reason to treat official and unofficial processes differently if opportunities to influence the former were inherently scarce while opportunities to influence the latter were not. This appears to be Rawls’s position on the matter. Focusing in particular on the election of officials, Rawls describes this process as “a public

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facility designed to serve a definite purpose.”21 To wit, this purpose is to “control the entry to positions of political authority.” This public facility, moreover, “has limited space”—there are only so many positions of political authority. Because the number of positions is scarce, the distribution of influence over the selection of these positions is a relevant moral concern. By implication, Rawls seems to think that other aspects of public life do not exhibit this necessary justice-triggering feature.

At first glance, Rawls’s remarks seem to highlight a critical difference between elections and other aspects of public life. While candidates for election compete for a fixed number of positions, there are no similar limitations on positions of power within civil society. For instance, when it comes to shaping the background public culture, the message space in which ideas vie for attention has multiple sites and porous boundaries. It may often be possible for alternative outlets to generate spontaneously. If one’s view does not gain air time in a television broadcast, one can take to the streets, or to the press, or to the internet. Consequently, those with greater resources cannot effectively silence the voices of the less well endowed. This is especially true in an era of internet communication, which erodes the barriers to entry endemic to more traditional methods of mass communication.

B. Scarcity of Cognitive Space

And yet, if scarcity were not somehow a feature of the wider public sphere, it is difficult to explain why civil society groups typically adopt strategies of competition. Groups holding particular positions generally seek to outperform one another in achieving public recognition of various kinds. Some seek to have their perspective triumph over rival perspectives. When there is

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no rival perspective, they seem to be competing amongst the universe of different causes for public attention. If scarcity were not somehow a condition of civil society, what could explain this behavior?22

Building upon developments in social psychology, Thomas Christiano argues that the conditions of modern citizenship include a “socially induced cognitive scarcity.”23 The idea is that most citizens, given their diverse other commitments, can reserve only a certain amount of cognitive space for considering public affairs. This need not be the regrettable result of apathy or disillusionment. Rather, a highly articulated division of labor and pressure from legitimate personal attachments leave citizens with little time to reflect on wider issues. Particularly under these circumstances, different propositions compete with another for access to our cognitive space and priority within it. One way of understanding the competitive nature of advocacy efforts, therefore, is to take these groups as competing with each other over access to our cognitive space. This would also indicate that we have reason to take concern with the way in which propositions gain access to this space. If we object to parceling out discrete positions of power on the basis of wealth, we should object similarly to parceling out access to our attention on the basis of wealth.

Admittedly, even when the most readily available sources of information reflect the perspectives of wealthy elites, attention remains something over which we can maintain some control. With some effort, we can avoid giving in to the dominant sources of information and

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22 One might reply that the scarce resource in question is none other than finance. Groups act competitively because they seek to maintain or increase their funding. Without a deeper exploration of the sociology of nonprofit organizations, we can note that this explanation fails two paradigm cases: endowed organizations, which have no need to raise additional funds, and volunteer-run organizations, which maintain small budgets. Despite having little financial motivation, both types of group still often adopt competitive strategies.

take steps to seek out alternatives. Cognitive space and political office are disanalagous in this way. When someone controls the machinery of state, we cannot simply avoid her authority. The fact that positions of official power come along with coercive enforcement suggests that we should take special concern with access to those positions. But it does not imply that we should therefore take no concern with inequalities in opportunities to influence the background culture.

Indeed, the fact that background influence lacks coercive authority makes it troubling in a special way. Background influence does not confront us head-on and directly invade our will in the way that coercive laws often do. It operates more insidiously, seeping into our assumptions often without our realizing it. Under modern conditions, expecting all citizens to adopt a disposition of constant vigilance toward the sources of their beliefs may not be reasonable.

V. THE WORKABILITY DILEMMA

Official proceduralists might nevertheless attempt a different defense. A virtue of their view is that strategies for applying a principle of political equality to official procedures are not difficult to conceive. As mentioned previously, official procedures are focal points of the political process. They have relatively distinct boundaries. The access points to these boundaries are readily apparent. There is nothing terribly mysterious about campaign finance reform or measures to insulate the government from lobbyists. By contrast, what it would mean to assure equal opportunity for wider public influence is unclear. This opaqueness owes to the nebulous quality of the mechanisms through which it flows. As Cohen puts it, the way in which influence manifests outside of formal arenas is “not at all well defined and bounded: it extends throughout life, spreads through all its spheres, and the processes involved are not at all well understood.”

This characterization rings true when one considers some of the different mechanisms that bear

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on the formation of public opinion: connections of kinship and friendship, formal education, commercial advertising, cultural media, government communication, and online social networks, to name just a few.

Faced with the apparent intractability of influential processes beyond the official political facilities, one might think that assuring equal availability of public influence exposes us to a dilemma. Taking the first horn would involve endorsing a radical extension of state control, permitting the state to set boundaries and monitor access points to an increasing number of arenas of social interaction. To see the challenges with this option, consider the demands it would make on our intimate relationships, within which we develop certain intellectual capacities and substantive convictions. The specter of a state that monitors and limits how much parents read to their children suggests some of the limitations of this strategy. Such a strategy threatens to undermine the value of privacy in numerous domains of social life. Moreover, it could probably not succeed without also granting the state broad powers that would be difficult to confine to particular domains.

Taking the second horn of the dilemma would commit us not to state monitoring and regulation of the processes of public influence, but rather to a radically egalitarian distribution of resources. When no one enjoys differential advantages to convert into additional influence in the first place, the need for egalitarian political procedures evaporates into thin air. While few commentators are prepared to seriously defend the first option, some egalitarian thinkers embrace this second option with more open arms.25

Two considerations counsel against following in this direction, however. In the first place, the radical egalitarian position prescribes a very blunt instrument for a problem that might be

amenable to a surgical solution. Although many forms of economic inequality may be objectionable, others may be either innocuous or beneficial. Before considering a radical treatment option, we should make sure we have exhausted localized alternatives. In the second place, the radical egalitarian position essentially folds political equality into a theory of distributive justice, such that the case for one stands and falls with the case for the other. In this respect, the radical view fails to grapple with the fact of profound and abiding disagreement about distributive justice itself. An aspiring well-ordered society needs fair procedures for making collective decisions in spite of these disagreements. Theorizing them away does little to help resolve these practical controversies.

VI. BEYOND POLITICAL SPENDING

A. Deliberative Proceduralism

In what follows I defend a strategy for resolving the dilemma just posed: a position that at once avoids the repugnance of the totalitarian option and respects the distinction between political equality and distributive justice. I call this position deliberative proceduralism. Deliberative proceduralism holds that the subject of political equality extends to certain mechanisms that mediate political influence beyond the official processes of elections and administrative decision-making. It accepts that some aspects of the process of public opinion formation remain difficult to comprehend, challenging to control, or protected from regulation in virtue of the overriding value of the liberty interests that they facilitate. It denies that all processes of public opinion formation necessarily exhibit one or more of these features. It proposes, furthermore, that the

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26 Certainly, people vociferously disagree about procedural questions, too. But arguably the depth and range of these disagreements tends to be more narrowly confined.

27 Beitz, Political Equality, p. xvi.
extension of political egalitarianism to unofficial processes does not need to touch all such processes in order to be meaningful.

The view’s apparent indeterminacy may at first seem like an Achilles’ heel. But I think it is actually a source of strength. To see this, consider an interpersonal analogy. If, as your friend, I agree to appeal to my greater physical strength in fewer of our arguments, I have thereby improved the egalitarian character of our relationship. I may still be a jerk, but the relationship has at least moved further away from one based on dominance and subservience to one that approaches true friendship.\textsuperscript{28} Certainly, it would be best if I were disposed never to apply my physical strength against you. But suppose this option is not available, for whatever reason. In this case, you would be foolish not to accept the less abusive relationship over the more abusive one.

My task, then, is to describe a mechanism of public influence that satisfies the requisite criteria. Mechanisms that most resemble official processes in their form stand out as particularly strong candidates. Take the process of election, which regulates the delegation of authority to representative individuals. Under contemporary conditions, I propose that democratic societies can be understood as employing representation in an additional way. Namely, consider that, besides delegating the job of lawmaking to representative individuals, citizens also delegate another aspect of collective self-government. They delegate the task of deliberating about public affairs, and they do so by authorizing organizations to conduct research and advocacy on their

\textsuperscript{28} This relationship will not come to resemble friendship if, in exchange for reducing the scope of my power, I simply increase the intensity with which I exert it. The possibility poses a challenge for deliberative proceduralism. If regulating certain processes simply leads citizens to reassert their power advantages in other processes, the net amount of political inequality will remain constant. Though I cannot rule out this possibility from the outset, as a consequence I regard it as neither particularly likely nor particularly unmanageable. Pursuing this line of argument further would take us too far afield, however.
behalf. Communicating through a variety of media, these organizational agents articulate interests, propose policies, debate one another’s positions, and contest the conduct of the state. Some of these groups represent general ideologies; others advocate on particular issues. Unlike public officials, these groups do not directly control the coercive apparatus of the state. However, it would be a mistake to presume that such groups do not thereby play a significant political role.

The groups in question endeavor to shape a society’s background political culture, its background political agenda, and its background public political opinion. Adding the modifier “background” to these familiar terms is meant to signify that they represent phenomena operating at further remove from electoral politics.29 One might define a political culture in terms of a society’s repository of institutional traditions, constitutional doctrines, and historic texts. By contrast, its background political culture, as I mean it, furnishes and constrains the concepts that a society uses to make binding decisions. It contains the language, historical narratives, and commonsense epistemic and evaluative standards that citizens use to communicate about their interests.30 Likewise, while the political agenda includes the docket of candidates contending for election and the bills proposed in legislatures, the background political agenda includes the pool of issues from which candidates and legislators draw. Similarly, while public opinion might be taken to refer to citizens’ preferences for candidates and their approval of legislation, background public opinion refers to what citizens tend to believe about more general propositions: whether low taxes produce economic growth, whether capital punishment is morally permissible, or what kind of duties we have towards animals. Background public opinion

29 These concepts can also be seen as instantiations of Lukes’s third dimension of power. See Lukes, *Power: A Radical View*.

30 This distinction is not quite the same one that Rawls draws between a “public political culture” and what he calls the “background culture.” He defines the latter in terms of “the culture of daily life,” and includes among its constituents the activities of clubs and teams. What I describe here as the “background public political culture” is meant to be more narrowly confined. See Rawls, *Political Liberalism*, pp. 13–14.
serves to inform citizens’ more specific opinions about candidates and policies.

In the contemporary American context, this functional description would apply to a wide swath of the nonprofit sector, covering “public education organizations,” think tanks, NGOs, and any other 501(c)(3) public charity that engages in a substantial degree of public expression. All of these associations can be seen as representing citizens in a process of public deliberation.

Such groups operate on a society’s political common sense in ways that can be difficult to appreciate. Yet their ultimate influence on citizens’ beliefs can be quite considerable. Think for instance of the major social movements in recent American history: the “rights revolutions” that began with the civil rights movement, the environmentalist movement, the rise of Christian conservatism, and the ascendancy of right-wing populism. Each of these movements evolved over several decades, in many cases flying under the radar before earning recognition as a movement. In some cases, the success of these efforts lies no more in their impact on legislation than in their reshaping of background assumptions in public discourse. What is more, the emergence of such movements owes less to the spontaneous assemblage of individual citizens than it does to the coordinated efforts of well-funded organizations.

But if these associations are sustained by donation, and opportunities to make donations are differentially distributed, we seem to run into a familiar conundrum. These organizations will be initiated by, or more responsive to, the perspectives of those with the deepest pockets. And

31 Much, if not most, of nonprofit activity is not primarily expressive. This account only applies to expressive activity. How to draw practical distinctions between expressive activity and other activities goes beyond the concern of this study.


those organizations that raise the most funds will enjoy significant advantages in getting their views considered. Under conditions of economic inequality, the free flow of gratuitous transfers to expressive associations distorts equal opportunities to participate in public deliberation much in the same way that the free flow of campaign donations undermines equal opportunities to influence the election of candidates. Note that this is very much an independent problem from the one of fairness in campaign finance. Even in a society that publicly funds campaigns for elected office, donations to expressive associations can also serve as an important vehicle for inequalities in opportunities for influence.

B. Voucher Schemes

What would it mean to apply a principle of political equality to the process of public deliberation? I believe we can make progress toward resolving this dilemma by considering some proposals submitted for slightly different purposes.

Some of the most sophisticated discussion of the political morality of philanthropy in recent years occurs in the work of Rob Reich and Ryan Pevnick. Each has emphasized how the scope and scale of the contemporary practice of philanthropy owe much to the policies that states use to support it. These authors also single out a particular feature of this policy as irreconcilable with the value of democracy.34 As we saw in the previous chapter, public finance regimes in many contemporary societies allow charitable contributions to be deducted from income tax assessments.35 (The deduction applies to ordinary contributions as well as to contributions to

35 Some regimes use a policy of matching grants in place of, or in addition to, tax deductions. In the United Kingdom, the Crown contributes an additional 25 percent of the amount of a donation directly to a donor’s designated charity. However, high income earners are entitled to a tax deduction in addition to
foundations.) As commonly understood, a charitable deduction constitutes an implicit or indirect state subsidy to charitable enterprise. In effect, it allows qualifying taxpayers to allocate a portion of state expenditure to objects of their own choosing. Yet, how much citizens are able to donate and deduct depends on their level of income. Moreover, the policy requires that citizens contribute a certain amount in donations before they can be applied toward reductions in their income tax payments. Citizens who owe nothing in income tax cannot take advantage of the subsidy at all. To Reich and Pevnick, this policy constitutes a formal political injustice. Under this policy, wealthier citizens are entitled by law to allocate a greater portion of state expenditure than less wealthy citizens are. Arguably, this provision violates democratic legitimacy on an even more basic level than I have been discussing. Even the least demanding understanding of democracy’s equality constraint requires that citizens enjoy equal formal chances to influence public decisions.

However, as the foregoing discussion has hopefully made clear, it would be a mistake to presume that the only, or the primary, conflict between philanthropy and democracy is entirely an artifact of the tax privileges that states afford charitable enterprise.\(^\text{36}\) Even if the state offered no subsidies to the practice of philanthropy, or applied these subsidies in a more egalitarian spirit, we would still have grounds to question the compatibility of the practice with political equality.\(^\text{37}\)


\(^{37}\) It is worth noting that the amount of funds that the state contributes to charitable enterprise through the deduction is only a fraction of what citizens contribute on their own. In the United States, $39 billion dollars of federal revenue were foregone in 2013 as a result of the charitable deduction. This contrasts with $316 billion in charitable donations in 2012. See U.S. Congress Congressional Budget Office, “The Distribution of Major Tax Expenditures in the Individual Income Tax System” (May 2013), available at http://www.cbo.gov/sites/default/files/43768_DistributionTaxExpenditures.pdf, and Brice...
Tax reform removes a way in which the state amplifies the voices of the rich. But it does not address the volume of those voices that need no amplification in the first place. Thus, fixing on the deduction leaves us unable to assess whether differences in donative means are justified apart from any amplification they receive from the state.

Nevertheless, some of the proposals designed to redress this injustice in the tax code point us toward strategies for restraining inequalities in the means of donation more generally. Pevnick proposes replacing the charitable deduction in the United States with a system of indirect government grants. On an annual basis, each citizen of voting age would receive an equally-weighted voucher to contribute to the qualifying charitable organization of his choice. The effect of this proposal would be to prevent wealthier citizens from enjoying greater say over government expenditure, while also creating a baseline of equality in the means of philanthropic donation. Notably, however, in Pevnick’s version of the proposal, individuals would be permitted to make additional cash donations in excess of their voucher allotment. This would leave in place considerable inequalities in the means of donation.

One might reply that this Equally-Weighted Voucher Scheme succeeds in eliminating the worst forms of inequality. What is most objectionable is not so much that citizens lack equal opportunities to influence state expenditure, but that some citizens are excluded from the practice altogether. Additionally, prohibiting citizens from making further contributions beyond their voucher allotment would be seriously undesirable in other ways. A distinctive feature of

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38 One might think that the deduction has an incentive effect on amount that citizens donate. In the absence of the deduction, wealthier citizens simply would not donate as much to charitable causes. While this may be true, the rich would still retain significant reserve power to shape outcomes by donation. Furthermore, it is worth pointing out that donations to the most controversial causes (such as education reform) probably do not depend much on tax incentives for their motivation.

philanthropy is that donors may choose not only whether and where to direct funds, but also how much. Permitting donors to determine on their own how much of their property to donate to particular causes is valuable in at least two ways. First, it respects an important liberty interest. We derive satisfaction from determining how much a particular cause is worth our support, and how our distinctive judgment can make a unique contribution to the cause’s success. Some citizens may wish to save extra income, or pursue more remunerative careers, precisely in order to donate more toward their conception of the common good. Insisting on strict equality of donative influence would be prejudicial to these citizens. Second, the liberty to determine the amount of one’s donations helps to promote the efficient allocation of donative capital, not entirely unlike the for-profit financial market. Arguably, the more discretion that donors have, the greater their incentives to weigh their donative decisions carefully. Likewise, affording donors greater discretion can have a disciplining effect on potential intermediary organizations, who must demonstrate their efficiencies in order to compete successfully for additional funds. These considerations indicate why an Equally-Weighted Voucher Scheme would be ill-advised to prohibit citizens from making cash donations in addition to their voucher allotment. But they also point toward an alternative scheme that does a better job of balancing these various considerations.

Estlund has developed an alternative voucher proposal for the case of campaign finance that imposes greater limitations on the range of donative inequalities while at the same time protecting specific interests in liberty and efficiency. In his version, each citizen initially receives

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40 A point that Pevnick also makes in support of his own proposal. Pevnick, “Democratizing the Nonprofit Sector,” p. 280.
41 As I noted in the first chapter, however, this disciplining function can also have perverse implications, as when donors use their discretion to control the behavior of vulnerable beneficiaries.
an equally-weighted voucher (at a nominal cost). Citizens are not freely permitted to make
unlimited donations in excess of their equal allotment, however. Rather, those who wish to make
additional donations must purchase additional vouchers. The cost of these vouchers increases the
more vouchers one purchases—while their redemption value remains the same. What is more,
Estlund shows that the proceeds of the voucher sales can be used to fortify the value of the
baseline voucher. This proposal has the effect of not only constraining the range of inequalities in
input but also maximizing the opportunities available to ordinary citizens. Estlund believes that
this “epistemic difference principle” suffices to render the remaining inequalities in input
justifiable to less well off citizens. Because they possess greater opportunities for influence under
conditions of (moderated) inequality than they otherwise would, it is unreasonable for them to
insist on strict equality. Furthermore, this Progressive Voucher Scheme might be thought to
preserve the liberty interest that citizens have in determining the amount of their contributions
and the presumed returns to efficiency that come along with it.

Applying a version of Estlund’s voucher proposal more widely indicates a possible
strategy toward reconciling philanthropy with democratic legitimacy. It could limit the extent to
which wealthier citizens can convert property into dominance over a society’s public culture.
And it could furnish ordinary citizens with the resources to contribute meaningfully to the
determination of these aspects of civil society. However, applying this Progressive Voucher
Scheme faces some remaining obstacles.

Although the Equally-Weighted Voucher Scheme targets charitable donations of all
kinds, the argument for the Progressive Voucher Scheme recommends a more limited focus. I
suggested that a particular reason for taking concern with the means of donation owes to the way
in which certain donations work to influence public deliberation. However, altering the
background public culture is neither the primary intention nor an equally obvious effect of all
philanthropic donations. Donations to a neighborhood choir program and donations to a public interest group exhibit some notable differences in this respect. The latter can be expected to contribute significantly more influence on public affairs than the former. Further reflection might reveal a justification for treating all donative opportunities in the same way. However, the logic of such an argument would likely depart significantly from what I have presented here.

Limiting the application of the Progressive Voucher Scheme to address the specific concerns of this chapter would require drawing legal distinctions between targets of donation that are foreign to contemporary practice and difficult to operationalize. For instance, organizations are generally not required to report their advocacy activity except when it amounts to lobbying. And many organizations engage both in advocacy efforts and in the provision of tangible goods and services simultaneously. A narrow application of the Progressive Voucher Scheme would require creative accounting and reporting methods to isolate expressive activities and their sources of support. Although I am optimistic that solutions to these problems can be found, these challenges also suggest a need for further work.

VII. CONCLUSION

To recap, we have been exploring one way in which philanthropy might challenge democratic legitimacy. A number of scholars converge on the view that democracy’s central requirement is that the determination of collective decisions issue from a process in which citizens enjoy equal opportunities for influence. Those who have considered the place of donations in this mix have tended to limit their concern to the finance of electoral campaigns. I have questioned whether this limited focus is ultimately justifiable.

Donations to campaigns are not the only source of distortion of the fairness in control over a society’s common affairs. I suggested that unregulated philanthropic donations can also
undermine fair opportunities to influence the shared features of a social environment.

Some may worry that the problems identified herein constitute mere symptoms of background economic injustice. A society that distributes the benefits and burdens of social interaction as inadequately as most actual societies do places tremendous advantages in the hands of a small proportion of the population. Among these advantages are opportunities to exert disproportionate control over social outcomes. One might suspect that under conditions where the distribution of property is less unequal this problem simply dissolves. This would be a false conclusion to draw. While it is true that under ideal conditions the extent of these problems may significantly diminish, none of them disappears altogether. This is true at least if we view ideal theory through a lens which sees certain inequalities in a neutral or positive light. An exploration of philanthropy brings into focus certain objectionable inequalities in power that this lens occludes. In this way, the problems with which philanthropy confronts us are not merely symptoms of a failure to meet justice’s demands as we know them. Rather, taking these problems seriously requires that we refine our understanding of what it is that justice demands.

CHAPTER 3
Giving and Time

I. DEATH AND DONATIONS

The practice of philanthropy enjoys a unique relationship to the passage of time. Philanthropic gifts can be, and often are, a means of preserving resources for the enjoyment of future generations. This is most obvious in the case of physical edifices, such as a hospital, library, or theater, designed to serve as community resources for multiple generations. In modern legal contexts, societies can also facilitate long-term philanthropic investment with particular instruments of law. Bequests and trusts are common devices for distributing the benefits of a donation across generations. A practice of bequest allows property owners to dedicate their estates to charitable pursuits upon their death. Instead of automatically relinquishing property to named heirs or remitting it to the state, the bequest empowers a decedent to decide what shall happen with her property upon her death. Donating property to a charitable purpose is a popular use of this power. The trust, whether established during one’s life or through a bequest, allows a property owner to create perpetual charitable endowments. Placing property into trust splits ownership among three parties: a settlor (or, “trustor”) transfers the management of the property to one party (a “trustee”), while designating a third party as the property’s beneficiaries. By designating others to manage the property on their behalf, settlors do not need to remain alive in order to give effect to their philanthropic intentions. In fact, by investing trust property in income-generating funds and assigning its management to a self-replacing board of professionals, a property owner can expect that her philanthropic projects will survive more or less indefinitely. Most grant-making foundations as we know them today are organized as trusts, and much of their power can be explained in relation to the perpetual existence that the trust instrument
affords them.

Though intergenerational transfers are a core feature of philanthropic practice, whether and in what way they can be morally justified is deeply controversial. Throughout the history of ideas, many thoughtful commentators have held that practices honoring the wills of the dead are either conceptually incoherent or morally impermissible. Since individual property owners cannot profit or suffer from events that occur after their death, the desire to control property post mortem may seem either irrational or selfish. More recent commentators have drawn a clear distinction between interpersonal (non-charitable) transfers and charitable transfers, arguing that while significant challenges beset attempts to justify the former, the latter survive scrutiny fully intact. In this vein, one strand of research considers intergenerational philanthropy in relation to its effects on the distribution of wealth. A number of commentators have suggested that charitable transfers are consistent with liberal principles of justice. Depending on the causes they serve, charitable bequests may even mitigate objectionable inequalities in economic and political opportunity. Another strand of debate evaluates intergenerational charitable transfers in relation to their effects on the distribution of resources between generations, considered as collective entities. It notes that intergenerational charitable transfers constitute a form of savings for future generations. As such, they are to be assessed according to their consistency with a principle of justice in intergenerational savings. One prominent account argues that intergenerational charitable transfers succeed on this score: they fully satisfy the demands of justice in savings.

As this chapter shows, however, both strands of the current debate ignore what appears to be a critical dimension of the political morality of intergenerational charitable transfers. Although such transfers may contribute to just outcomes, they also restrict the liberty of future generations to dispose of those resources as they will. Respecting the intentions of the dead seems to conflict with a potentially significant interest that belongs to living persons: the power to jointly
control their common affairs. Ultimately, I contend, resolving this conflict is not as insuperable as the pointed remarks of earlier commentators might lead us to believe. However, it does require a more thorough account of the interests at stake in the practice of intergenerational charitable transfer than most contemporary treatments acknowledge.

This chapter undertakes that task and unfolds in four core parts. Section II explains more clearly the practical stakes of these issues, noting the extent to which the practice of philanthropy has historically depended upon intergenerational charitable transfers. Section III takes a crucial first step in establishing that intergenerational transfers of private property are not ruled out from the start. Against certain sources of skepticism, I argue that there are very good reasons to honor the wishes of the dead, though not without important qualifications. Section IV turns next to the contemporary arguments that distinguish carefully between interpersonal (non-charitable) transfers and charitable transfers to reach the conclusion that the latter are especially consistent with the demands of justice. I accept this conclusion, albeit with noteworthy qualifications. These slabs pave the way for Section V, which introduces the problem of generational sovereignty and shows how it complicates the justification of intergenerational charitable transfers. I argue that generational sovereignty—the autonomy of a generation over its collective affairs—is a genuine interest, worthy of serious consideration. Taking this interest seriously requires certain limits to the extent of control we afford to the “dead hand of the past,” particularly in the domain of philanthropy. Nevertheless, I also suggest that the interests that recommend generational sovereignty are consistent with a certain degree of dead-hand control. The chapter concludes that intergenerational charitable transfers can indeed be justified. However, the account also indicates considerably more stringent regulations than current practice recognizes.\(^1\)

\(^1\) Note that this chapter does not address the conceptual problem of distinguishing the temporal boundaries of a generation. In societies where members are born and die on a continuous basis, applying
II. THE PRACTICAL CONTEXT

Newcomers to the topic may be surprised to learn that until relatively recently debates about the ethics of philanthropy were entirely bound up in larger debates about intergenerational ethics. This was largely because most acts of donation took place post mortem, when an individual conveyed property to charity in his will.2 Prior to the income growth and innovations in social insurance that peaked in the twentieth century, few people felt secure enough in their possessions to consider parting with them during life. Only at death could they be certain that they would no longer need their savings to sustain themselves or their dependents. Thus, transfers for charitable purposes generally took place only after the would-be philanthropist had died. For this reason the history of ethical reflection on philanthropy has tended to arise within the general problem of succession: what ought to happen to property when its owner dies.3 More specifically, the question has been whether there is a right to testation, and how far such a right extends.

Changing economic circumstances have complicated this debate. Today, bequests compose only a small portion of the funding devoted to charitable endeavors. The dollar amount

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3 This question carried particular significance when the main form of wealth was real estate, rather than corporate shares. Compared to stocks, bonds, and other financial assets, which can be created by law, land is a scarce natural commodity. This raised the stakes of conflict over succession. This observation is a recurring theme in Lewis M. Simes, Public Policy and the Dead Hand (Ann Arbor: University of Michigan Law School, 1955).
of charitable contributions from living individuals now dwarfs that of bequests by a factor of ten.⁴ The limited dollar value of bequests under contemporary conditions may help to explain why few commentators spill much ink on philanthropy’s intergenerational dimension anymore. The waning significance of the traditional charitable bequest is misleading, however. For the declining value of bequests has been offset by the rising significance of perpetual charitable trusts.

To reiterate, a trust splits the incidents of property ownership across three parties. A (“settlor,” “trustor,” or “founder”) transfers to B (“trustee”) the right to manage the property for the benefit of C, a third party. A trust is charitable when instead of naming persons as its beneficiaries it names one or more charitable purpose. A trust is perpetual when the terms of the trust discourage (or forbid) the trustee from alienating the principal. A perpetual trust will persist as long as its assets do. In most cases, the trust’s assets are invested in financial markets, where they tend to accrue sizeable long-term gains, above and beyond the costs of administration. Barring gross mismanagement by trustees, national economic crisis, or changes in the law, a charitable trust can be expected to live forever.

Private foundations are the most prominent example of charitable trusts. (Private universities provide an additional prominent example, though the issues they raise are somewhat different.)⁵ At bottom, what we call a “foundation” is nothing more than an endowed charitable trust that makes grants to other charitable agents.⁶ Though most foundations are now created

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⁴ My calculations, based on data from *Giving USA 2013* (Purdue: Indiana University Center on Philanthropy, 2013).

⁵ Unlike a foundation, a university’s main endowment fund is typically (i) not the gift of any one donor and (ii) governed by trustees often without significant direction from the donors themselves. However, universities do face the problem of restricted gifts, which I discuss below.

⁶ The Internal Revenue Service distinguishes between three types of foundation. “Non-operating” foundations are grant-making entities. “Operating” foundations, such as museums and zoos, engage in charitable enterprise directly. Though technically universities and hospitals are also operating foundations, the I.R.S. treats them separately. To make matters even more confusing, some organizations that contain the word “foundation” in their name are not in fact organized as endowed charitable trusts, but as ordinary charitable corporations.
within the lifetime of an individual donor, most are also designed to outlive the donor. The number and size of foundations has grown astronomically over the past few decades. According to estimates of the Internal Revenue Service, between 1985 and 2011 the number of foundations tripled (from 31,171 to 92,990), and the value of assets held by foundations grew by six-fold (from $95 billion to $641 billion). In relative terms, the proportion of finance that foundations provide to charitable endeavors has also tripled over this period.

Restricted charitable gifts provide another example of perpetual philanthropy. Restricted charitable gifts are donations to incorporated charities for the purpose of supporting particular programs, typically on a perpetual basis. The receiving entity is bound to administer the gift according to the terms set out by the donor, which can be more or less specific. Restricted gifts, in others words, are charitable trusts under the trusteeship of particular charities. No statistical agency currently tracks the prevalence or extent of restricted gifts. However, some evidence suggests that the vast majority of “major gifts”—typically exceeding $1 million—possesses this quality.

To be sure, foundations and restricted gifts raise many interesting issues apart from their relationship to time. However, as will become clear in what follows, philanthropy’s temporal aspects are rarely examined, poorly understood, and tremendously important. Justifying the enforcement of charitable bequests and trusts is no easy task. For convenience, I will be using the term “intergenerational charitable transfers” (or, “ICTs”) to refer to all devices for investing

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8 My calculations, based on data from Giving USA 1986 (Purdue: Indiana University Center on Philanthropy, 1986) and Giving USA 2013 (Purdue: Indiana University Center on Philanthropy, 2013).

private property in a charitable purpose beyond the donor’s mortal existence. This label therefore includes charitable gifts made at death as well as *inter vivos* charitable gifts placed in perpetual trust.10

### III. PRELIMINARY DOUBTS

When it comes to ethical reflection on ICTs, most commentators to date have treated the problem of charitable transfers as an extension of (or exception to) the problem of testation. The problem, in other words, is whether or to what extent individuals have a right to determine what shall happen to their property after they die. Many have thought that individuals have no such right, or that such a right comes with serious limitations. Thoroughgoing skeptics hold that the very notion of testation is conceptually incoherent. A right of testation requires honoring the wishes of persons after they die, which is effectively to attribute rights to dead persons. But, according to this line of skepticism, only living persons can have rights. Future generations are thus not required to respect the wishes of the dead on any matter, property included. Another argument against testation emphasizes its damage to surviving family members, who may have particular interests in inheriting the testator’s estate. For family members it would be better to receive assets automatically, without the chance that the testator will choose to put the assets to a different use or impose restrictions on them.

#### A. Rights of the Dead?

Many have questioned the conventional belief that the wishes of the dead have moral

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standing. Interests in testamentary freedom are posthumous interests, interests in the outcome of events that occur after death. To say that the dead have interests, according to skeptical views, is either to express metaphysical confusion, on the one hand, or to consecrate vainglorious desires, on the other.

To have an interest in something is precisely to be in a position to derive benefits from its success and harm from its failure. Thanks to the influence of modern science, it is natural to suppose that we are incapable of suffering setbacks or enjoying achievements once our blood has permanently ceased to circulate (the traditional definition of death). One might infer that posthumous interests continue to apply only in the context of a view a transcendent soul, in which some aspect of the person continues to exist even after the body has disintegrated. Conceivably, without a body the soul could still benefit or suffer from the outcomes of events. But this basis for respecting the wishes of the dead will not satisfy persons who reject its metaphysical tenets. Nor will it satisfy those who hold that the persistence of reasonable disagreement about such matters requires that the exercise of public power prescind from metaphysical claims altogether. Once we set aside this perspective on the afterlife, posthumous interests seem to lack a stable foundation.

One who accepts this metaphysical skepticism about posthumous interests might conclude that there is no right of testation. Because nothing the future does affects the interests of the past, the living have no obligations to respect the wills of the dead. This conclusion should

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12 To be clear, nothing in this study depends on endorsing a particular conception of death. I do assume, however, that death occurs.

give us pause, however. For its truth entails some disturbing consequences. Many societies recognize a wide range of obligations toward the dead, such as honoring their burial preferences and commemorating their achievements. At least some of these conventions will strike us intuitively as unassailable. A theory that would reject these conventions tout court lacks sufficient initial plausibility.

To see this, suppose a dying friend asks you to read a particular poem at her funeral. It is a tasteless choice, in your opinion, and tracking down a copy of the text will cause you some inconvenience. She would never find out if you chose to mark the occasion with a far superior poem from your own collection. Let us suppose further that both you and your friend reject bipartite metaphysical views. Nonetheless, you would probably still think that you have a clear duty to honor your friend’s wishes as best you could. Indeed, it would be monstrous of you not to do so. If we reject an account of posthumous interests, however, we seem forced to conclude that our intuitions about duties to the dead have no sound basis. This conclusion strains credulity.

It is mistaken to infer from the mere fact that dead persons cannot experience harm that living persons have no duties to them whatsoever. Indeed, it should be plain that duties to the dead have their basis in another source. What might be called a “practice theory” of testation grounds duties to the dead in the value of testation as a social practice.14 A social practice of testation is valuable, according to this type of view, not because it respects our posthumous rights as such, but because it generates significant benefits for us while we are still living.15 Testation

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15 Strictly speaking, the wrongness in failing to respect the interests the dead on such a view occurs not from violating the rights of dead persons as such but in terms of free-riding on a public good. This is a feature of practice-theories of promissory obligation more generally. For further discussion, see Axel
allows a property owner to extend her plans and projects beyond her mortal existence. This affords her opportunities to pursue more or different options during life.

Consider another illustration. Suppose you are a person of advanced age with an abiding passion for supporting public libraries. However, you also face ill health, and a concern about having sufficient funds to cover your medical expenses prevents you from committing to making donations while you remain alive. Without the power of testation, supporting public libraries would require you to put your health at greater risk, a decision that most would consider imprudent. With the power of testation, however, you can arrange things such that whatever property remains in your possession at death goes to your favored library fund. This removes the trade-off between promoting your conception of the common good and protecting yourself from discomfort. By extending the range of available options this way, testation facilitates the formulation and execution of a rational life plan.

While not disputing the ontological basis of a practice of testation, several commentators have nevertheless denied that testation is socially valuable. It creates vicious incentives to obsess over one’s posthumous reputation. Taking concern with one’s legacy can easily become a

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16 One might worry that this kind of argument in favor of testation depends upon background conditions that lack a decent social minimum. That is, we might think that a well-ordered society would socially guarantee health care (in one way or another), such that elderly citizens would not have cause to worry about paying for medical expenses. If a well-ordered society would transcend circumstances that contain these tragic trade-offs, testation would appear to lack an independent justification. However, I take it that even in a fully just society, not every desire for health improvement would be covered by social insurance. One might be able to rely on social insurance to cover one’s essential health needs while nevertheless choosing to use one’s disposable income to pay for extra care that improves one’s quality of life.

17 Reeve holds that the role of bequest in helping to facilitate responsible planning explains the support it enjoys from J.S. Mill, T.H. Green, and Rawls. See Andrew Reeve, *Property* (Houndsmills: Macmillan, 1986), p. 161.

18 This criticism was especially prominent in eighteenth-century France, England, and America. See Kevin C. Robbins, “The Nonprofit Sector in Historical Perspective,” in *The Nonprofit Sector: A Research*
distraction from accomplishing valuable things during one’s time on earth. The history of literature and the historical record overflow with tales of the mischief wrought from eccentric or vindictive testators.¹⁹ Some recent thinking in philosophy challenges the received wisdom, however. As Samuel Scheffler has argued, a person who took no concern for her legacy after death would not be leading a recognizably human life.²⁰ Many of the things we do and care about during life depend upon the expectation that they will provide some benefit to those who succeed us. Without the expectation that others will succeed us and enjoy the fruits of our labors, there would be scant reason to labor over difficult or long-term projects. Moreover, we hope that we will be remembered well, or at least not entirely forgotten, for the long-term contributions that we make to society. Part of the motivation to engage in lasting projects lies with the expectation that the beneficiaries of those projects will admire the achievements and respect the sacrifices that we have made. If a society were disposed to forsake or denigrate the efforts of the dead, living persons would struggle to find motivation to pursue much more than short-term hedonistic pleasures.

Participating in intergenerational projects promotes responsible stewardship of social resources. It is also a way extracting greater meaning from a temporally-bounded existence. Seeing ourselves as participants in intergenerational endeavors can be a particularly valuable source of self-worth. With this in mind, testation reveals itself as a way of enlisting our participation in long-term projects. This holds true especially for the majority of us who live rather ordinary lives. Those who accomplish fantastic feats during their early years may not need to take extra steps to ensure a lasting social contribution. But for the rest of us, the prospect of

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¹⁹ As evidence one might point to almost any English novel from the Georgian or Victorian period.
committing our estate to people we love or a cause we value can be an important motivation for continuing to develop our talents and expend our energy. Particularly as one ages and one’s faculties slacken, the expectation that one still has a key social contribution to make can be a significant source of dignity.

Thus, we can locate strong _pro tanto_ reasons for a practice of testation without reference to controversial metaphysical claims about the interests of dead persons. A power of testation is an instrument for expanding the range of options available to us while we are living. It provides certain incentives for productivity and social saving. And, though some of course may be inclined to use this power imprudently, testation is a special way of giving meaning to the lives of the temporally-bound creatures that we are.

**B. Rights of Inheritance?**

Obviously decedents are not the only stakeholders in practices of succession. Clearly enough, a decedent’s interests in maximal testamentary freedom oppose the interests of potential heirs to receive property, and in ways that are most beneficial to them. Historically, many have thought that a decedent’s kin have a right to inherit an estate regardless of the decedent’s wishes.21 However, the best arguments for a right of inheritance seem to apply only in the context of certain historical assumptions.

For instance, when family members are dependent on the income of a family farm, and ownership of the farm lies with a single family member (typically male), testamentary freedom

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21 As Robbins reports, eighteenth-century English parliamentarians challenged that, by allowing property to be transferred out of family control, bequests threatened to fragment the power of England’s nobility. (And this they regarded as regrettable.) They also argued that a succession regime that keeps property within the family is a wise policy of national security: family members have the greatest incentives to protect inherited property from foreign invasion. Both claims are contestable, to say the least. See Robbins, “The Nonprofit Sector in Historical Perspective,” pp. 26–27.
subjects the dependents to domination. A bitter or eccentric farm owner could choose to will the
farm to the Church, or a neighbor, leaving his dependents without a source of income. Knowing
that their future income hung on the sympathetic disposition of the patriarch, dependents would
face pressure to curry his favor, conforming their behavior to his desires. This phenomenon
prevails especially where premature death is commonplace, such that parents die before children
are old enough to fend for themselves. It also prevails when certain genders are prohibited from
owning property or earning wages.

One might easily think that a legal right of inheritance would provide some protection
against these conditions. If ownership of the farm automatically falls to one or more of the
patriarch’s dependents, they will face less risk of destitution upon his death and less risk of
domination during his life. In the absence of these conditions, however, the problems for which
inheritance provides a solution seem largely to disappear. When subsistence farming is no longer
the principal form of income, life expectancies are longer, all genders enjoy formal liberties of
ownership and occupational choice, and various forms of insurance protect dependents against
destitution, the case for a right to inheritance would appear to be much weaker.

IV. PRELIMINARY OPTIMISM

A. Testation and Background Justice

Recent commentators have complicated the question of testation by considering its
relation to liberal theories of distributive justice.22 An unfettered right of individuals to make

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unilateral transfers conflicts with a society’s attempts to secure or maintain a particular
distribution of resources. Especially when they involve large amounts, gratuitous transfers to
individuals can very easily undermine attempts to achieve or maintain just background
conditions. As Rawls puts it, albeit with a different target in mind, “the overall result of separate
and independent transactions is away from and not toward background justice.”23

Intergenerational transfers reshuffle the distribution of wealth in accordance with the whims of
testators. The spontaneous and independent choices of testators cannot be expected to maintain
or promote a desirable distributional pattern.

This occurs in two main ways. As it happens, those who make intergenerational transfers
by and large tend to transfer their estates to kin. This promotes the accumulation of wealth
within families and threatens the ideal of equality of opportunity. Heirs of great fortunes receive
opportunities unavailable to those who inherit less or nothing at all. Under regimes that
recognize a right of testation, the success of one’s life plans may depend more on the accident of
being born into a wealthy family than on one’s potential contribution to society or one’s status as
an equal citizen. Unless a society takes special measures to insulate public affairs from
accumulations of wealth, the integrity of democratic processes will also suffer, as we saw in the
previous chapter.

Liberal perspectives commonly remark that these problems arise not so much with the
justice of property succession as such, but rather with a society’s failure to regulate the
byproducts that succession policies can generate. Simply taxing receipts of large sums of wealth
can attenuate the risk to equality of opportunity and the integrity of the democratic process.24

23 Rawls, Political Liberalism, p. 267.
24 So argue John Rawls, A Theory of Justice, rev. edn. (Cambridge, Mass.: Harvard University Press,
Closing the loopholes that allow wealth to accumulate removes the main challenge that succession policies typically pose to the preservation (or achievement) of background justice. To permit inheritance subject to limitations folds our interests in gift-giving and gift-receiving into principles of distributive justice.

Most important for the concern of this chapter, liberal theories of succession typically treat charitable gifts as unmitigated exceptions to the problem of justice in succession. Several explicitly encourage intergenerational charitable transfers and seek to protect them from the restrictions that they would impose on non-charitable transfers. This is so for two main reasons. First, because ICTs are gifts for purposes, rather than gifts to persons, their benefits tend to be widely distributed and, in turn, less prejudicial to distributive equality. A bequest to a nature preserve, for example, benefits all who choose to visit the preserve, rather than any one particular heir. To be sure, not all ICTs are entirely inequality-neutral. A testator might erect a family foundation and install her children as its trustees, allowing them to inherit the privilege to make decisions about collective goods in their community. An ICT might be used to provide collective goods that predominantly benefit wealthy persons, either by concentrating its work in a wealthy suburb, or by funding goods that predominantly appeal to richer people. Odious as they are, however, these types of stratification are arguably less inherently pernicious than those fostered by non-charitable transfers, which directly facilitate the transmission of dynastic privilege. Regulations to mitigate the equality-undermining features of ICTs would leave the practice itself more or less in tact. Regulations to mitigate the equality-undermining features of non-charitable transfers would radically reshape the practice.

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25 This is true of Haslett, McCaffery, and Rakowski, op. cit.
A second reason for the liberal endorsement of ICTs is that, instead of indirectly undermining equality, ICTs often work directly to promote it. Whether ICTs promote equality depends on what purposes a society designates as charitable and how it structures the choice among different purposes. As we saw in the first chapter, many believe that a society ought to provide special incentives for charitable gifts aimed at reducing absolute deprivation. Though they may raise other concerns, bequests of this type can generally be seen as equality-enhancing. In sum, ICTs do not challenge equality as fundamentally as inherited wealth does, and they may even help to moderate other sources of inequality.

B. Testation and Justice in Savings

Certain scholars have made a more direct case for an affirmative policy toward ICTs. Chiara Cordelli and Rob Reich argue that ICTs serve as an especially useful means for satisfying justice in savings between generations.27 The argument starts from the observation that, whatever their other functions, bequests also serve as a way of saving for future generations. Resources not consumed during one’s life remain available to others who are living or unborn. But saving for the benefit of future generations involves sacrificing the interests of members of the current generation. For the most part, each generation has an interest in consuming as much property as possible.28 A just savings principle specifies (abstractly) how much a present generation is obliged to save for the future, and how much future persons can reasonably demand from their predecessors. Cordelli and Reich adopt Rawls’s general solution to this problem. The “just savings principle,” in Rawls’s terms, directs generations to share the burden of developing and

27 Cordelli and Reich, “Intergenerational Transfers of Private Wealth.”
28 Strictly speaking, this assumes that a generation derives no satisfaction from the way property is used after its death, or that on balance the value of consuming all of one’s property during life outweighs the satisfaction from disposing of events after death.
maintaining just institutions over time. They are to do this each by adopting a schedule of savings rates that they wish their predecessors had also followed. Rawls notes that savings may take various forms, including the conservation of natural resources, investment in buildings and technology, and investment in education and culture. In addition, Rawls holds that once a society has stabilized just institutions, it is no longer required to continue saving.

However, Cordelli and Reich note that certain types of goods are at once critical constituents of a just institutional environment, not well supplied by traditional policy instruments, and unable to sustain themselves without continuous reinvestment. One of these goods is social capital, which provides indispensable support for the virtues of democratic citizenship. The reproduction of social capital requires a diverse, vibrant, and independent civil society. In turn, the health of such a society depends on financial support that is both ongoing and voluntary. Disaster preparedness is another component of intergenerational investment. Averting disasters requires research into, and instruments to mitigate, low-probability, high-magnitude catastrophes. Though the state might take certain steps to address these events directly, Cordelli and Reich believe that private supplementation of state efforts is necessary to hedge against cataclysmic events. Finally, Cordelli and Reich contend that democratic processes have inherently short time horizons, and they are thus unlikely to invest in mechanisms that sufficiently take the interests of future generations into account. Because of their insulation from democratic pressure and their longer time horizons, ICTs are especially suited for financing long-term and experimental research projects, which are primarily beneficial to future persons.

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30 I discussed this idea more elaborately in Chapter 1.
For these authors, policies that encourage ICTs support the development and maintenance of just institutions in these particular ways. Even if a society seems to have already achieved a just basic structure—what Rawls calls the “steady-state” stage of development—this structure will be unstable without ongoing, affirmative measures to finance social capital, disaster preparedness, and technological innovation. To Cordelli and Reich, even if not singularly necessary for financing these goods, charitable bequests and trusts are optimal sources for their support.

Though I find much of this argument compelling, I wish to note three important qualifications. One might agree with Cordelli and Reich that social capital, disaster preparedness, and technological innovation are critical constituents of the resources to be shared across generations. At the same time, one might question whether charitable bequests and trusts really are the only, or the most reliable, means of generating these valuable resources. One virtue of these devices is that because they harness the judgments of diverse local agents, they are more likely to discover certain kinds of knowledge than processes that rely on centralized decision-making. However, the argument does not show that charitable bequests and trusts possess this feature uniquely. Other institutional forms might be just as good, if not better, at discovering useful technology or hedging against uncertainty. I will not pursue this idea further here, but I suspect that a diverse and robust system of public universities could offer similar epistemic advantages, at least when it comes to disaster preparedness and technological innovation.32 A second qualification for the argument is that it does not firmly establish that disaster preparedness and innovation require ongoing sources of support. Conceivably, a massive, one-time investment

32 Though it requires some different steps, one could make a similar argument about the value of social capital. It is not at all obvious that ICTs are unique in their ability to facilitate the reproduction of social capital.
in these efforts could lead to more revolutionary discoveries than a more incremental approach. Finally, the argument does not indicate that current policies toward ICTs, which involve generous tax incentives, are necessarily consistent with the just savings principle. At any given point, a society might have too much or too little invested in charitable savings. It would require further work to establish the ideal rate of savings through charitable transfers. Whatever that rate turns out to be, a state would need to fine-tune its policies toward charitable investment such that the current generation was saving neither excessively nor insufficiently.

C. Taking Stock

I began by asking whether intergenerational charitable transfers of private property are ruled out a priori. Against preliminary sources of doubt, I suggested that individuals have legitimate interests in determining, to some degree, what happens to their property after they die. I went on to deny that these interests stand in irreconcilable tension with justice within families or with background social justice. I agreed with liberal egalitarians that ICTs can be consistent with the demands of equality and that they can be part of a policy for securing justice in savings between generations. Before proceeding I want to register some additional qualifications to these conclusions.

The first thing to note is that ICTs can exacerbate the intragenerational problems I discussed in the previous two chapters. This is so because ICTs tend to represent greater amounts of resources than intragenerational transfers do. Thus, if one thought that the types of tasks that a society delegates to donation do not comport entirely with the demands of justice, policies that permit or encourage charitable bequests or trusts will simply reinforce the putative injustices. One might also believe that justice requires regulations on the opportunities to influence events through donation. I have argued that, in the absence of special safeguards,
philanthropy objectionably converts inequalities in wealth into inequalities in public power. Where such safeguards are absent, charitable bequests and trusts may simply intensify this problem. As mechanisms of philanthropy, charitable bequests and trusts are desirable to donors in large part because they magnify donors’ power to influence states of affairs. Yet when bequests and trusts combine with background inequalities in wealth, these mechanisms further augment the public power of the most well-off citizens over the power of everyone else. Under these conditions, greater regulation—or even outright prohibition—of ICTs might be a reasonable response.

Nevertheless, in the following section I set aside these problems in order to address the unique challenges to which intergenerational transfers give rise. In particular, I want to suggest that there might be something troubling about imposing one’s will upon future generations, even when that will is charitable. Likewise, a current generation has good reason to wonder whether or why it should continue to respect past generations’ conceptions of the common good.

V. THE VALUE OF GENERATIONAL SOVEREIGNTY

The foregoing section accepted that intergenerational transfers are potentially consistent with certain demands of justice, and that under certain conditions ICTs can even be justice-promoting. It is tempting to conclude the story here, and almost all commentators do. One might very well think that if a practice preserves justice, we should at least freely permit it, if not actively encourage it. However, I argue that these attempts to justify ICTs are incomplete. By and large, existing treatments of ICTs fail to appreciate the fact that such transfers exercise power over future generations in a way that requires additional justification.

A constitutive feature of charitable bequests and trusts is that they require future generations to honor the charitable investment decisions of the past. In this way such devices
restrict the liberty of future generations to make their own economic decisions. Resources that
could otherwise be theirs entirely, to allocate as they choose, must instead serve the purposes
declared and specified by their forebears. In turn, these transfers restrict the degree of control
that future generations may exert over the qualitative features of the social world they inhabit.
This is due to the fact that ICTs are public investments, designed to alter the nature and extent
of collective goods within a society.

Subjection to the “dead hand of the past” is not something most of us think much about,
and it can be hard at first to see why it raises any moral concerns at all. It is simply a brute fact
that because time marches forward, past generations will enjoy greater influence over future
generations than vice versa. Furthermore, we might think that most objections to control by the
past are almost never genuine objections to control as such. Rather, when these objections
materialize, the principled concerns that support them turn out to be objections to substantive
injustice. When we object to a provision in a national constitution, for instance, almost invariably
the basis of our objection is that this particular provision is unjust or unwise. We do not object to
constitutional provisions simply in virtue of the identity of the persons who formulated them. By
comparison, distinctive concerns about sovereignty appear to arise mainly within our own
generation. We care when our contemporaneous fellow citizens enjoy greater or lesser control
over our common lives. These kinds of intragenerational inequalities in power affect us in ways
that intergenerational inequalities do not. Finally, we may think that even if dead-hand control
somehow proves to be objectionable when it affects state institutions, these objections do not
necessarily translate to the control of private assets. Past control of a society’s constitution may be
objectionable in a way that past control of charitable investment decisions may not be.

Nonetheless, I argue that (i) despite time’s natural forward momentum, institutional
choices can augment or limit the degree to which the past controls the future, (ii) each generation
has a genuine interest in sovereignty over its collective affairs, and (iii) intergenerational charitable transfers pose a particular threat to this interest.

Notice, first, that although time may only move forward, each generation can take measures to expand or reduce the freedom of its successors. The perpetual constitution is the most obvious way in which the past might attempt to limit the freedom of the future. A constitution attempts to make it more difficult or impossible for future generations to alter past decisions. But the concept of a constitution also reveals the extent to which control by the past is not entirely given by nature. Constitutions can be more or less rigid: they can leave more or less discretion to future persons, or impose higher or lower burdens to their own amendment.

At least prima facie, maximal control over its common affairs is something that each generation has reason to want. To stress this point, some commentators go so far as to claim that obedience to rules set by the past is tantamount to colonialism. If we find it objectionable for one society to control another in the course of a single generation, we should be equally troubled by the attempt of one generation to control another within a single society. Though it may not be possible to avoid influence from the past entirely, considering the division of sovereignty across generations is hardly an idle endeavor.

Philosophical attention to this issue almost entirely focuses on the perpetual constitution. While there is much to say about constitutions, few seem to have noticed that ICTs are another salient way in which the past might subject the future to control. In a similar vein, though it might not be possible to preserve total control over charitable outcomes for each generation,

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35 I suspect that this aspect of ICTs has escaped scrutiny for the same reasons that philanthropy has tended to evade theoretical evaluation more generally: its intentions, if not its outcomes, are admirably benevolent, and its innocuous private origins belie its significant public consequences.
alternative ways of organizing charitable investment can distribute intergenerational shares of control in different ways. A society could organize the transmission of wealth such that past generations enjoyed the power to determine the proportion of intergenerational savings to be devoted to charitable investment, while the particular choices over the direction of charitable investment remained entirely up to the succeeding generation. In another scenario, past generations could enjoy neither power. Rather, upon their death, full ownership would transmit to the succeeding generation. The succeeding generation could then determine what portion, if any, to devote to charitable purposes, and how exactly to do so. Without denying the importance of intergenerational savings, therefore, we must question whether or why charitable bequests and trusts are legitimate mechanisms of transferring resources into the future.

Below I subject ICTs to four principled tests designed to tease out the nature and scope of the value of generational sovereignty. The aim is to identify why and to what extent each generation has a claim to make its own philanthropic decisions.

1. **A Different Difference Principle.** The first test considers whether the restrictions on liberty that ICTs place on future generations can be justified by maximin reasoning. Under certain assumptions, ICTs leave future generations better off in aggregate material terms than they would be under alternative transfer mechanisms. If so, the greater benefits generated would compensate for the loss of control.

2. **Relational Equality.** Though the benefits might compensate for the losses in one particular dimension, they might incur unacceptable costs in others. A second test considers whether these transfers are consistent with the value of social equality, which recent work in democratic theory has claimed to be a central component of the justification of political authority. Inequalities of power between generations might
objectionably treat future generations as social inferiors and thereby undermine their claims to treatment as social equals.

3. **Collective Self-Determination.** A third test considers the intrinsic value of collective self-determination. Though ICTs might leave future generations better off in a material sense, depriving them of the opportunity to exercise their own judgment might also objectionably subject them to alien control.

4. **Epistemic Reliability.** Another justification for authority holds that those subjected to it are thereby better able to comply with the reasons that apply to them. ICTs may thus be justified depending on whether they turn out to possess unique epistemic virtues.

I argue that ICTs can pass the first three tests. If certain assumptions hold, they can indeed maximize each generation’s interests in material advantage, without challenging their interests in social equality or collective self-determination. However, such transfers face more difficulty in surviving the fourth test, regarding their relative epistemic reliability. While ICTs boast some particular epistemic virtues, particularly with regard to tracking truth and educating preferences, I argue that such benefits tend to decay dramatically over time. This conclusion reaffirms the existence of ICTs but recommends time limits on the duration of dead-hand control.

### A. A Different Difference Principle

One way of justifying dead hand control might show that, of the available alternatives, it results in the greatest possible benefits to future persons. From this standpoint, future generations might have reason to accept the constraints imposed by ICTs because they induce greater savings, productivity, or stability.

In the absence of these devices, previous generations might consume a greater portion of the resources available to them or produce less overall. As I suggested above with particular
reference to bequests, ICTs make it easier for individuals to commit resources to charitable purposes. The power to bequeath an estate at death, beyond the point at which one might need the property to satisfy one’s other needs, removes a trade-off between prudential self-concern and altruism. In addition, the prospect of leaving a philanthropic legacy might act as a further incentive to produce greater quantities of resources or to save greater resources for donation. If past generations could not make ICTs, future generations would inherit fewer charitable dollars.

Another possibility applies more specifically to trusts. Because trusts pay out incrementally over time, they insulate charitable enterprise from economic shocks.36 Reliance on a secure stream of income protects charitable enterprise from the costs of constant fundraising and the risk of contraction during economic recessions. In turn, this ongoing financial security facilitates the efficient formulation and execution of long-term plans. It allows charity managers to offer robust and stable goods and services, and for beneficiaries of those goods and services to plan around their continued provision. Without ICTs, the finance of charitable enterprise would be much more volatile.

In sum, these considerations suggest that the gains in the amounts of resources generated by ICTs outweigh certain costs of dead-hand control. These devices plausibly maximize the availability of charitable dollars to future generations, and they do so in a way that preserves stability over time. But this kind of justification faces some immediate limitations. Principally, the proposition that ICTs in fact have these purported effects on incentives might very well be false, or at best only conditionally true. We should therefore be wary of overstating the force of these conclusions gleaned from armchair social theorizing. However, even if these effects do hold, one might deny that the extent of the gains in quantity, or any gains in quantity, can outweigh the loss

of control that comes along with ICTs. To test this idea further, we must consider more specifically why and to what extent that control is valuable.

**B. Relational Equality**

In the previous chapter I appealed to relational egalitarian arguments to ground the claim that differences in philanthropic opportunities between citizens can be objectionable. The thought is that when wealthier citizens use their superior wealth to make larger philanthropic donations, they leverage an arbitrary advantage to advance their conceptions of the common good over the conceptions that less wealthy citizens affirm. In so doing, they treat less wealthy citizens as social inferiors and work to undermine the status of equal citizenship. One might think that something similar occurs with the distribution of power between different generations. ICTs allow past generations an arbitrary advantage to impose their conception of the common good upon future generations. Future generations are not permitted to exercise the same power over the past. This might appear to undermine the equal moral status of generations (and thus, the persons who compose them). The policy that most obviously preserves the equal moral status of each generation is for past generations to place no restrictions on the future use of property. By denying future generations the power to determine the common features of their world independently, ICTs denigrate the capacity for judgment of future persons and treat them as social inferiors.

There are two strong reasons to doubt that the value of relational equality mounts an obstacle to ICTs, however. First, on one sophisticated interpretation of that value, rule by the dead does not create the objectionable social hierarchy about which we have reason to care. According to Niko Kolodny, political inequality is only damaging when it characterizes ongoing
One marker of the injury of social inequality is that it occasions what Kolodny calls “consideration-constituting responses.” Social inferiors experience pressure to give extra consideration to their putative social superiors, and this correlates with patterned behavior, such as fawning, genuflecting, supplicating, and deferential terms of address. Inequalities in social position are not necessarily objectionable when the hierarchy serves some justifiable social purpose and individuals enjoy fair opportunities to attain the more powerful roles. But in the absence of these conditions, the presence of these consideration-constituting responses is evidence of unjust social inequality. The experience of engaging in deferential behavior is a humiliating one that individuals occupying the lower stations are justified in resenting. However, in Kolodny’s view, these kinds of responses, and the justifications that support them, simply do not appear in the context of relationships separated by time. (If we resent the Founding Fathers, that resentment is more likely due to substantive grievances rather than their favored position within an intertemporal pecking order.) Kolodny does not speculate much as to why exactly this is so. I would wager that it has to do with the fact that the past is simply not around to lord its power over us. When we obey the past, we do so mainly out of respect for the past, respect that we could conceivably withdraw. This enhanced capacity to exit the relationship of social inequality reduces the inclination toward resentment.

In any case, on this analysis, past persons and future persons do not share the kinds of ongoing social relationships that make differences in power objectionable among members of the same generation. Indeed, one could also say that this analysis distinguishes a crucial difference between dead-hand control and colonialism. Colonial rule involves an inequality of power between persons, or groups of persons, who are engaged in one kind of ongoing relationship.

One strong reason why colonial rule is objectionable even in its most benevolent moments is that it treats subjects as social inferiors, dependent on the judgment of their imperial overlords. In Kolodny’s view, however, concerns about social equality do not travel across generations. Rule by the past might be objectionable on other grounds. But it does not treat future persons as socially inferior to past persons.

A second and much simpler reason why ICTs might not offend the value of relational equality is that they empower and restrain each generation equally. That is, with ICTs, the past can bind the present, but the present enjoys the very same opportunity to bind the future. One might think that the *de facto* degree to which generations can bind their successors may be quite unequal, particularly in virtue of the specificity of the assets at their disposal. For instance, if an early generation extracts and transfers, with restrictions, the entire stock of a nonrenewable resource, it will enjoy a form of exclusive power over future generations. But this kind of concern appears to matter most under conditions in which natural resources constitute an overwhelming proportion of a society’s wealth. When financial securities serve as the main form of wealth, this concern largely falls aside.38

I take these points to show that the value of social equality does not pose a serious obstacle to the justification of ICTs.

C. Collective Self-Determination

Another kind of argument holds that rule by others is objectionable even when it satisfies our substantive interests and even when it preserves relationships of social equality. Drawing on insights from Rousseau and Hegel, Jake Zuehl argues that subjects of political authority have a

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strong and independent interest in also being the authors of that authority.\textsuperscript{39} Even if it were true that a benevolent despot, or a robot, or a perpetual constitution could more reliably track our interests, our lacking collective control over our laws and policies would be objectionable. It would be objectionable because in some sense it would make our world not fully ours. We would not be able to identify with, or see ourselves in, the decisions that affect our lives. We would feel like guests in a hotel room rather than residents of a home. The world would confront us as other and alien.

One might think that ICTs undermine collective self-determination precisely in the way that Zuehl claims is important. These devices impose the judgments of the past upon the future. They reflect the wills of the past and not our own. I suspect, however, that ICTs can be made consistent with the value of collective self-determination, at least on Zuehl’s account of it.

For Zuehl, we can reasonably feel at home in our social world when our institutions reflect our will. But we do not need to control each individual law and policy in order to be collectively self-determining in the relevant sense. Rather, Zuehl claims that a collectivity is self-determining when, by way of democratic decision-making, its “core institutions” intentionally reflect its “core values.”\textsuperscript{40} Thus, collective self-determination is undermined when the state is not governed democratically, or when the state cannot reliably regulate the society’s core institutions in accordance with citizens’ shared values. (Collective self-determination is also absent when citizens lack basic agreement on core values, but Zuehl defines this concept so broadly as to rule out all but the most fundamental disagreements.)\textsuperscript{41}

ICTs control social outcomes through non-democratic means, and because they represent

\textsuperscript{39} Jake Zuehl, “Collective Self-Determination” (Ph.D. diss., Princeton University, 2016).
\textsuperscript{40} Ibid., p. 1.
\textsuperscript{41} Ibid., pp. 68ff.
the values of past generations, they do not necessarily reflect the “core values” of presently existing persons. However, whether ICTs undermine collective self-determination seems to depend on whether they influence a society’s “core institutions,” or the conditions that core institutions are meant to regulate. Though Zuehl provides no definition of “core institutions,” the common illustrations that he offers (the civil and criminal justice systems, and systems for distributing employment, healthcare, and education) seem to possess a unifying quality.42 That is, a central unifying feature of such institutions is their role in assigning fundamental rights, duties, and opportunities—what we might otherwise call matters of basic distributive justice.43

On this interpretation, a necessary condition of something’s being a threat to collective self-determination is its being involved somehow in the administration of basic distributive justice.44 A practice does not create an obstacle for collective self-determination if it has no appreciable influence on the conditions that we have reason to control collectively. Thus, in order for ICTs to pose a threat to collective self-determination, it would have to be true that ICTs necessarily influence matters of basic distributive justice. And it should be clear that while allowing philanthropy a role in the administration of basic distributive justice is a common feature of existing practice, it is not a necessary feature thereof. Many privately funded collective goods have no obvious connection to fundamental rights, duties, and opportunities. At most, then, respecting the value of collective self-determination would rule out ICTs for particular

42 Ibid., pp. 42–43.
43 I borrow this definition from Rawls’s comments about the “basic structure,” to which Zuehl seems partially indebted. Zuehl’s “core institutions” and Rawls’s “basic structure” appear to be extensionally identical with one exception: whereas Rawls includes political institutions on the list, Zuehl isolates them. Presumably Zuehl isolates political institutions in order to draw attention to their causal role in regulating the remaining institutions. See Rawls, Theory, pp. 7, 96. For helpful discussion of alternative interpretations of the basic structure, see Arash Abizadeh, “Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice,” Philosophy & Public Affairs 35, no. 4 (2007): 318–58.
44 Not much hangs on whether basic distributive justice turns out the be the feature that unifies this list.
purposes, but not others.

But it is not certain that Zuehl’s account actually rules out ICTs of any kind. This is so because of the type of control that Zuehl takes to be a sufficient indicator of collective self-determination. What is required for collective self-determination is that the core institutions are responsive to citizens’ “core values.” And it is conceivable that even if ICTs exercised some influence over the distribution of fundamental rights, duties, and opportunities, that distribution might still be more responsive overall to state control. It could still reflect citizens’ core values, even as it admits of influence from other sources. Only when the level of influence from ICTs crosses some threshold would it be true that the fundamental rights, duties, and opportunities no longer reflect the democratically-constituted general will.

I take these observations to show that although ICTs subject a society to control by alien forces, this control is reconcilable with a core reason we have for wanting freedom from that kind of control. The following section shows that reconciling ICTs with one remaining reason for generational sovereignty proves more challenging, however.

D. Epistemic Reliability

So far we have seen that ICTs might work to the material benefit of future generations and do not threaten certain important procedural values. But all the while another issue has been lurking in the shadows. Namely, while it may be true that ICTs maximize the quantity of charitable investment, they do not necessarily serve the substantive interests of their intended beneficiaries in other crucial dimensions. It certainly serves our interests to have more of some good rather than less of it. But when accessing that good depends upon using it in the narrowest of ways, having a great amount of that good no longer offers much benefit at all. Some examples may bring this into clearer view.
When the Englishman Thomas Betton died in 1723, he ordered his estate placed into trust. His will declared that half of the trust’s annual income be paid “forever to the redemption of British slaves in Turkey or Barbary.”45 Despite his good intentions, however, Betton failed to foresee that the white slave market would disappear in the 1830s, when France seized Ottoman territories and in short order rooted out the trafficking of human beings. Fidelity to Betton’s stated wishes would require that the funds continue to accumulate unused should those markets somehow reappear. Also consider Bryan Mullanphy of St. Louis, Missouri. He died in 1851, but not before establishing a trust “to furnish relief to all poor immigrants and travelers coming to St. Louis on their way, bona fide, to settle the West.”46 Within a few decades, the West was mostly settled, and innovations in transportation made wagon stops in St. Louis obsolete. If Mullanphy had his way, his trust would still be idly accumulating funds, waiting perhaps for the Pacific Garbage Patch to become habitable. Or take the case of Marie Robertson, who made a restricted gift to Princeton University in 1961.47 The terms of the trust specified the gift’s purpose as “the education of men and women for government service.” Changes in the market for government employment and competing priorities of the university led Princeton to interpret these terms in the broadest of ways—particularly in the years after Robertson’s death in 1981. As some will know well, this set off a rancorous legal dispute with surviving members of the Robertson family.

None of the arguments that we have considered so far would rule out these kinds of troubling cases. Each appears consistent with the liberal perspective on inheritance, which approves of ICTs insofar as they are inequality-neutral or inequality-reducing. For instance, the

45 Simes reports this case in Public Policy and the Dead Hand, p. 122.
46 Ibid., p. 127.
47 I take these facts from Goodwin, “Ask Not What Your Charity Can Do for You.”
succoring of weary immigrants and travelers reduces a pertinent form of inequality. Each case appears consistent with the justice-in-savings perspective on ICTs, which holds that ICTs are valuable as fonts of social capital, disaster preparedness, and technological innovation. Preserving Betton’s slave-rescue fund would be a hedge against a kind of rare disaster. The slave rescue and repatriation organizations that it would fund could contribute to the stock of social capital. The methods that these organizations might develop could be adapted or scaled up by other organizations or by the state. Honoring the terms of Robertson’s gift would be consistent with these justifications, too.

For illustrative purposes, also consider how Robertson’s gift fares against the tests that I considered in the immediately foregoing sections. A system that allows past generations to invest in the training of future government servants might leave the future with more and better-trained government servants than it would otherwise have. Since Robertson is not engaged in ongoing relationships with her beneficiaries, her outsized influence over their lives does not amount to an objectionable form of social hierarchy. Nor does Robertson’s gift appear to undermine future generations’ collective self-determination. In order to have any effect on social outcomes, Robertson’s trainees would still need to acquire office through democratic processes. Once installed, they would be charged with regulating core institutions in light of citizens’ core values—not by Robertson’s values.

Nevertheless, reflecting on these cases reveals that something is terribly awry. If we think of philanthropy as valuable partly (or mainly) in virtue of its public benefits, it should trouble us to notice that the judgments of the past are entirely unreliable predictors of what will be beneficial to future publics. This will be true especially if we understand “public benefit” in terms of individual preferences. That is, on one plausible interpretation of the term “public benefit,” some investment of property is beneficial to the public if it satisfies the preferences of the persons
to whom it is available. Living persons are generally much better at gauging and satisfying the preferences of their contemporaries. One obvious reason for this is that living donors are among the set of potential beneficiaries. Whatever else it does, an *inter vivos* gift satisfies at least certain elements of the donor’s set of preferences. But more importantly, living donors tend to have more intimate knowledge of the preferences of their potential beneficiaries. Being alive also enables them to update their judgments in response to new information. If I discover that no one is attending the museum that I have been supporting, I can change the direction of my donation (by funding some other cause) or change the strategy of my gift (say, by funding the museum’s marketing efforts rather than its collection development). These features disappear with intergenerational philanthropy. For once I die, there is no guarantee that the judgments I formed while alive will satisfy the preferences of any potential beneficiaries who survive me. The greater the separation of time, the worse the likely discrepancy between past judgments and future preferences. Thus, if we believe that impersonal gratuitous transfers of property are only publicly beneficial when they satisfy the preferences of the persons to whom they are available, ICTs are entirely unreliable sources of public benefit.

An immediate response is to deny a preference-based conception of public benefit. One might think, alternatively, that there is a fact of the matter as to what constitutes the public benefit. What preferences persons happen to hold on this question are irrelevant. The main criterion by which to grade ICTs, therefore, is their tendency toward substantive correctness.

This conception of public benefit is not implausible, particularly in light of the Robertson

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48 I am not here referring to the “warm glow” phenomenon, which explains away altruistic behavior in terms of self-regarding concerns. This phenomenon, it seems to me, is equally present in both intergenerational and intragenerational philanthropy. Rather, my point is that living to see the success of my philanthropic projects and living amongst others who value or come to value these projects would satisfy additional preferences of a donor. On warm-glow giving, see James Andreoni, “Impure Altruism and Donations to Public Goods: A Theory of Warm-Glow Giving,” *Economic Journal* 100 (1990): 464–77.
case. A main point of dispute between Princeton and the Robertsons hinged on the fact that Princeton wanted to use the gift to train students for careers outside of formal government employment. We might see Robertson’s gift not as a predictive failure about the best strategies for training public servants, but rather as an affirmative statement about how a society should understand positions of public service. Whereas Betton and Mullanphy might have revised their judgments with the benefit of hindsight, the availability of a principled alternative position makes it an open question as to whether Robertson would have accepted Princeton’s amendments had she lived to consider them. If we hold that the common good has an objective reality, Robertson and Princeton’s dueling propositions about what serves the common good cannot both be correct. Perhaps Robertson’s position in this debate really was closer to the truth. If this were the case, Robertson’s apparent good judgment might be taken as an indication that the past contains precious sources of wisdom that deference to the preferences of the moment risks ignoring.

Suppose we accept the metaphysical premise here about the objective reality of the public benefit. Particular choices can be good for a group of people whether or not they endorse those choices. Still, it is hard to believe that past generations enjoy privileged access to these facts. Indeed, certain considerations suggest that future generations might be more reliable judges of these truths, whatever they are. Future generations may be more reliable judges because of improvements in technology, accumulations of historical data, and population growth. Technical development and the benefit of hindsight allow future generations to draw more reliable causal inferences and to develop more sophisticated tastes. The larger population size that future generations typically boast also means a greater number of minds capable of aggregating knowledge.

At the same time, respecting the judgments of the past does appear to offer certain
epistemic benefits. Because the judgments of the past often do diverge from the judgments of the future, a certain amount of deference to past judgments increases the diversity of available options. Confronting the presence of alternative propositions also forces the future to reconsider the propositions to which they are inclined and to test their strength. In plenty of cases they may find that the judgments of the past expose them to certain valuable advice that they would not have otherwise considered. In other cases, exposure to the past reminds them of mistakes to be avoided at all costs. The judgments of the past can educate the future even when these judgments are wrong. But they are not always wrong. Indeed, sometimes the judgments of the past will reflect the preferences of the future well enough. In these cases, relying on the investments of the past allows the future to complement these investments by building upon them, or to supplement them by exploring additional options that it might not have otherwise pursued. In these ways, deference to the past can bolster the strength and expand the range of options available to the future.

Thus, while deference to the past is unlikely to satisfy the future’s preferences, it may nevertheless expand the future’s capacity for choice in other ways. Generally, we have reason to want cultural options that are richer and more robust than the options we could produce entirely on our own.\footnote{Ronald Dworkin, “Can a Liberal State Support Art?” in \textit{A Matter of Principle} (Cambridge, Mass.: Harvard University Press, 1985), 221–33.} ICTs can achieve a meaningful sense of “public benefit” insofar as they contribute to a society’s cultural architecture.

\textbf{E. General Purposes, Sunset Provisions, and Cy-Près}

To be sure, this defense of ICTs will only hold insofar as these transfers actually do contribute to a society’s cultural architecture in the way that I have claimed is valuable. And my
sense is that without certain protections in place these contributions tend to have a limited shelf-life. After a certain period of time, respecting the judgments of the past actually *reduces* the richness and strength of cultural options. Surely the speed and extent of the decay will depend on the content of those judgments. A transfer crafted around narrow purposes, or restricted to specific strategies, will generally become obsolete rather quickly. Consider an intergenerational charitable transfer designed to perpetuate racial supremacy, or another designed to treat mental illness with lobotomy. The passage of time reveals that whatever benefits such transfers might contribute is surely outweighed by the cost of promoting patently unjust values and false beliefs.

One might think that a transfer dedicated to very general purposes, and no restrictions on the manner in which those purposes are to be carried out, avoids these challenges. It would leave trustees of a donation free to determine what causes to pursue, or how to pursue the causes designated by the donor. An immediate problem with this proposed solution is that it squelches one of the main incentives for making ICTs in the first place. As I discussed above (in §III), a prime interest donors have in making such transfers is the liberty to give effect to their specific judgments. I take much more pleasure in the thought of endowing a particular form of musical performance that I value than I do in the thought of making a contribution to “general artistic expression.” If I faced a choice between devoting my estate to “a form of art to be named later by anonymous future persons,” and devoting it to some private purpose, I am not sure what I would choose. A scheme that significantly limits the degree of choice among potential objects of philanthropy would make ICTs much less attractive as a policy option.

One might respond that this position ignores the fact that the largest foundations tend to adopt very general purposes. In fact, in many cases the purposes have been so broad that trustees have been able to pursue aims that the donor would almost certainly have rejected. (Today, the Ford Foundation is a case in point.) In spite of this, the enthusiasm for endowing large, general-
purpose foundations has only grown more fervent over time. The willingness of donors to make ICTs for general purposes appears to indicate that policies limiting donor discretion would do little to affect the relevant incentives. In reply, I would note that in these cases a different kind of incentive is at play: namely, the opportunity for enduring public impact that is a function of concentrated wealth. That is, even if I cannot impose my particular musical tastes on future generations, the promise that future generations will forever associate my name with artistic expression might be more than enough to tempt my checkbook. But this kind of incentive will only provide motivation to a small minority of fabulously wealthy donors. For persons with such a large capacity for donation, their mark on society will be perceptible even when they completely cede management decisions to others. Thus, policies that restricted ICTs to broad purposes would likely end up discouraging all but the wealthiest donors.

Another problem with confining ICTs to general purposes is that even seemingly general purposes can become obsolete once enough time has passed. A transfer designed simply to “combat child poverty” might seem broad enough to stand up to historical changes of any kind. (No doubt Betton and Mullanphy thought similarly of their own trusts.) But a transfer to combat child poverty could become obsolete in numerous ways. For instance, it would become obsolete if child poverty ceased to remain a problem or if a future generation determined to address this problem exclusively through collective efforts. And even a transfer that has not become entirely obsolete may be objectionably wasteful or impractical, particularly when it controls a vast sum of wealth.

A second option is to prevent donors from making perpetual trusts. A one-time bequest, or a trust that spends down its assets after a limited number of years, stands a good chance of avoiding the tendency toward obsolescence. Whether this is an attractive policy option seems to depend on the particular purposes to which the ICT is devoted. That is, certain types of
initiatives take many years to get off the ground. Their benefits might not become apparent for many decades, if not centuries. Term limitations on ICTs would discourage the kinds of long-term thinking that some claim as one of their chief strengths.

A third possibility is to apply greater oversight of ICTs by reforming the doctrine of *cy-près*. *Cy-près* (from the archaic French *cy près comme possible*) permits public officials (typically judges) to revise a trust that has become obsolete. However, as it is traditionally practiced, officials are only allowed to revise the terms of the trust when those terms have become illegal by current standards or literally “impossible” to carry out. An initial reaction is to regard this aspect of the doctrine as too conservative, precisely because it defers entirely to the potentially obsolete judgments of past persons. To some extent, however, this limited judicial power preserves the justification of ICTs. If judges could simply replace the terms of charitable trusts with their own preferences or the preferences of contemporary litigants, donors would have fewer incentives to make such ICTs, and these transfers would no longer leverage their particular epistemic benefits.

Lewis Simes suggests that, without supplanting the judgments of the donor, the “impossibility” standard should be broadened slightly to encompass also trusts that are unreasonably wasteful or impractical. The Simes proposal aims to strike a balance between the interests of the past and the interests of the future. It protects donors’ judgments (and the incentives that come along with a promise to respect them) from falling victim to temporary budget crises or current funding fads. At the same time, it ensures that ICTs continue to serve ends that are not unreasonable and at a rate that is not too inefficient.

Along with John Stuart Mill, who made a similar proposal a century before him, Simes

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51 In truth, Mill offers at least two separate and partially incompatible proposals on this question. These occur in brief articles published in popular periodicals. In 1833, he makes the suggestion I report above, that the state step in to revise the terms of a trust after a fixed interval (no longer than “the
also offers a prudent way of administering the process of *cy-près* review.\(^{52}\) An enduring feature of *cy-près* is that officials may only consider revising a trust when some person with the legal standing to do so brings a challenge to the terms of the trust. Among other problems, this tends to expose to scrutiny only a fraction of potentially obsolete trusts. In view of Simes and Mill, all charitable trusts should come under review automatically after a fixed period of time. (Simes recommends thirty years.) If they are still effectively serving valid charitable purposes, they may continue to do so unhindered for another interval of time. If they fail this test, officials may step in to revise their purposes.

Altogether, these observations point toward a particular regulative strategy. That is, future generations should generally respect the one-time bequests and limited-life trusts of those who come before them. Meanwhile, the price of adopting a longer time horizon is to expose one’s endeavors to substantive audit and adjustment at successive intervals.

VI. **CONCLUSION**

I have argued that the justification of intergenerational charitable transfers requires that we consider a dimension of political morality that receives infrequent attention. Intergenerational charitable transfers might serve egalitarian aims, and they might promote justice in intergenerational savings. But at least in their traditional operation, such mechanisms also subject foresight of a prudent man may be presumed to reach”). In 1869, he suggests instead that the state *nationalize* obsolete private trusts, so long as it devotes their funds to purposes “of a permanent character, to remove the temptation of laying hands on such funds for current expenses in times of financial difficulty.” What is puzzling is that though the 1869 proposal envisions a greater role for the state, Mill’s general position here is otherwise much more hostile to state control than his position in 1833. See J.S. Mill, “Corporation and Church Property (1833),” in *The Collected Works of John Stuart Mill: Essays on Economics and Society Part I*, ed. John M. Robson, Vol. IV (Toronto: University of Toronto Press, 1967), pp. 193–222, and his “Endowments (1869),” in *The Collected Works of John Stuart Mill: Essays on Economics and Society Part II*, ed. John M. Robson, Vol. V (Toronto: University of Toronto Press, 1967), pp. 615–29.\(^{52}\) Simes, *Public Policy and the Dead Hand*, pp. 139–40.
future generations to the judgments of past persons. This appears to conflict with the interest that each generation has in sovereignty over its collective affairs. We have reasons to want that the decisions about the world we share issue from us, rather than others who are not us: be they citizens of a foreign society or past citizens of our own society. To justify ICTs requires an analysis of the constituents of the value of generational sovereignty and to what extent these constituents make space for influence from the past.

Generally speaking, we have seen that the value of generational sovereignty divides into two types of familiar interests. One reason a generation has for wanting control over its common affairs is instrumental. Often we desire this control because by controlling our own affairs we are better able to realize our substantive interests, whatever they are. We also have non-instrumental reasons for wanting generational sovereignty. One of these is the reasonable desire we have for feeling at home in our social world, where feeling at home is a result of that world reflecting crucial elements of our will.

I have shown that ICTs do not inherently frustrate these interests. Maintaining exclusive control over the direction of charitable investment does not necessarily serve a generation’s substantive interests. ICTs provide certain incentives that increase the amount of resources available for charitable investment, and they offer some unique epistemic benefits. It is also false that maintaining exclusive control over the direction of charitable investment is necessary for a generation to be self-determining. A generation can still successfully collectively determine its core institutions while allowing a certain degree of influence to trickle in from other sources.

However, I have also stressed that synchronizing ICTs with these interests in generational sovereignty requires that they be regulated in certain ways. ICTs that become obsolete do not serve future generations’ substantive interests. And at least at a certain level, ICTs that target matters of basic distributive justice will start to cut into a generation’s interest in collective self-
In closing, it is worth reiterating that although the argument comes out modestly in favor of some kind of intergenerational philanthropy, this should in no way be taken as an endorsement of the status quo. As I discussed at the end of §IV, under certain historical conditions intergenerational philanthropy can serve to exacerbate various unjust background conditions. Although one might hope that a society could address these injustices directly, I cannot rule out whether stricter limitations on intergenerational philanthropy might be part of a transitional reform strategy. Some might regard this failure to offer more determinate guidance as disappointing. To the contrary, I believe that achieving greater clarity of certain matters of principle is a crucial first step toward any informed discussion of policy choices.
CONCLUSION

We are not generally disposed to scrutinize the practice of philanthropy. Philanthropy is beneficent by design, and often so in effect. In many ways it represents the best angels of our nature. It allows citizens to lift their sights beyond their personal projects and attachments, to consider and apply themselves directly to public concerns. Through philanthropy citizens respond to the needs of strangers, express aspects of their identities, enrich their society’s cultural language, and foster a vibrant associational life. And they do so not by way of social confrontation and coercion, but by way of their own independent judgment and goodwill. If philanthropy deserves criticism, we typically think it applies to donors who have earned their largesse dishonestly, or to those whose gifts evince insufficiently altruistic motives. Structural criticism, however, may provoke our puzzlement, if not our irritation. Who but the envious, the petty, or the cynical could criticize the practice itself?

This study has not denied the value of philanthropy. It has revealed, however, that a mainstay of contemporary practice—the presumption in favor of donor discretion—faces several principled challenges. As we have seen, a liberty to donate to a wide range of purposes seems hard to square with the stringent rights of disadvantaged persons to assistance. Policies that subsidize this liberty without regard for the claims of need appear to shirk a society’s collective duty to its least well-off members. When donor discretion combines with background inequalities in wealth, it conflicts with our democratic conviction that each citizen is equally entitled to influence public affairs. And when it seeks perpetual life, enforcing donors’ wishes conflicts with the interests of future persons in freedom from alien control.

In the first chapter, I noted how a variety of conditions single out philanthropy as a principal mechanism for discharging the collective duty to a society’s least well-off members.
That the claims of need demand urgent attention is beyond dispute. However, I contended that these considerations fail to mount a compelling case for using public policy to steer donations in this way. Delegating the response to disadvantage to private decisions is a dereliction of the duty to establish public principles of distributive justice. Decentralizing the financial responsibility for securing a just social minimum is a hopelessly unreliable strategy. And attempting to satisfy the needs of misfortunate citizens with voluntary and discretionary sources of finance subjects them to unjustified forms of power and social subordination. Though a society ought not prohibit eleemosynary donations as supplements to a just social minimum, public subsidies for philanthropic donations cannot be justified on eleemosynary grounds. A practice of subsidizing private donations might be justified on other grounds, however, and I proposed three promising routes. A society might apply social resources to resolve market failures in the production of collective goods. It might use subsidies to expand the range of valuable options for laboring and consuming. And it might subsidize donations to nourish the democratic virtues that come along with organized voluntary association.

Even as I argued that donors should enjoy a degree of discretion regarding the ends of their gratuitous transfers, the following chapters showed two ways in which this discretion must be constrained. Donations serve as a unique means for enjoying influence over a society’s common affairs. However, when an unqualified permission to make donations combines with background inequalities in wealth, the fairness of democratic procedures suffers, and social outcomes face threats to their legitimacy. This problem is not limited to donations that support campaigns or political parties. It affects all donations that finance public expression and advocacy. Consequently, I suggested that a principle of political equality and the regulations that support it may extend at least to certain types of philanthropic donations.

Protecting donor discretion faces additional challenges from the standpoint of future
generations. Donations designed to pay out benefits after a donor’s death provide a valuable way of caring for the interests of future persons. But intergenerational philanthropy is also a way of imposing wills of the past onto the future. I argued that a concern for generational sovereignty directs us to broaden our understanding of the range of considerations that bear on the practice of intergenerational charitable transfer. Accounting for the considerations in this expanded range reveals that the most significant challenge to intergenerational philanthropy as such is its tendency toward obsolescence. Subjecting charitable trusts to a form of periodic review provides a promising solution to this problem.

Despite the connection of these issues to current policy concerns, I have cautioned against treating the conclusions of these chapters as offering determinate guidance. I noted, for instance, that challenges with implementing the proposal to regulate expressive donations might require approaching the problem from a different angle than the one that I suggest. Likewise, I allowed that there might be reasons to limit or even eliminate intergenerational transfers, reasons that have little to do with the value of generational sovereignty itself.

Though I have cautioned against reading off practical conclusions from the foregoing arguments, readers might nonetheless be left pondering what types of recommendations these arguments provide for individual practical deliberation. That is, readers may wonder whether they themselves have a duty to donate, and if so, what such a duty amounts to. Alternatively, they may wonder what types of limitations they ought to recognize on their own donations, should they choose to make them. These are intrinsically interesting questions. They become even more interesting when one realizes that the arguments I have given here appear to provide conflicting advice on how to answer them.

Few would deny that contemporary circumstances fall far short of what social justice requires. Many affluent societies fail to secure a just social minimum, let alone any more
demanding restraints on the degree of inequality. We commonly believe that when institutions fail to satisfy principles of justice, individuals incur a duty to respond in some way. What is more, we likely believe that such a duty falls most heavily on those who are better off. We can reach this judgment from several different directions.¹ For instance, we might think that the better off are somehow complicit in imposing the unjust institutions. Or, we might think that the better off owe compensation as a result of benefitting from the injustice. We might also think that individuals have a free-standing duty to promote just arrangements, whether or not they collaborate in imposing them or derive undeserved gains from them. That is, a natural duty of justice directs us to respond to injustice simply insofar as we have the capacity to do so.

Whatever we take to be the moral basis of an individual duty of justice, philanthropy appears to provide an essential means for discharging it. One obvious way of responding to distributive injustice is for citizens to contribute to funds to compensate or care for those who suffer from it. In the first chapter, however, I expressed serious reservations about using philanthropic donations to respond directly to conditions of injustice. Though the target of my argument was public policies that subsidize donations, rather than donations themselves, these reservations carry over to some extent. Gifts to needy strangers are inherently unreliable means of assistance, and they expose recipients to objectionable forms of power. A donor persuaded by these concerns might attempt to seek out a safer alternative. In particular, she might pivot away from attempts to mitigate the effects of unjust institutions and toward strategies of reforming unjust institutions themselves. The most obvious way to advance institutional reform, in turn, is through supporting political advocacy. Supporting the work of political campaigns, public

¹ For an attempt to disentangle the various reasons for which individuals might have a duty to donate resources, see Chiara Cordelli, “Reparative Justice and the Moral Limits of Discretionary Philanthropy,” in Philanthropy in Democratic Societies: History, Institutions, Values, ed. Rob Reich, Lucy Bernholz, and Chiara Cordelli (Chicago: Chicago University Press, forthcoming).
interest groups, and think tanks can work against unjust circumstances without exposing the victims of injustice to domination or social subordination. However, in the second chapter, I expressed worries about the way in which financing political advocacy also risks exposing others to objectionable forms of treatment. What distributive justice requires, and how best to achieve it, are questions that give rise to considerable disagreement. When wealthier persons apply their resource advantages to the finance of expressive associations, they advance their own political preferences beyond those of citizens with fewer resources. They convert inequalities in wealth into unjust inequalities in power.

The just philanthropist would thus seem caught in a dilemma. Although she faces a weighty duty to deploy her largesse against the injustice that surrounds her, by the lights of the foregoing arguments, the two main responses available would appear to implicate her in additional injustice. Showing more definitively how donors might be able to circumvent this dilemma is a topic for further research. However, I want to suggest a few possibilities that serve the additional function of clarifying some of this study’s main arguments.

The first thing to note is that risks of dependence and subordination may be costs worth bearing under certain circumstances. When public institutions are hopelessly decayed or underdeveloped, eleemosynary charity is simply all there is. Having said this, I would also draw attention to the fact that certain mitigation strategies can be more and less consistent with the types of concerns that I have highlighted. For instance, when the problem is that public assistance programs are underfunded, the response for private donors might be to set up booster funds to reinforce those public programs, rather than to establish rival private programs. Similarly, when the problem is income inequality, the response for private donors might be to effect direct cash transfers to recipients, rather than to engage in invasive judgments about their needs. Designing these and other strategies in ways that are consistent with a transition to a less
unjust institutional environment presents an enduring challenge.

A similar comment applies to advocacy efforts. That is, the harms involved in amplifying the volume of one’s political preferences may also be costs worth bearing, when the stakes are high enough. But here donors also face an additional option. In particular, rather than fund efforts to reform institutions in line with the interests of marginalized persons, they might fund efforts to enhance the voices of those persons. With this in mind, certain types of community organizing efforts begin to look appealing, at least when they operate at some remove from their financial backers. These and other efforts aim to erode barriers to political expression and contestation. Donors who support these types of strategies would have a formidable reply to the charge that they are unjustly converting advantages in wealth into political advantage.

Although these options come with many caveats, I take them to show that the arguments of this study allow and even encourage a considerable role for philanthropy in responding to social injustice. However, they also provide some bases for criticizing a variety of giving strategies that may be more popular.
BIBLIOGRAPHY


