The Transformation of American Philanthropy:
From Public Trust to Private Foundation, 1785-1917

by

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For My Parents,
Carol and Chuck Harmon

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ABSTRACT

This dissertation examines the early history of philanthropic enterprise in the United States. I use the legal and administrative records of nineteenth-century philanthropic foundations, as well as the popular debates they inspired amongst legislators and social reformers, to argue that American philanthropy did not begin as a "private" practice outside of government. Rather, public officials, reformers, and the wealthy collaborated and competed to utilize and regulate the administration of private wealth for public works. As Americans moved away from the early modern system of European patronage that prioritized the private funding of public works, they created public-private partnerships to distribute private wealth for national development. I demonstrate that the nation's first major philanthropic institutions—from Congress' creation of the Smithsonian Institution (1846) to the chartering of the Rockefeller Foundation (1913)—developed as public-private partnerships that worked across business, benevolence and governance. It was only in the twentieth century, that philanthropy became the purview of private foundations that operated with little government oversight.

Philanthropic enterprise has been at the center of American state and economic development from the very beginning. While historians have credited later, Progressive-Era foundations, including the Russell Sage Foundation, the Carnegie Corporation of New York, and the Rockefeller Foundation, with adapting the financial and legal technologies of corporate capitalism to create the nation's first foundations, my research shows that these philanthropists based their strategies on the Smithsonian. The Smithsonian was the true archetype for American foundations; its legal form laid the groundwork for the expansive corporate privileges we associate with modern philanthropy. Congress itself decided how to regulate the Smithsonian—choosing between operating it as a government agency, a quasi-governmental institution, or a private foundation. In the end, Congress made the Smithsonian a "public trust," meaning that its capital came from a private trust, but public officials managed it for a distinctly public purpose.

Government officials populated its board, while private citizens served in leadership roles. This model made the Smithsonian and future public trusts more powerful with their proximity to government officials, but it also imbued private wealth with an explicitly public character. George Peabody adapted this model to promote public education in the South during Reconstruction, and in the Gilded Age, Rockefeller and Carnegie created public trusts to fund agricultural development and scientific research.

By the twentieth century, the public-trust model would change dramatically though. Philanthropists came to see themselves as trustees for the nation, rather than mere contributors of public benefactions. While the founders of public trusts envisioned government officials as the trustees of the funds they created, with the rise of corporate capitalism, wealth increasingly became its own source of power in American society—a source that could aggregate capital and outspend state entities on social welfare. Under these conditions, increasing pressure from philanthropists and public officials to separate their public works from their business operations and from the government, I argue, led to the rise of a new species of corporation more akin to the private foundations we know today.

This transformation of American philanthropy marks a critical shift in the regulatory vision for private wealth for public works. Amidst twenty-first-century debates about the corroding impact of private wealth on democratic institutions, this history offers an account of the alternative regulatory visions that Americans have had for philanthropy—from the very beginning.

INTRODUCTION

The Rise and Fall of the Public Trust

Towards the end of his life, Benjamin Franklin added a codicil to his will that left £1000 sterling each, in trust, to the municipalities of Philadelphia and Boston.[1] And in a nod to the cumulative possibilities of compound interest, he laid out what, at the time, must have seemed like an almost fantastical scheme: for both cities to manage their trusts for the next 200 years. City officials, he explained, were to lend out the funds in small sums at five percent to young artisans. After one-hundred years, he predicted, the cities would have accumulated £131,000, and by the terms of his will, he instructed them to expend £100,000 of these funds on "public works," such as the construction of bridges and buildings.[2] During the next century, city officials were to continue lending out the remaining £31,000. In another 100 years, each state would have £4,000,061 that they could use according to their own wishes.[3]

[1] For more on the history of Franklin's codicil, see Bruce H. Yenawine, "Benjamin Franklin's Legacy of Virtue: The Franklin Trusts of Boston and Philadelphia." PhD diss., Syracuse University, 1995; Peter Dobkin Hall, "Benjamin Franklin and the Origins of Secular Voluntarism," *Documentary History of Philanthropy and Voluntarism in the United States, 1600-1900,* Hauser Center on Nonprofit Organizations at the John F. Kennedy School of Government, Harvard University website, https://www.hks.harvard.edu/fs/phall/10.%20Franklin.pdf (accessed October 19, 2016).

[2] The American Philosophical Society holds the original copy of the final version of Benjamin Franklin's will. For a transcript, see Yenawine, "Benjamin Franklin's Legacy of Virtue," 261-265.

[3] Two hundred-years after Franklin's death, in 1990, the states of Massachusetts and Philadelphia were left with $4.5 million and $2 million respectively. For more on debates about what to do with the leftover funds see, Fox Butterfield, "From Ben Franklin, a Gift That's Worth Two Fights," *The New York Times*, April 21, 1990.

Franklin envisioned the establishment of these private trusts for public purposes as an experiment. He was not sure if it would work, and he implied as much at the end of the codicil, referencing the many accidents over the course of 200 years that might derail what he called his "vain fancy."[4] In retrospect, however, his experiment seems like quite a bit more than fancy. Franklin was well known for his experiments in civic improvement, and this exercise was likely intended to instruct Americans on the benefits of savings and well-managed credit.[5] More importantly, though, Franklin was attempting to introduce the cumulative powers of compound interest to the young nation's citizens. In 1785, Franklin had been corresponding with French economist and philanthropist Charles Joseph Mathon de la Cour.[6] In response to Franklin's *Poor Richard's Almanack*, which was popular with French intellectuals, Mathon de la Cour had written *Téstament de Fortuné Ricard, maître d'arithmétique à D***, and he shared a copy with Franklin. The testament is a fictional will composed by M. Fortuné Ricard, who leaves 500 livres in trust for 500 years, a portion of which is to be distributed at the end of each century for increasingly grand public works.[7] Mathon de la Cour's vision inspired Franklin to make the fictional trust a reality in the United States.

There might not be a better place to begin the history of modern American philanthropy. This was Benjamin Franklin extolling the virtues of disciplined capital accumulation, for the benefit of American cities. He was yoking capitalist activity to the wealth of the nation. More subtly, it is a quintessentially American process, because American philanthropy has been for

[4] At the end to the codicil of his final will, Franklin wrote, "Considering the accidents to which all human Affairs and Projects are subject in such a length of Time, I have, perhaps, too much flattered myself with a vain Fancy, that these Dispositions, if carried into execution, will be continued without interruption and have the Effects proposed." See Yenawine, "Benjamin Franklin's Legacy of Virtue," 264.

[5] Major histories of Franklin's life and work include: J. A. Leo Lemay, *The Life of Benjamin Franklin*, vols. 1-3 (Philadelphia: University of Pennsylvania Press, 2006-2009) and Edmund S. Morgan, *Benjamin Franklin* (New Haven: Yale University Press, 2002).

[6] Franklin served as the Minister Plenipotentiary of the United States in France from 1778-1785. Subsequently, he maintained a number of acquaintances and correspondence with European officials and thinkers, including Mathon de la Cour. For more context see, Yenawine, "Benjamin Franklin's Legacy of Virtue," chapter 2.

[7] Franklin encouraged the translation and printing of Mathon de la Cour's essay in the United States. It was included in the appendix of Richard Price, *Observations on the Importance of the American Revolution, and the Means of Making it a Benefit to the World* (Dublin: L. White, 1785). For context see Yenawine, "Benjamin Franklin's Legacy of Virtue."

hundreds of years a story about the development of giving within an array of corporate vehicles. Indeed, Franklin had to name corporate bodies to manage his trusts.[8] If he did not, then his will likely would not have passed muster in American courts.

For many centuries in England, trust law governed the passing of wealth across generations to fuel a system of aristocratic patronage. Most American states, by contrast, repealed the British Charitable Statutes altogether in the early national period. In fact, the safest method of making a bequest for public works in the United States was actually to leave funds to a corporate body, in trust. So when Franklin wrote up his codicil, in Boston he provided for "Select Men, united with the Ministers of the oldest Episcopalian, Congregational, and Presbyterian Churches" (churches being corporate entities) to manage their trust.[9] And because Philadelphia was an incorporated municipality, in its case, he sanctioned the city itself, as a body corporate, to manage the funds.

These may seem like minor details or questions of semantics, but as corporations became the vehicles through which American philanthropy was conducted and, also, sanctioned by government, those corporate entities gained not only capital, but legitimacy as well. As

[8] Much has been written on how trust law shaped the emergence of American philanthropy. For more on relevant case law and context, see: Lawrence M. Friedman, *Dead Hands: A Social History of Wills, Trusts, and Inheritance Law* (Redwood City: Stanford University Press, 2009); Thomas E. Blackwell, "The Charitable Corporation and the Charitable Trust," *Washington University Law Review* 24, no. 1 (1938); Stanley N. Katz, Barry Sullivan, and C. Paul Beach, "Legal Change and Legal Autonomy: Charitable Trusts in NY, 1777-1893," *Law and History Review* 3 (Spring 1985). For more on the history of corporate law, see: Morton J. Horowitz, *The Transformation of American Law, 1870-1960* (New York: Oxford University Press, 1992); Susan Pace Hamill, "From Special Privilege to General Utility: A Continuation of Willard Hurst's Study of Corporations," *American University Law Review* 49 no. 1 (1999); Simon Eden Baldwin, "History of the Law of Private Corporations in the Colonies and States," in *Select Essays in Anglo-American Legal History*, eds. Committee of Association of American Law Schools (Boston: Little Brown, 1909); Joseph Stancliffe Davis, *Essays in the Earlier History of American Corporations*, 2 vols. (Cambridge: Harvard University Press, 1917); Irwin G. Wyllie, "The Search for an American Law of Charity, 1776-1844," *The Mississippi Valley Historical Review* 46 (Sept 1959); Gareth Jones, *History of the Law of Charity, 1532-1827* (Cambridge: Cambridge University Press, 1960); Howard S. Miller, *The Legal Foundations of American Philanthropy, 1776-1844* (Madison: State Historical Society of Wisconsin, 1961); Ronald E. Seavoy, "The Public Service Origins of the American Business Corporation," *Business History Review*, 52, no. 1 (Spring, 1978); Norman I. Silber, *A Corporate Form of Freedom* (Boulder: Westview Press, 2001); Peter Dobkin Hall, "What the Merchants Did with Their Money: Charitable and Testamentary Trusts in Massachusetts, 1780-1880," in *Entrepreneurs: The Boston Business Community, 1700*-1850, eds. Conrad Edick Wright and Kathryn P. Viens (Boston: Mass Historical Society, 1997).

[9] See Benjamin Franklin's will, where he explicitly describes the corporate bodies intended to manage his trust.

Americans neither intended to manage philanthropy through aristocratic patronage nor through a federal agency; public officials and the wealthiest Americans were left to devise the legal and financial technologies that would make American philanthropy possible in the nineteenth century. And as they designed the nation's first philanthropic institutions, they experimented with corporate, financial, and administrative technologies to create corporate bodies that could undertake business, benevolence, and governance functions.[10]

The corporate bodies that facilitated American philanthropy fostered a public-private partnership model that would have a lasting influence on the shape of the American nonprofit sector. As Jonathan Levy has recently explained, "If there is one continuity to the history of American philanthropy, it is that, from the first, it has been a corporate enterprise."[11] And further, it is a story of a corporate enterprise cast between two modes of governance—both private management of wealth and public management of social welfare. Due to the corporate form of American philanthropy, the corporate and legal technologies of commerce—from merchant banking to vertically-integrated trusts—are indelibly linked to American philanthropy. However, understanding American philanthropy as a corporate enterprise also signals that philanthropy, charity, and voluntarism—all undertaken through corporate bodies—have more in common with business and governing institutions than historians have realized.[12]

[10] Histories of philanthropy have often been told separately from histories of charity and voluntarism. There are strong reasons to combine these different types of giving around the concept of enterprise though, as churches, voluntary associations and foundations have operated as incorporated bodies in the United States. For a synthetic works that combines these different types of giving and development, see Peter Dobkin Hall, "A Historical Overview of Philanthropy, Voluntary Associations, and Nonprofit Organizations in the United States, 1600-2000," in *The Nonprofit Sector: A Research Handbook,* eds. Walter W. Powell and Richard Steinberg, vol. 2 (New Haven: Yale University Press, 2006). For more on the differences between them, see Benjamin Soskis, "The Problem of Charity in Industrial America, 1873-1915." PhD diss., Columbia University, 2010: 261-265.

[11] Jonathan Levy has described how American states did not incorporate trust law into their regulation of charitable corporations in "On Altruism and the Origins of Nonprofit Philanthropy," in *Philanthropy in Democratic Societies: History, Institutions, Values*, eds. Rob Reich, Chiara Chordelli and Lucy Bernholz (Chicago: University of Chicago, 2016). For the classic treatment of the development of a three-sector economy see, Burton A. Weisbrod, "Toward a Theory of the Voluntary Non-Profit Sector in a Three-Sector Economy," in *The Economics of Nonprofit Institutions*, ed. Susan Rose-Ackerman (New York: Oxford University Press, 1986).

[12] Historians have written widely on the corporation in American history; however, their accounts of its significance revolve around the eventual creation of the business corporation. See, for example, Alan Trachtenberg, *The Incorporation of America: Culture and Society in the Gilded Age* (New York: Hill and Wang, 2007); Martin J. Sklar, *The Corporate Reconstruction of American Capitalism, 1890-1916* (Cambridge: Cambridge University Press, 1988); Roland Marchand, *Creating the Corporate Soul: The Rise of Public Relations and Corporate Imagery in American Big Business* (Berkeley: The University of California Press, 1998); Oliver Zunz, *Making America*

In this dissertation, I analyze the history of philanthropic enterprise in the United States, beginning in the nineteenth century. I argue that the nation's largest philanthropic experiments, from the creation of the Smithsonian Institution (1846) to the incorporation of the Rockefeller Foundation (1913), began as public-private partnerships that worked across business, benevolence and governance. While historians of American philanthropy generally date the birth of the modern foundation to the creation of the Russell Sage Foundation (1907), the Carnegie Corporation of New York (1911), and the Rockefeller Foundation (1913), I show that the rise of what we think of as these "private foundations" represents a major transformation in American philanthropy, rather than its genesis.[13] That transformation involved the legal and social evolution of seeing philanthropic foundations as public trusts that operated as public-private partnerships to envisioning them as private foundations that operated autonomously from business and government. How Americans have thought about the public or private nature of distributing private wealth for public purposes has influenced the regulation of American philanthropy, as well the social value placed on the accumulation of wealth through commercial activity, I contend.

Prominent historians of American philanthropy have claimed that Americans lacked the organizational vehicles to conduct national philanthropy in the early-twentieth century.[14] This has led to an analysis of how foundations filled gaps left by American business and government in the provisioning of social services.[15] However, by shifting the periodization of the history of

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Corporate 1870-1920 (Chicago: University of Chicago Press, 1990); Kenneth Lipartito, "The Utopian Corporation," in *Constructing Corporate America: History, Politics, Culture*, eds. Kenneth Lipartito and David B. Sicilia (Oxford: Oxford University Press, 2004).

[13] For examples of historians emphasizing the genesis of philanthropic foundations in the early-twentieth century, see Helmut K. Anheier and David C. Hammack, "American Foundations: Their Roles and Contributions to Society," in *American Foundations: Roles and Contribution,* eds. Helmut K. Anheier and David C. Hammack (Washington: The Brookings Institution, 2010). Also see, Alice O'Connor, *Social Science for What: Philanthropy and the Social Question in a World Turned Rightside Up* (New York: Russell Sage Foundation, 2007); Olivier Zunz, *Philanthropy in American: A History* (Princeton: Princeton University Press, 2012).

[14] See, for example, Peter Dobkin Hall, *Inventing the Nonprofit Sector* (Baltimore: Johns Hopkins University Press, 1992), 5; Barry D. Karl and Stanley N. Katz, "Foundations and Ruling Class Elites," *Daedalus* 116, no. 1 (1987) and "The American Private Philanthropic Foundation and the Public Sphere 1890-1930," *MINERVA* XIX, no. 2 (1981).

[15] The most famous articulation of private philanthropy fulfilling functions that government and business refused or failed to provide is the "three-failures thesis." See, Weisbrod, "Toward a Theory of the Voluntary Non-Profit Sector."

American philanthropic foundations to include the early nineteenth century, my research shows that Progressive-Era foundations did not lack organizational or corporate precedent in managing their wealth at all. By examining the legal records of early-twentieth century foundations, I demonstrate that these foundations substantively based their legal form and administrative operations on earlier foundations, beginning with the Smithsonian Institution (1846) and the Peabody Education Fund (1867). Indeed, foundations assuming a legal and social identity as "private corporations" that held their endowments in absolute ownership was new in the early-twentieth century; however, the functions they sought to undertake were well established by previous philanthropic foundations.

This dissertation then addresses the transformation of American philanthropy across the nineteenth-century—from a public-trust model that operated through public-private partnerships to a private-foundation model that undertook development work separately from and in competition with the emerging welfare state. Such a transformation was not inevitable, I will show. Rather, the public-trust model represents a path-not-taken in American history—a path that prioritized an entirely different regulatory vision for private wealth in the social and economic development of the nation. Amidst twenty-first-century debates about the corroding impact of private wealth on democratic institutions, this history of American philanthropy offers an account of the alternative regulatory and administrative visions that government officials, wealthy citizens, and social reformers have had for philanthropy—from the very beginning.

This story begins in the nineteenth century, when some of America's richest citizens, in conjunction with state and federal legislatures, incorporated the nation's first major philanthropic institutions—and created what I refer to as "public trusts."[16] Like Franklin, the nation's first major philanthropists left funds in trust to be managed by corporate bodies as national benefactions. Public trusts were the predecessors to what we think of as modern foundations today. A foundation can refer to any endowed institution. Public trusts, by contrast, were created

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[16] For the Rockefeller Foundation's use of the term "public trust, see, "The Genesis of the Investigation," 1915, Folder 150, Box 20, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center." And Frederick T. Gates laid out the contours of the concept (while not using the term directly) in a letter to John D. Rockefeller Sr.: Frederick T. Gates to John D. Rockefeller Sr., June 3, 1905, Folder 57, Box 3, Frederick T. Gates Papers, Rockefeller Archive Center.

from the wealth of one individual, which in turn were managed by public officials who undertook explicitly public works.[17] Through these public-private partnerships that emphasized the civic purpose of private wealth, the public-trust model of American philanthropy eased citizens into the idea of private wealth accumulating and exercising public power. The model also created a legal and administrative mechanism for public officials, the wealthy, and social reformers to undertake national development projects that worked across business, benevolence, and governance.

The public trust served a vital function for a nation that had decided not to manage its philanthropy and charity through a centralized government agency. For a nation that lacked a federal income tax that would have made the federal government capable of funding philanthropic and national development work—such as the creation of public schools, the prevention of public health crises, and the undertaking of agricultural development—this was key. For these reasons, private wealth had heightened public value to government in this earlier period.

I first encountered the term "public trust" while reviewing internal memoranda at the Rockefeller Foundation Archive Center. In the early-twentieth century, the Rockefellers[18] claimed that their foundation was a "public trust, not a private possession," because the American people had a right to supervise the foundation through legislative representatives.[19] However, ironically, the Rockefellers and their philanthropic advisers were making this point when the dismantling of the public-trust model of American philanthropy was already well underway. In fact, from the start, the Rockefeller Foundation was more of a private foundation than a public trust. Rockefeller and his advisers had not included public officials on the foundation's board, and the foundation existed to fulfill any purpose its board of trustees desired to pursue (as opposed to specifying a specific public purpose in its articles of incorporation like

[17] As foundations refer to any endowed institutions, that term can refer to a public trust. However, all foundations are not public trusts. At times, I use the term foundation to refer to a public trust for the sake of conciseness.

[18] I use the term "Rockefellers" to refer to John D. Rockefeller Sr. and John D. Rockefeller Jr., along with their team of advisers including Frederick T. Gates, Starr J. Murphy, and Jerome Greene. All of these individuals were instrumental in developing the Rockefeller family's philanthropic strategies in the early-twentieth century.

[19] "The Genesis of the Investigation."

earlier public trusts). The Rockefellers were trying to revive the language of the public trust, at this late moment, because by the early twentieth-century they were under pressure from government officials and social reformers to articulate the public value of their newly incorporated foundation. By that time, foundation leaders were discussing the possibility that new economic legislation would "preclude the acquisition of surplus wealth" and prevent the giving of "large continuing gifts." [20] Public sentiment, many foundation leaders thought, would lead government officials to increase taxation and give money away for public works itself.[21] Therefore, describing the public purpose of the Rockefeller Foundation was critical to its success and long-term viability, the Rockefellers believed.

So while my first encounter with the term "public trust" was fairly anachronistic, later, I would find it referenced more organically. I would find the term had been used to reference the British Museum's public identity in 1753,[22] as well as the early operations of the Columbian Institute in Washington D.C. in 1827.[23] These entities were using the term public trust to reference the stewardship of private capital and objects for national publics. While I could not find a history of the concept or even a precise definition, I did find that the term public trust has been used occasionally to describe private gifts to government entities in early American philanthropy.[24] My thinking about the concept continued to evolve in conversations with Pamela Henson, the Director of the Institutional History Division of the Smithsonian Institution Archive, in the fall of 2016. Henson has referred to the early Smithsonian Institution as a "public trust" in

[20] George Foster Peabody to Frederick T. Gates, Nov. 5, 1911, Box 57, George Foster Peabody Papers, Manuscript Division, Library of Congress, Washington, D.C. Also, see Hollis B. Frissell, Principal of the Hampton Normal and Agricultural Institute, express his belief that the government would limit large gifts in the future in his letter to George Foster Peabody, Nov. 10, 1911, Box 57, George Foster Peabody Papers, Manuscript Division, Library of Congress, Washington, D.C.

[21] George Foster Peabody to Frederick T. Gates, Nov. 5, 1911.

[22] Graham Beal, "Art for Sale? Public Trust, Public Debt: The Detroit Institute of Arts and the City of Detroit Bankruptcy" (lecture, University of Michigan, Ann Arbor, MI, March 21, 2017).

[23] Report of the Committee of the Columbian Institute, October 1, 1827, Box 1, Record Unit 7051, Columbian Institute Records, Smithsonian Institution Archives.

[24] See, for example, Yenawine, "Benjamin Franklin's Legacy of Virtue," 41; Hall, "Benjamin Franklin and the Origins of Secular Voluntarism."

her own work.[25] While the public trust may not refer to a precise legal category, some of the world's largest philanthropies, including the Smithsonian Institution, have used it to reference the public-private partnership model they have employed.

In my dissertation, I use the term public trust to refer to both the distinct legal form that nineteenth-century philanthropic institutions took, as well as the social purpose they created for private wealth in the nation's development. For the foundation-model of philanthropy to develop in the United States, Americans had to be able to legally and socially create a role for private wealth in the undertaking of the nation's public works. Just as Franklin's experiment with compound interest suggested, imagining the limitless growth of private capital in national and global markets was critical to wealth developing a lasting role in American governance. And, corporate vehicles needed to exist that would allow trustees to invest, grow, and distribute that private capital for the sake of national development in perpetuity. That long process of imagining, debuting, and implementing novel models of trusts and corporations to manage the nation's wealth is the subject of this dissertation.

How have people thought about and used private wealth as a source of power nationally and globally?[26] Prior to the eighteenth century and the emergence of banking and finance, endowed charitable bequests consisted of revenues from land.[27] Universities, churches, and public works operated with the help of endowments, but they were funded by the landed aristocracy. In Franklin's lifetime that was already changing as lending money out to make more money transformed the very possibilities of capital accumulation. Franklin could create public trusts that would operate off of lent money, rather than rents. By the mid-nineteenth century, however, an even greater sea change was taking place as the rise of banking and finance allowed endowed capital to be managed in securities. With the rise of banking and finance, endowed foundations offered founders a new vehicle to accumulate more wealth and social influence beyond the horizons of their natural lives. American bankers, businessmen, and eventually

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[25] See, for example, Pamela Henson, "History of Smithsonian Trust and Federal Funds," March 2016, Institutional History Research Files, Smithsonian Institution Archives.

[26] For a history of profit see, Jonathan Levy, "Accounting for Profit and the History of Capital," *Critical Historical Studies* 1 no.2 (Fall 2014).

[27] Hall, "Benjamin Franklin and the Origins of Secular Voluntarism."

industrialists, had the financial expertise to endow their funds with stocks and bonds that they believed would grow in perpetuity. This vision of establishing endowments with hand-selected securities carved out a niche for the expertise of the self-made rich in philanthropy. It was the accumulators, with this approach, who had the know-how to grow America enterprise, economically and socially.

Philanthropists took note, and so did government officials and Americans concerned with potentially corrupting sources of centralized power in their developing democracy. The impact of these financial technologies on the management of private wealth was only surpassed by how they transformed the size of American fortunes. If Franklin's contemporaries had to be taught the virtues of compound interest in the late eighteenth century, by the mid-nineteenth century, America was a "paradise of millionaires."[28] Or at least that was the hope of the merchants, bankers, and industrialists who imagined their rapidly increasing wealth as a fixture in the nation's future development.

Andrew Carnegie developed the most famous vision for the role of wealth in national development. In his famous essay that would become known as "The Gospel of Wealth" (first derisively and then in earnest), he laid out his rationale for the accumulation of wealth in U.S. capitalism. Possessors of what he termed, "surplus wealth," or the profits from industry that exceeded the common needs of any family or individual, would serve as stewards in American social and economic life. Millionaires, he suggested, should use their surplus wealth to act as "trustee[s] for the poor." And in this sense, parts of the profits of corporate capitalism would become "the property of the many."[29] Carnegie also explained what surplus wealth was not. It was not a "competence," which he defined as "moderate sums saved by many years of effort, the returns on which [were] required for the comfortable maintenance and education of families." Rather, surplus wealth referenced the capital which built great fortunes. While a competence might be the respectable aim for everyone, surplus wealth was a privilege of the few. In many respects, all wealth produced in industrial capitalism can be seen as a surplus. In contrast, Carnegie's concept of surplus wealth is highly specific; he meant to reference the capital—held

[28]A.B. Johnson Esq., "'The Almighty Dollar:' Or Money as a Motive of Action," *Merchants' Magazine and Commercial Review* XXXVI (1857), 48.

[29] Andrew Carnegie, "Wealth," *North American Review* (June 1889).

by only a few—that he imagined would serve as the engine of what he called the development of American civilization.

Carnegie's vision for the ideal stewardship of the nation's "surplus wealth" was, however, certainly contested. Intellectuals, activists, and Progressive-Era politicians debated the role that private wealth should play in the shaping of public life. California Senator John D. Works decried what he saw as the increasing relationship between commercial and charitable interests. In a speech on trusts and combinations, he argued that the United States government should not "farm out…the right and power to educate the people of the country" to men like Andrew Carnegie who made their money through "extortion, oppression, and crime."[30] By doing so the American people would become "receivers of stolen goods," and such a practice would make the United States' major educational institutions "subservient to the interests and views" of men like Carnegie.[31] Senator Works' remarks reflect a deep anxiety about the management of surplus wealth in the U.S. industrial economy. In Senator Works' words, "[a]s a matter of simple justice and right the money thus accumulated belongs not to the dispenser of these charities but to the men, women, and children whose underpaid toil accumulated the fund."[32] By the early twentieth century, the public trust was in danger of declining due to fears of private wealth's influence over public officials.

In large part, this is a story about the control and management of wealth—about the competing visions for the accumulation and regulation of private wealth. Carnegie and Works were not engaging in a new debate though; even by the mid-nineteenth-century, enough Americans had large fortunes to inspire public conversation about the desired distribution of surplus wealth. Americans were, from the start, concerned about designing public trusts to promote American democracy. In an article about public benefactions, and their desired role in society, one author had suggested that millionaires should consider what the state could not accomplish.[33]

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[30] "Blistered Fingers," *The Washington Post*, May 6, 1913.

[31] "Blistered Fingers."

[32] "Trusts and Combinations," John D. Works papers, BANC MSS C-B 423, The Bancroft Library, University of California, Berkeley.

[33] E.P. Peabody, "Public Benefactions," *Merchants' Magazine and Commercial Review* 36 no. 6 (1857), 667.

> Benefactors should ask themselves what is that which the municipalities and the State governments cannot be expected to see should be done? What is that which, indeed, it would be politically dangerous for a republican people to confide to a government which must always, for the time being, represent a one-sided political party, and therefore, in its best estate, be changing every few years? What is that which it will ennoble individuals to do spontaneously, while it would endanger the morals of official persons to do it? What is that which is never well done by clerks of governments, but must be the pride of an individual or a family, in order that it should make progress with society, ever going before, instead of toiling after, its demands?

These were provocative questions (and they remain so today). What public welfare causes were best provisioned by the government? What should the public purpose of trusts created from private surplus wealth have been? In the development of American democratic governance, how could the division of these responsibilities have threatened the nation's commitment to popular sovereignty and to fostering political efficacy?

As Americans addressed these complicated policy questions, just as Carnegie and Senator Works' divergent views about surplus wealth suggest, their answers would change dramatically. Philanthropists such as Rockefeller and Carnegie came to see themselves as trustees for the nation, rather than mere contributors of public benefactions. In the beginning, founders of the Smithsonian, the Peabody Education Fund, the John F. Slater Fund, and even the Carnegie Institution of Washington had envisioned public officials as the trustees of the funds they created. However, with the rise of corporate capitalism, wealth increasingly became its own source of power in American society—a source that through accumulation and combination might outspend the government on social welfare initiatives.

This story, then, is not simply about the role of surplus wealth in society. It is also about the shifting scope of the state and corporate power. For much of the nineteenth century, surplus wealth, itself, was seen as public. That is not to say it was held as communal property, but that regulators, philanthropists, and the general population continually reassessed how public officials and the nation's richest citizens should engage in the stewardship of the nation's prosperity—or if one or the other party was the best steward. Amidst changing politics around the ownership and management of what Andrew Carnegie eventually called the nation's "surplus wealth," public trusts like Franklin's fueled national debates about how surplus wealth should be managed and distributed in American economy and society.[34] And the increasing role of private wealth in public life, as well as the concentration of wealth, made these questions about philanthropy and the fundamental purpose of surplus wealth critical questions for historians, policy experts, and lay people. The history of the public trust in America is also a story of the controversial visions of progress produced alongside the rise of corporate capitalism—particularly the animating role that philanthropists have claimed for surplus wealth in advancing civilization and, later, social welfare.[35]

This early history of philanthropic enterprise revises the classic periodization of modern American philanthropy.[36] The Smithsonian Institution set an important legal precedent for the creation of national benevolent institutions that were not explicitly governmental in the nineteenth century—leading to the creation of future foundations and national associations as private corporations, I argue. Historians of American philanthropy, however, have not addressed the Smithsonian in their work; the role that Congress played in shaping the Smithsonian has been eclipsed by heroic narratives about the organizational genius of industrial philanthropists, such as Carnegie, Rockefeller and Sage. The story of the birth of the modern foundation usually maintains that early-twentieth-century foundations invented a new corporate vehicle to conduct national philanthropy at a new scale. Government institutions failed to meet citizens' social

[34] Carnegie, "Wealth," 657.

[35] Eighteenth-century political economists and moral philosophers, such as Adam Smith and Adam Ferguson, provided the vision for the accumulation of national wealth to create "a more advanced state of society." See, Adam Smith, *The Wealth of Nations*, Book V (New York: Collier, 1902), 44 and Adam Ferguson, *An Essay on the History of Civil Society* (Cambridge: Cambridge University Press, 1995). Smith and Ferguson laid out national development in terms of savagery and civilization. The American continent was their ground zero for national development, because as Smith described, "the native tribes of North America" were the "lowest and rudest state of society." Further, Smith saw Americans as a nation of farmers that had not progressed to the production of manufactures and foreign commerce, which were the natural stages of development, according to him. See *The Wealth of Nations*, Book III (New York: Penguin, 1999), 483.

[36] For examples of historians emphasizing the genesis of philanthropic foundations in the early-twentieth century, see Anheier and Hammack who note that most histories of foundations begin in the early twentieth century in "American Foundations: Their Roles and Contributions to Society." Also see, Alice O'Connor, *Social Science for What*; Zunz, *Philanthropy in America.*

needs and business entities lacked the will or capacity, so it was up to these philanthropists to make national philanthropy a reality in the Progressive Era.[37] In contrast to this emphasis on the genesis of national philanthropy in the early twentieth century, my research demonstrates that many of the nation's first foundations used the Smithsonian's federal charter as a model when they created their own articles of incorporation.[38] In short, the Smithsonian was the archetype for the major foundations we know today. What is more, that legal form laid the groundwork for the expansive corporate privileges we associate with modern philanthropy. Carnegie and Rockefeller had help—a lot of help—in creating the philanthropic foundation.[39]

My work on the early history of philanthropic enterprise also contributes to scholarship on state development in the nineteenth century. American political development scholars have shown the critical role that various types of nonprofit corporations played in the undertaking of public works, particularly in the nineteenth century.[40] The government worked with and through associations and nonprofit corporations the work shows. My research on the public-private

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[37] See, for example, Peter Dobkin Hall, *Inventing the Nonprofit Sector*, 5; Karl and Katz, "Foundations and Ruling Class Elites," and "The American Private Philanthropic Foundation and the Public Sphere 1890-1930."

[38] I traced this connection between the Smithsonian Institution's charter and future foundations in the contents of the first foundations' articles of incorporation, as well as correspondence between foundation trustees and their legal and philanthropic advisers. Foundation charters have been an underutilized source in histories of American philanthropy and the history of the nonprofit corporation.

[39] When Andrew Carnegie and his legal advisers chartered the Carnegie Institution of Washington in 1904, they explicitly used the Smithsonian's federal charter as a model. In a letter to the Secretary of the CIW, the attorney who drafted the CIW's revised charter in 1904, John L. Cadwalader, explained how he drafted the new charter for the CIW: "I based it somewhat upon the act of incorporation the Smithsonian and similar acts which have passed Congress." See, John L. Cadwalader to Charles Walcott, March 21, 1904, Carnegie Institution of Washington Administration Records, 1890-2001, Administration, Carnegie Institution of Washington, Washington D.C.

[40] Scholars of American Political Development have been exploring the role that voluntary associations and other types of nonprofit corporations have played in the development of the state since the late twentieth century. Major works include: Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United State*s (Cambridge: Harvard University Press, 1992); Richard R. John, *Spreading the News: The American Postal System from Franklin to Morse* (Cambridge: Harvard University Press, 1998); Elisabeth S. Clemens, "The Rube Goldberg State: Building and Blurring Public Programs, 1900-1940," in *Rethinking Political Institutions: The Art of the State*, eds. Ian Shapiro, Stephen Skowronek, and Daniel Galvin (New York: New York University Press, 2006); and Brian Balogh, *A Government Out of Sight: The Mystery of National Authority in Nineteenth-Century America* (New York: Cambridge University Press, 2009), as well as *The Associational State: American Governance in the Twentieth Century* (Philadelphia: University of Pennsylvania Press, 2015). For examples in the history of philanthropy, see: Johann Neem, *Creating a Nation of Joiners: Democracy and Civil Society in Early National Massachusetts* (Cambridge: Harvard University Press, 2008) and Amanda B. Moniz, *From Empire to Humanity: The American Revolution and the Origins of Humanitarianism* (New York: Oxford University Press, 2016).

partnership model of the public trust expands on these arguments by demonstrating that the public trust was not simply a way that the government worked with or through nonprofit corporations; rather it was a site for public officials to undertake new national development projects. Even before more famous Gilded-Age debates about the accumulation of wealth, I contend, Americans were creating legal and conventional social roles for the deployment of private surplus wealth in the undertaking of major public works. Rather than labeling philanthropy as "private" or autonomous from government activity, through the development of the public trust, national benevolence becomes part of how American governance strategy developed in the nineteenth century—and it was, in fact, a way that private money began to have a say in the complex modes of governance of the nineteenth century.

This dissertation also considers how the public-private partnership model of the public trust shifted over the course of more than a century. Understanding the legal and social development of American associations as what legal historian William Novak calls "a mode of governance" has offered new insight into a politics of association that did not analytically separate the public and the private and the governmental and the nongovernmental—but rather considered the legal creation and regulation of associations as a mode of governance itself.[41] Work in this field promises to demonstrate the central role that voluntary associations have played in American political development, while uncovering distinct nineteenth-century associational politics and practices.[42] In this dissertation, I analyze how the public trust continued to develop as a corporate vehicle for public benefactions in the nineteenth century. In doing so, I contribute to work on what Novak called the "legal-political construction of civil society," and I expand its attention to the pivotal role that surplus wealth played in the growth and regulation of civil society. Like the Smithsonian, other public trusts were created from private fortunes, but they were managed in part by government officials for explicitly and consciously "public" purposes. As a result, studying the evolution of these public trusts requires attention to the

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[41] Novak provides a rich historiographical precedent for conceiving of American associations as a "mode of governance," rather than a check on state authority in American history. See, "The American Law of Association," 172.

[42] Recently, historians have been publishing on this relationship between American democracy and the corporate form. Rob Reich, Chiara Chordelli and Lucy Bernholz, eds., *Philanthropy in Democratic Societies: History, Institutions, Values* (Chicago: University of Chicago, 2016); Naomi R. Lamoreaux and William J. Novak, eds., *Corporations and American Democracy* (Cambridge: Harvard University Press, 2017).

wealthy individuals who gave their fortunes away and their relationships with government authorities who both crafted special legislation to foster that growth and stood in management roles after the creation of these institutions.

By analyzing the pivotal role that surplus wealth played in the growth and regulation of civil society, I also contribute to work in the history of capitalism that seeks to understand how financial and legal practices have shaped economy and society.[43] However, I argue that the chartering and administration of nonprofit corporations were at the center, rather than the periphery, of debates about the corporate form in American history. While historians have paid far greater attention to the ways in which privileged access to capital and incorporation shaped the evolution of the business corporation, nonprofit corporations were the true eye of the storm as they united concerns about material and social development that commercial corporations could only gesture at bringing together.

Further, my research has as much to do with the financial and administrative technologies that propelled the transformation of American philanthropy as the social significance of the real and imagined power of private wealth in national life. As Americans worked out the desired relationship between private wealth and public works, they grappled with fundamental questions

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[43] Recent works on the history of capitalism that have emphasized the financial technologies and practices central to its development, include: Stephen Mihm, *A Nation of Counterfeiters: Capitalists, Con Men, and the Making of the United States* (Cambridge: Harvard Univesity Press, 2007); Bethany Moreton, *To Serve God and Walmart: The Making of Christian Free Enterprise* (Cambridge: Harvard University Press, 2009); Seth Rockman, *Scraping By: Wage Labor, Slavery, and Survival in Early Baltimore* (Baltimore: Johns Hopkins University Press, 2009); Louis Hyman, *Debtor Nation: The History of America in Red Ink* (Princeton: Princeton University Press, 2011); Julia Ott, *When Wall Street Met Main Street: The Quest for an Investors' Democracy* (Cambridge: Harvard University Press, 2011); Richard White, *Railroaded: The Transcontinentals and the Making of Modern America* (New York: W. W. Norton & Company, 2011); Jonathan Levy, *Freaks of Fortune*: *The Emerging World of Capitalism and Risk in America* (Cambridge: Harvard University Press, 2012); Sven Beckert, *Empire of Cotton: A Global History* (New York: Random House, 2015). Scholars have long discussed the duality of market practices and social relations after Karl Polanyi's work in *The Great Transformation: The Political and Economic Origins of Our Time* (Boston: Beacon Press, 2001). Since the 1980s, cultural historians have plumbed the relationship between economy and society in works such as, Alan Trachtenberg, *The Incorporation of America: Culture and Society in the Gilded Age* (New York: Hill and Wang, 1982); Karen Halttunen, *Confidence Men and Painted Women: A Study of Middle-Class Culture in America, 1830-1870* (New Haven: Yale University Press, 1982); *Jean-Christophe Agnew, Worlds Apart: The Market and the Theater in Anglo-American Thought 1550-1750* (Cambridge: Cambridge University Press, 1986); Marchand, *Creating the Corporate Soul*; James Cook, *The Arts of Deception: Playing with Fraud in the Age of Barnum* (Cambridge: Harvard University Press, 2001); Janet Davis, *The Circus Age: Culture and Society under the American Big Top* (Chapel Hill: University of North Carolina Press, 2002).

about the purpose of surplus wealth in American capitalism and the role that the wealthiest citizens should play in its distribution. By the early twentieth century, John D. Rockefeller Sr., Andrew Carnegie, and Olivia Slocum Sage all faced social and legal challenges as they endowed major foundations. By analyzing how they and their legal advisers designed their trusts, as well as how legislatures regulated the corporate bodies they created, I argue that increasing pressure from philanthropists and public officials to separate their public works from their business operations and from the government led to the rise of a new species of corporation more akin to the private foundations we know today--and something fairly unlike the old public trust model popular in the mid nineteenth century. The nation's surplus wealth was no longer to be managed through living public trusts that would be closely affiliated with government-sanctioned public works. Rather, it was to become its own source of power—with its own form of governance. As Congress tried to distance itself from Carnegie and Rockefeller's "tainted money," it actually empowered private wealth to operate with more autonomous power. This approach produces an entirely different perspective on the rise of the private corporation in American history than one that uses the business corporation as a central analytic.

When I began archival research for this dissertation, I reviewed the government, legal and administrative records relating to the creation of the nation's first foundations. In the early-twentieth century, leaders in philanthropy published a number of lists describing the nation's first philanthropic foundations.[44] Intriguingly, every major foundation included in these lists—the Peabody Education Fund, the John F. Slater Fund, the Carnegie Institution of Washington, the General Education Board, the Carnegie Foundation for the Advancement of Teaching, the Russell Sage Foundation, the Anna T. Jeanes Fund, the Carnegie Corporation of New York, and the Rockefeller Foundation all received special charters.

The fact that all of the nation's public trusts received special charters makes them an ideal corporate vehicle to study both the regulatory and entrepreneurial visions that created the

[44] Leonard Ayres, "The Seven Great Foundations," *The Journal of Education* 72 No. 8 (1910); Daniel Gilman, "Five Great Gifts," *The Outlook* 86 no. 13 (1907); Frederick Warren Jenkins and Elizabeth Lowell Black, "American Foundations for Social Welfare: A Selected Bibliography," *Bulletin of the Russell Sage Foundation Library*, no. 11 (June 1915). Also, see, M. M. Chambers, *Charters of Philanthropies: A Study of Selected Trust Instruments, Charters, By-Laws, and Court Decisions* (New York: Carnegie Foundation for the Advancement of Teaching, 1948).

public-trust model of American philanthropy. While it is correct that corporate enterprise is the unifying force in American philanthropy, it is crucial to also understand that public trusts were treated differently than other types of corporations by state and federal legislatures. While states developed general incorporation laws across the nineteenth century to standardize the corporate privileges permitted to different types of entities and to open up the incorporation process to more people, foundations did not fit into a general incorporation model.[45] That means that Congress and the New York legislature decided that state laws governing charitable trusts, as well as state general incorporation laws pertaining to benevolent corporations,[46] should not pertain to the nation's biggest philanthropic foundations.

The potential social value of private wealth—in performing vital social functions such as managing public health crises, organizing education, and creating cultural institutions—had led federal and state government officials to create and regulate national benevolent institutions differently than other types of voluntary associations and businesses. This favorable treatment of the public trust was important to its development, because many states set limits on the size of the endowment a benevolent institution could hold, for the amount of time it could operate, and the purposes that qualified as benevolent in their statutes governing laws of incorporation.[47] Under these conditions, lay people and government officials began to debate how wealthy Americans should be permitted to devote private property to public uses, but at an extremely heightened scale.

In the chapters that follow here, I track the development of the corporate entities that influenced the transformation of American philanthropy. I begin by emphasizing the creation of the

[45] Hamill, "From Special Privilege to General Utility." See also, Horowitz, *The Transformation of American Law*, 72-75.

[46] Jonathan Levy describes how the rise of general incorporation laws impacted the development of nonprofit corporations in nineteenth-century America in "Altruism and the Origins of Nonprofit Philanthropy," 28-31.

[47] Increasingly, historians have been interested in the varying manner in which state incorporation laws influenced the creation of American civil society and produced varying approaches to benevolence. Ruth H. Bloch and Naomi R. Lamoreaux explain the geographical differences amongst state chartering practices, as well as the broad contours of chartering practices that influenced nonprofit corporations across the nation in "Voluntary Associations, Corporate Rights, and the State: Legal Constraints on the Development of American Civil Society, 1750-1900," NBER Working Paper 21153 (2015). Jonathan Levy has described how American states did not incorporate trust law into their regulation of charitable corporations in "On Altruism and the Origins of Nonprofit Philanthropy."

Smithsonian Institution in 1846 with a federal charter as a key moment when federal officials and philanthropists negotiated whether national benevolent institutions would be government agencies, quasi-governmental institutions, or private foundations. Congress' decision to grant the Smithsonian Institution a federal charter to operate as a public-private entity laid the groundwork for national benevolent institutions to develop as public trusts. My second chapter examines how the growth of private surplus wealth in America allowed its richest citizens to experiment with creating their own public trusts during Reconstruction. The merchant banker George Peabody adapted the Smithsonian's public-trust model to manage his major fund for southern education. In order to do so, he had to work with cutting-edge financial and legal technologies that permitted him (and his trustees) to use capital markets to grow the funds from his private trust, and to use a corporate body to manage the fund's operations. This involved the evolution of New York corporate statutes, along with the legislature's willingness to grant what would become the Peabody Education Fund a special charter in 1867.

While these early chapters emphasize the consolidation of the public-trust model of American philanthropy in the nineteenth century, my later chapters examine its gradual decline in the late-nineteenth to early-twentieth centuries. My third chapter explores how the rise of debates about the proper role of private wealth in public life exploded in the Gilded Age and Progressive Era with emerging debates about corporate capitalism. I examine how Carnegie, Sage and Rockefeller all experimented with creating public trusts in this period, and as they did so, I show how they altered the legal form of the public trust to gain more control over the operation of the funds. By the early twentieth century, philanthropists were developing an alternative corporate vehicle to undertake their philanthropy—the private foundation. These private foundations were widely regarded as a "new species of corporation," that was met with both celebration and condemnation by public officials and social workers.

Amidst the rise of the private corporation and antimonopolism, my last two chapters consider the Rockefeller Foundation's failed federal charter as an instance when the public trust almost adapted to the conditions of corporation capitalism. However, rather than increase the regulation of public trusts, the federal government decided to divorce its social welfare work from private philanthropists. I use Congressional hearings and reports, along with popular coverage of the proceedings, to assess how these debates about the Rockefeller Foundation reflected larger prevailing anxieties about the wealthy's use of the corporate form for charitable purposes. My fifth and final chapter concludes with the Rockefeller Foundation's attempt to fund industrial relations research through their foundation after the Ludlow Massacre. The Rockefellers owned a controlling share of the coal mine at the center of the massacre, the Colorado Fuel and Iron Company, so state and federal governments began investigating the Rockefeller's use of their foundation to undertake corporate welfare work. Shortly afterwards, the United States Industrial Relations Commission actually expanded the commission's interest in industrial welfare to include "The Centralization of Industrial Control and Operation of Philanthropic Foundations." These events resulted in government entities separating their work from private foundations and in the increased regulation of private wealth in public life throughout the twentieth century. All along the way, I show that this transformation of American philanthropy worked to shape state development, American capitalism, as well as philanthropy.

CHAPTER ONE

Making the Public Trust:
Congress and the Bequest that Created the Smithsonian Institution

In New York late in August 1838, weak and sick from an uncomfortable voyage across the Atlantic too full of squalls and headwinds, Richard Rush gratefully disembarked the packet ship Mediator.[48] Rush, an eminent Pennsylvania attorney who had already served as the U.S. Attorney General and the Secretary of the Treasury, eagerly anticipated a short rest at home, but he first awaited instructions from the U.S. Secretary of State.[49] He had eleven boxes of gold sovereigns amounting to just over $500,000 in his possession, along with a weighty collection of trunks filled with the personal effects of a deceased Englishman.[50] He needed to know where to deposit it all.[51]

For two years Rush had been in England prosecuting a bequest on behalf of the U.S. government, which he referred to as, a most unusual "public business."[52] That business began in

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[48] Richard Rush to John Forsyth, 28 August 1838, in *The Smithsonian Institution: Documents Relative to its Origin and History*, ed. William Rhees (Washington: Smithsonian Institution, 1879), 109.

[49] George Brown Goode, ed., "The Founding of the Institution, 1835-1846," in *The Smithsonian Institution, 1846-1896: The History of its First Half Century* (Washington: Smithsonian Institution, 1897), 28-29.

[50] Richard Rush to John Forsyth, 26 June 1838, Rhees 73-75. There were thirteen trunks, and Rush believed they contained, "books unbound, manuscripts, specimens of minerals, some philosophical or chemical instruments, and a few articles of table furniture," Rhees 97.

[51] Richard Rush to John Forsyth, 28 August 1838, Rhees 109.

[52] Richard Rush to John Forsyth, 4 September 1838, Rhees 110-112.

1829 when James Smithson, the illegitimate son of the Duke of Northumberland, had surprised his countryman and American officials by puzzlingly naming the United States in his will.[53] Smithson bequeathed almost all of his fortune to his English nephew, but in the event of his nephew's death and in the absence of heirs, he left his fortune "to the United States of America, to found at Washington, under the name of Smithsonian Institution,[54] an establishment for the increase and diffusion of knowledge among men."[55]

When Smithson and his nephew died without heirs, President Andrew Jackson appointed Rush, who was also a practiced diplomat, to prosecute the U.S.'s claim to the Smithson bequest. It took Rush two years, but he successfully won the suit. In August 1838, back in the United States with the numerous trunks, he needed only to deposit the gold to complete his task. Soon the Secretary of State sent instructions, and Rush arranged for the deposit of the funds in the U.S. Treasury. That unlikely deposit, more than the bequest ironically, launched a far greater force in American economy and society. Upon the deposit of Smithson's fortune in the national treasury, Rush enabled a new use for private fortunes in the undertaking of national public works. This was a moment when a foreign bequest provided an opportunity to the US federal government,

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[53] Smithson, who had never visited America, perhaps was trying to snub his native country and family that had deemed him illegitimate. It is also possible that as a practicing chemist and member of England's Royal Society, he had loftier goals of promoting discovery in the New World. James Smithson's personal papers, unpublished manuscripts, and personal belongings were intended to be kept at the Smithsonian Institution, but they burned in a fire at the Smithsonian building on January 24, 1865 prior to being inventoried. Recently two scholars have tried to piece together his motivations. See, Heather Ewing, *The Lost World of James Smithson: Science, Revolution, and the Birth of the Smithsonian* (New York: Bloomsbury, 2007) and Nina Burleigh, *The Stranger and the Statesman: James Smithson, John Quincy Adams, and the Making of the Greatest Museum: The Smithsonian* (New York: Harper Perennial, 2004). For more information about Smithson's possible motivations for bequeathing his fortune to the United States, also see: Geoffrey Hellman, *The Smithsonian: Octopus on the Mall* (Westport, Connecticut: Greenwood Press, 1966), especially chapter three.

[54] The most comprehensive institutional history remains Goode's *The Smithsonian Institution, 1846-1896: The History of its First Half Century*. As Director of the Institutional History Division of the Smithsonian Institution Archives, Pamela Henson has published widely on the history of the Smithsonian Institution and the Smithson bequest. See, for example, Pamela Henson, "History of the Smithsonian Institution Endowment," 2011, Institutional History Research Files, Smithsonian Institution Archives; "Objects of Curious Research: The History of Science and Technology at the Smithsonian," *Isis* 90 (1999). Ewing and Burleigh's recent works have attempted to describe Smithson's life and the scientific community he was a part of in Europe. And for an account of the Smithsonian's exhibition practices, see William S. Walker, *A Living Exhibition: The Smithsonian and the Transformation of the Universal Museum* (Amherst: University of Massachusetts Press, 2013).

[55] Will of James Smithson, Rhees 1-2.

and it was an opportunity the government took—embarking on a path towards a new hybrid role for government and private funding. Because as unlikely and unusual as Smithson's bequest was, the Smithsonian as we know it was not a fait accompli when Rush deposited the funds.

Even in the mid-eighteenth century, Smithson's bequest for establishing the Smithsonian Institution was a proverbial drop in the bucket when taken together with the appropriations records from a single session of Congress. And around that time the annual revenue and expenditures of the federal government both topped thirty million dollars.[56] In 1845, for example, Congress spent well over a half million dollars compensating legislators and covering incidental expenses alone.[57] A half-million-dollar gift to the federal government would not have lasted long in the annals of national benevolence without becoming an endowed institution—even in the first half of the 19th century. The principal would have to be preserved for the gift to achieve the testator's objectives.[58] It was Congress' stewardship of the bequest and its decision not to touch the endowment's principal that gave the Smithsonian Institution a lasting place in the federal government's appropriations and in the nation's vision of its economic and social development. This was no small act—endowments that would grow in perpetuity were hardly common.[59]

And with the federal government in possession of Smithson's fortune, Congress was left to decide what type of entity the Smithsonian Institution would be—whether it would be a government agency or private corporation, whether it would primarily serve Washington D.C. or

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[56] "The National Treasury," *Republican Banner*, December 25, 1844.

[57] Here, I am referencing the receipts and expenditures of the government for the fiscal year ending June 30, 1845. See, United States Department of the Treasury, *An Account of the Receipts and Expenditures of the United States*, 29th Congress 1st Session (Washington D.C.: Treasury Department, 1845).

[58] In January 1939, Congress appointed a joint committee to determine the best manner of carrying out Smithson's bequest. They repeatedly discussed the importance of preserving the principal of the fund. Rhees, 159, 168, 198, etc.

[59] John Quincy Adams advocated for the preservation of the fund's principal and its investment in the U.S. Treasury. See: Smithsonian Institution's charter: 29th Congress, 1st Session, 10 August 1846; Nina Burleigh, *The Stranger and the Statesman: James Smithson, John Quincy Adams, and the Making of the Greatest Museum: The Smithsonian* (New York: Harper Perennial, 2004). For more on how the Smithsonian's approach to managing its endowment influenced other institutions, see the writings of the institution's first Secretary Joseph Henry: Marc Rothenberg and Kathleen W. Dorman, eds., *The Papers of Joseph Henry*, vol. 11 (Washington DC: Smithsonian Institution, 2007), xxxvi-xxxviii.

the entire nation, and how exactly it would promote the increase and diffusion of knowledge. None of these fundamental questions were settled by Smithson. Unwittingly, with his open-ended bequest to establish an institution "for the increase and diffusion of knowledge among men," he had invited the federal government to design, from the ground up, a massive benevolent institution that would influence the organization of the U.S. nonprofit sector in centuries to come. The Smithsonian was the establishment of a new place for the power of accumulated capital in the nation—somewhere between private and public.

Despite the extraordinary circumstances surrounding its creation, historians of American philanthropy have, for the most part, not included the Smithsonian Institution in their work.[60] This has been the case for two reasons. First, while the Smithsonian Institution was created from the private wealth of an individual, in 1858 the federal government started to make annual appropriations to the Smithsonian Institution, and by the 1880's a majority of its funding came from the federal government.[61] Because of this, the Smithsonian Institution has been seen as a creature of the federal government with greater relevance to the development of federal authority than to the development of philanthropic institutions.

However, while federal officials may think of the Smithsonian as a "federal instrumentality" today, its first leadership did not think of it as a government institution.[62]

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[60] I have not found an example of historians grappling with the legal and social connections between the Smithsonian Institution and later foundations. For the lengthiest treatment of the history of the Smithsonian Institution as "public philanthropy," see Peter Dobkin Hall, "The Limits of Public Philanthropy," *Documentary History of Philanthropy and Voluntarism in the United States, 1600-1900,* Hauser Center on Nonprofit Organizations at the John F. Kennedy School of Government, Harvard University website, https://www.hks.harvard.edu/fs/phall/10.%20Franklin.pdf (accessed October 19, 2016); Hall more briefly mentioned the connection in "A Historical Overview of Philanthropy, Voluntary Associations, and Nonprofit Organizations in the United States, 1600-2000," 41. Also see, Zunz who briefly mentioned the significance of Congressional debates about accepting Smithson's bequest in *Philanthropy in American*, 105.

[61] Pamela Henson, "History of Smithsonian Trust and Federal Funds," March 2016, Institutional History Research Files, Smithsonian Institution Archives.

[62] By 1977 Congress commissioned a report on the relationship between the Smithsonian and Congress that still shapes how we view the Smithsonian today. At that time, commissioners deemed the Smithsonian a "federal instrumentality." See Phillip S. Hughes, "Report to the Audit Review Committee of the Board of Regents of the Smithsonian Institution," 1977, Smithsonian Institution Archives, Record Unit 613, Box 429, Folder: 1977 Bd. of Regents/Audit Review Committee, 11.

Rather, as William Rhees the chief clerk under the Smithsonian's first two secretaries and the first keeper of the Smithsonian Institution Archives, explained: "The Smithsonian [was] not a Government Institution, as [was] often supposed, but [was] a private foundation, originating entirely in the bequest of an individual."[63] As such, the Smithsonian Institution set an important legal precedent for the creation of national benevolent institutions that were not explicitly governmental—leading to the creation of future foundations and national associations.

Further, historians of American philanthropy have not addressed the Smithsonian in their work because the Smithsonian's role in forging the shape of the American nonprofit sector has been buried under the weight of heroic narratives about the organizational genius of industrial philanthropists. The story of the birth of the modern foundation usually goes something like this: in the early-twentieth century as American fortunes grew larger than ever, would-be philanthropists lacked the organizational vehicles to conduct national philanthropy at a new scale. Government institutions failed to meet citizens' social needs and business entities lacked the will or capacity, so wealthy entrepreneurs like John D. Rockefeller and Andrew Carnegie created the Rockefeller Foundation and the Carnegie Corporation of New York to make national philanthropy a reality.[64]

In contrast to this emphasis on the genesis of national philanthropy in the early twentieth century,[65] my research demonstrates that many of the nation's first foundations used the Smithsonian's federal charter as a model when they created their own articles of incorporation.[66] In short, the Smithsonian was the archetype for the major foundations we know today. What is more, that legal form laid the groundwork for the expansive corporate privileges we associate with modern philanthropy. Carnegie and Rockefeller had help—a lot of help—in creating the

[63] Rhees, viii.

[64] See, for example, Hall, *Inventing the Nonprofit Sector*, 5; Karl and Katz, "Foundations and Ruling Class Elites," and "The American Private Philanthropic Foundation and the Public Sphere."

[65] For examples of historians emphasizing the genesis of philanthropic foundations in the early-twentieth century, see Anheier and Hammack, "American Foundations: Their Roles and Contributions to Society;" O'Connor, *Social Science for What*; and Zunz, *Philanthropy in America*.

[66] I traced this connection between the Smithsonian Institution's charter and future foundations in the contents of the first foundations' articles of incorporation, as well as correspondence between foundation trustees and their legal and philanthropic advisers. Foundation charters have been an underutilized source in histories of American philanthropy and the history of the nonprofit corporation.

philanthropic foundation. In fact, this legal and social connection between the Smithsonian and philanthropic foundations is directly evidenced in what historians often refer to as the first foundation, the Peabody Education Fund. [67] The first Secretary of the Smithsonian Institution, Joseph Henry, advised George Peabody on his philanthropy in Baltimore in 1866.[68] Peabody would go on to create the PEF a year later.

The Smithsonian's influence on the design and purpose of foundations would also last into the twentieth century. When Andrew Carnegie and his legal advisers chartered the Carnegie Institution of Washington in 1904, they explicitly used the Smithsonian's federal charter as a model. [69] Charles Walcott who served as a founding member of the CIW's executive committee was an old friend of Andrew Carnegie and a long-time honorary curator at the Smithsonian who would go on to become its Secretary in 1907.[70] The institutional tradition established by the Smithsonian extends to the Rockefellers, as well. The Rockefellers and their philanthropic advisers used federal charters, like that of the Smithsonian's, to design their General Education Board, and they attempted to do so with the Rockefeller Foundation.

Unusual Public Business: The Decision to Accept the Bequest

Smithson's bequest of his fortune to the United States government did not result in its immediate dissipation. On the contrary, the way government officials decided to preserve the fund—as a trust managed by public officials and private citizens through a corporate entity—reveals the

[67] Many historians cite George Peabody's creation of the Peabody Education Fund in 1867 as the establishment of the first philanthropic foundation in the United States, and the Sage Foundation as the first "general-purpose foundation." See, for example, O'Connor, *Social Science for What?*, 25; Zunz, *Philanthropy in America*, 10.

[68] The Joseph Henry Papers contain the correspondence in which Henry described his contact with George Peabody. Thank you to Kathy Dorman for sharing this connection with me. See, *The Papers of Joseph Henry,* vol. 11: xxxvi-xxxvii; Joseph Henry to Asa Gray, 31 October 1866 (81-83); Joseph Henry to George Ide Chace 10 Dec 1866 (96-97); Joseph Henry to Asa Gray 8 March 1867 (118-120).

[69] In a letter to the Secretary of the CIW, the attorney who drafted the CIW's revised charter in 1904, John L. Cadwalader, explained how he drafted the new charter for the CIW: "I based it somewhat upon the act of incorporation the Smithsonian and similar acts which have passed Congress." John L. Cadwalader to Charles Walcott, 21 March 1904, Carnegie Institution of Washington Administration Records, 1890-2001, Administration, Carnegie Institution of Washington, Washington D.C.

[70] Ellis L. Yochelson, "Andrew Carnegie and Charles Doolittle Walcott: The Origin and Early Years of the Carnegie Institution of Washington," *History of Geophysics* vol. 5 (1994).

critical role that the government played in managing the development of philanthropy in America. To understand the impact that the Smithsonian Institution has had on the nonprofit sector, first we need to know more about why Congress decided to accept Smithson's fortune and the entity the US government created to manage the funds.

The choice was deliberate and well-debated. The bequest inspired popular interest in both England and the United States. The English found it so strange that it was published in full in the *London Times*. It was met with similar curiosity in the United States and promptly published in the *New-York American*.[71] And before Richard Rush even boarded a ship to England, Congress was already engaged in public debates about the Smithson bequest—about questions even more fundamental than how to employ the gift. President Andrew Jackson believed he did not have constitutional authority to pursue the bequest on his own, so in the first months of 1836, both houses of Congress were in the process of deciding, as a preliminary matter, whether or not to authorize a U.S. official to prosecute the nation's claim to Smithson's fortune in the British court of chancery. [72] Concerns about accepting the funds ranged from its foreign origin to the constitutionality of Congress managing and accepting the bequest.

The concerns about constitutionality and federalism seemed primary. The bequest was dropped as fodder into fiery, ongoing debates regarding American federalism. Here was a bequest and purpose giving new ground to the central government at Washington, suddenly given a mandate to increase and diffuse knowledge among men. Further the debates hinged on public officials' desire to have access to any pool of funds to manage national development causes. In the antebellum period, the federal government's powers were famously limited. In 1789 the Departments of War, Treasury, and State were created as the first federal agencies.[73] These functions were to benefit the entirety of the nation and could hardly be performed locally, so they occupied the rare status of requiring federal operation and funding. Aside from this, as

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[71] Ewing, *The Lost World of James Smithson,* 347.

[72] Andrew Jackson, "Message from the President of the United States," 17 December 1835 and "Proceedings of the Senate," Rhees, 135-148.

[73] Gordon S. Wood, *Empire of Liberty: A History of the Early Republic* (New York: Oxford University Press, 2009), 86.

has been well-explored, the federal government lacked a clear path towards funding national operations and development.[74]

More than abstract concerns with centralized power, federal coffers did not overflow with funds easily devoted to public works—the nation's surplus wealth was limited. Congress funded the operations of its agencies mostly with tariffs and excise taxes.[75] There was no federal income tax at that time. (For a brief period, Congress would levy an income tax during the Civil War, but the Sixteenth Amendment, which permanently established the federal income tax, would not pass until 1913.) That meant that, when necessary, funding federal expenditures was an omnipresent concern, and the federal government establishing a Smithsonian Institution of its own—with national revenue—was a far-fetched proposition in this period. For example, even George Washington could not persuade national officials to create a national university during his tenure.[76] All of these concerns about the federal management of public works had to be confronted as a result of the Smithson bequest, making the gift as much about government as it was about the philanthropic aims of James Smithson.

And then, there were concerns about this role for government that went further than federalism, into a concern for how the gift bound up the government with private interests. In the Senate, the matter was referred to the Committee on the Judiciary where South Carolinians John C. Calhoun and William C. Preston made the most significant objections to the bill. First, both senators questioned the "dignity" of accepting the gift.[77] Senator Preston argued that it would be better for the nation to use its own funds to establish such an institution. He feared that by accepting the gift, Congress was pandering to the "paltry vanity of an individual."[78] He continued, "If they accepted this donation, every whippersnapper vagabond that had been

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[74] See John, *Spreading the News*; Allen S. Miller, "'The Lighthouse Top I See': Lighthouses as Instruments and Manifestations of State Building in the Early Republic," *Buildings and Landscapes: Journal of the Vernacular Architecture Forum* 17 No. 1 (Spring 2010).

[75] John Joseph Wallis, "American Government Finance in the Long Run: 1790 to 1990," *Journal of Economic Perspectives* 14 no. 1 (Winter 2000).

[76] Charles Coleman Sellers, *Mr. Peale's Museum: Charles Wilson Peale and the First Popular Museum of Natural Science and Art* (New York: W.W. Norton & Co., 1990), 99.

[77] "Congressional Proceedings," Rhees 143-144.

[78] Ibid., 143.

traducing our country might think proper to have his name distinguished in the same way. It was not consistent with the dignity of the country to accept even the grant of a man of noble birth..."[79] And Senator Calhoun believed "it was beneath the dignity of the United States to receive presents of this kind from *anyone*."[80]

These objections about the dignity of accepting a foreign bequest sound familiar to modern ears. The corrupting influence of private money in democratic politics is widely discussed today.[81] And the foreign origin of Smithson's fortune would only seem to have heightened the nefarious possibilities of its influence in American society. However, in the case of the Smithson fortune, there are surprisingly few references to its foreign pedigree in the Congressional record. Even Calhoun and Preston's comments above note the corrupting influences of the fund as offending the nation's dignity, rather than referencing a foreigner potentially interfering with U.S. governance. So shortly after the war of 1812 and the British burning the nation's capital, many Congressmen probably would have had little interest in allowing an Englishman to dictate the creation of a national institution, but there is ample evidence that Congressmen did wish to accept the gift and were eager to find ways to do so. The quick turn of Congressional debates about the bill to the constitutionality of accepting the bequest demonstrates this.

As these debates began to unfold and resolve, the negotiation of the boundaries between private and public purpose, power, and wealth were at stake. The first step was to argue whether federalism was even implicated, given a technical point. While Calhoun, a staunch defender of slavery and state sovereignty, construed the gift as one to the nation—and as such one that should be prevented—Delaware Senator John M. Clayton took a different view. Smithson had merely named the United States in his will as the trustee that would undertake the charitable

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[79] Ibid.,143.

[80] Emphasis mine. "Congressional Proceedings," Rhees 144.

[81] There have been many scholarly discussions of philanthropy as a threat to democracy and studies on its value to democratic governance across the humanities and social sciences. Two good examples of this in the history of philanthropy include, Peter Dobkin Hall, "Philanthropy, the Nonprofit Sector & the Democratic Dilemma," *Dædalus* 2 (2013): 139-158; Kenneth Prewitt, Mattei Dogan, Steven Heydemann, Stefan Toepler, eds., *The Legitimacy of Philanthropic Foundations: U.S. and European Perspectives* (New York: Russell Sage Foundation, 2006).

object of establishing a university in the District of Columbia, Clayton contended.[82] This distinction mattered so greatly, because there was legal precedent for Congress to incorporate public works corporations and charities for the benefit of Washington D.C. *in loco parentis patriae*.[83] If the Smithsonian Institution was to be another corporate entity to benefit the inhabitants of the District of Columbia, then there was at least some hope that it would not inspire new controversy.

Smithson had indeed stated that the gift was to found the Smithsonian Institution "at Washington," but the institution was to have a broad, universal purpose—to increase knowledge among men. That purpose would interest citizens in the United States and beyond, which [some] argued contradicted Clayton's technical point. Therefore, Senators did need to confront how the federal government might legally serve as a trustee of Smithson's bequest. While it would be relatively easy to assert Congress' right to manage the funds in Washington D.C., if the gift was to the "United States," as Senator John Calhoun of South Carolina asserted, then Congress' ability to manage the fund was a more difficult proposition. Another group of senators decentered federalism as they considered the bequest though. Samuel L. Southard of New Jersey believed that it was too benevolent of an endeavor to pass up—and went as far as to assert the utter irrelevance of whether the Smithsonian would benefit the District or the nation. Establishing charitable institutions for the diffusion of knowledge was a "vital principle of a republican government."[84] Public officials should do what they could to promote that vital principle whenever possible as a benefit to society, he held.

Somewhat similarly to Southard's concerns, members of a select committee in the House that formed to discuss the Smithson bequest—put frankly—did not care whether the Smithsonian Institution served Washington D.C. or the nation. They simply noted, "The location of the Institution at Washington, prescribed by the testator, gives to Congress the free exercise of all the powers relating to this subject with which they are, by the Constitution, invested as the local

[82] Rhees, "Congressional Proceedings," 143.

[83] For more on the history of *parens patriae* in American law see, Douglas R. Rendleman, "Parens Patriae: From Chancery to the Juvenile Court," *South Carolina Law Review* 23 (1971); Neil Howard Cogan, "Juvenile Law, Before and After the Entrance of 'Parens Patriae,'" *South Carolina Law Review* 22 (1970).

[84] "Congressional Proceedings," Rhees 145-146.

Legislature for the District of Columbia."[85] In other words, these House members did not perceive a legal problem with a D.C. institution with a national purpose. And proceedings in the House continued to echo senators' loftier sentiments about the virtues of the diffusion of knowledge in a republican government. The House committee not only recommended the passage of the bill, but its members also went so far as to publish a series of laudatory reflections on its passage. "Of all the foundations of establishments for pious or charitable uses, which ever signalized the spirit of the age, or the comprehensive beneficence of the founder, none can be named more deserving of the approbation of mankind than this," they wrote.[86] It was the "greatness and simplicity of Smithson's design" to promote knowledge among men that set the gift apart.

John Quincy Adams led the charge in the House to ensure that the United States accepted the bequest, and that its principal would be preserved in perpetuity. For Adams it was an opportunity to establish a national astronomical observatory. There was no funding for such a project at hand, so he hoped the bequest would first be used to propagate what he called "lighthouses of the skies."[87] After that, Adams envisioned that the principal of the fund would be preserved; it could be held as a loan in the U.S. Treasury and collect six percent interest per annum.[88] While they would eventually prevail, Adams' lofty visions were ancillary concerns at the moment; designing the operations and legal shape of the Smithsonian were unnecessary actions to take before attempting to claim the bequest.

Ultimately, despite some legislators' objections, both houses voted to claim Smithson's fortune for the United States. In some sense, more pragmatic views held sway. Congress seemed to have a hard time passing on an opportunity to undertake national development work. And while some still objected to the creeping aggrandizement in federal aims, as a matter of federalism, these concerns quieted in the face of a fortune marked for the increase and diffusion of knowledge.

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[85] Ibid., 152.

[86] Ibid., 150.

[87] "Memoirs of John Quincy Adams," Rhees 789.

[88] John Quincy Adams to John Forsyth, 8 October 1838, Rhees 842; Smithsonian Institution's charter: 29th Congress, 1st Session, 10 August 1846.

With acceptance decided, Richard Rush quickly sailed to England in August 1836, and while the intended use of the fund was by no means a settled matter, he was empowered to claim Smithson's fortune for the nation. After Rush's success, with a half-million dollars in gold in the treasury in 1838, that is when Congress had to decide what to do with the money. Renewed attention to the federal government acting as the trustee of a national benevolent institution set the stage for major popular and Congressional debates that followed.[89]

A National Institution: Designing the Purpose of the Smithsonian

The Smithsonian—whether it funded a cultural institution, a university, or scientific research—had the potential to expand the limited functions of the federal government. But, in particular, officials saw a practical and symbolic benefit to developing the Smithsonian as a research institution—one that would necessarily advance the nation and bring it closer to Western Europe. Such immense symbolic value lay in two features of the institution. First, it would provide the nation with a research institution that could contribute to natural resource development and serve necessary organizational functions for government agencies. As a select committee in the House discussed, establishing an institution to cultivate national knowledge was a necessary dignity for an *independent* nation; to avoid a position of "meek colonial dependence," the nation needed to stop relying on other countries to provide knowledge about America's "national features and resources." Rather, the nation and its leaders should come to their own conclusion about putting the country's resources to "useful purposes."[90] Putting research findings to useful purposes required the cataloging, maintenance, and publication capabilities of an institution that could serve functions that a library, museum, and research institute might provide.

Richard Rush, who had procured the funds in the first place, agreed with John Quincy Adams regarding the gift's potential to advance scientific investigation (beyond astronomy), and he joined him in advocating for establishing an institution capable of promoting America's interest in the "race among nations" for wealth, power, and science. And like Adams, Rush knew

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[89] Miller, "'The Lighthouse Top I See.'" For the contents of the Congressional debates, see "Congressional Proceedings," Rhees 135-474. For press coverage, see for example, "From Washington," *Republican Banner*, Jan 17, 1845; "Twenty-Ninth Congress: First Session," *The Cincinnati Daily Enquirer,* May 4, 1846.

[90] "Memorial of Professor Walter R. Johnson," Rhees 173.

the contours of that race well from his own work as a long-time public servant, but he also would have been well-versed in debates about education policy from his father, Doctor Benjamin Rush. Benjamin Rush had fought during his lifetime for the creation of a national university, eventually establishing Dickinson College.[91] In Richard Rush's estimation, by establishing the Smithsonian, the United States had the opportunity to engage in a "rivalry of mind" with European powers more than ever with the help of steam-powered ocean transport. That connection brought the Unites States closer to what Rush and his contemporaries called civilization.[92] "The continent that Columbus found was a desert, or overspread with barbarous people and institutions," he explained. Now, steam would bring "the active and enterprising men" of the old and new world together.[93] In his letter, Rush also mentioned that Americans had seen the publications produced by "recently formed associations" in Europe that had made "science a fashion there."[94] Rush saw the Smithsonian as the product of a partnership between Congress, which would oversee the Smithsonian, and the scientifically-minded men who would carry out its work and build its collections.[95]

The vision that Rush and other public officials put forth regarding the development of civilization was founded on a belief in the expansion of white, European civilization in the United States. This kind of developmentalist vision for the United States was critical to its self-image as nation capable of, as Adam Smith wrote in *Wealth of Nations* (1776), entering "a more advanced state of society,"[96] capable of producing surplus wealth and engaging in "foreign

[91] Sellers, *Mr. Peale's Museum*, 100-101.

[92] For more on the politics of nineteenth-century American beliefs about civilization, see: Roy Harvey Pearce, *Savagism and Civilization: A Study of the Indian and the American Mind*. (Berkeley: University of California Press, 1988); and Gail Bederman, *Manliness and Civilization: A Cultural History of Gender and Race in the United States, 1880-1917* (Chicago: University of Chicago Press, 1995). For classic works on Civilization and economic development see Adam Smith, *The Wealth of Nations* (1776), and Sigmund Freud, *Civilization and Its Discontents* (1930).

[93] Richard Rush to John Forsyth, November 6, 1838, Rhees 850-856.

[94] Ibid., 854.

[95] Ibid., 855.

[96] Adam Smith, *The Wealth of Nations*, Book V (New York: Collier, 1902), 44.

commerce."[97] Smith had described "the native tribes of North America" as the "lowest and rudest state of society," so it is no stretch to see Rush's comments about the continent that Columbus found as an articulation of the United States' emergence as a capitalist nation capable of advancing socially and economically.[98]

And second, this emphasis on the value of research was part of the spiritual cause attached to nation building. That spiritual cause was multi-layered, too. Rhetoric about the public value of the increase and diffusion of knowledge in the United States revolved around the idea that in a young nation without an aristocracy, the nation's institutions and economic development would only be as good as its citizens permitted. Education would be central to developing a citizenry capable of taking on that role. This symbolic, nation-building value of knowledge-production at a national institution was of particular importance to a country that could not and did not wish to reproduce European traditions of patronage.[99] If the museums, universities and research institutes were often state-supported in Europe, in the United States they were funded locally and as enterprises, at least rhetorically, tasked with advancing the common good.[100]

There were both institutional and intellectual frameworks that Americans leading the cause for national development drew upon as they debated a national institution's importance. In large part, this inspiration came from abroad. Beliefs about the symbolic benefit of a national institution to increase and diffuse knowledge were inspired, in part, by the national museums and scientific institutions that European governments were creating at the time. During his service abroad, for example, Benjamin Franklin who played a key role in founding many of the nation's "first" cultural and research institutions of various sorts, had witnessed the increasing emphasis

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[97] Adam Smith described "the natural progress of opulence" as composed of three stages: "…the greater part of the capital of any growing society is, first, dedicated to agriculture, afterwards to manufactures, and last of all to foreign commerce." *The Wealth of Nations*, Book III (New York: Penguin, 1999), 483.

[98] Adam Smith, *The Wealth of Nations*, Book V, 44.

[99] For more on the history of patronage systems in Europe, see Francis Haskell, *Patrons and Painters*: A Study in the Relations between Italian Art and Society in the Age of the Baroque (New York: Knopf, 1963); Michael Foss, *The Age of Patronage: The Arts in England 1660-1750* (Ithaca: Cornell University Press, 1971); Werner L. Gundersheimer, "Patronage in the Renaissance: An Exploratory Approach," in *Patronage in the Renaissance,* eds. Guy Fitch Lytle and Stephen Orgel (Princeton: Princeton University Press, 1981).

[100] See Lilian B. Miller, ed., *The Peal Family: Creation of a Legacy, 1770-1870*, especially David C. Ward's "Democratic Culture: The Peale Museums, 1784-1850" (New York: Abbeville Press, 1996).

on the public value of museums.[101] The British Museum, founded in 1753, grew when the nation purchased the private collection of an individual citizen.[102] The price of admission kept many would-be visitors out, but it was managed by the state and operated as a public trust in its own right. The French had aspirations of making royal collections more useful to the public even before their revolution.[103] But it was during their revolution in 1792, when the French created the "Museum Français" in the Louvre, that they inspired a new emphasis on the popular utility of a national museum. In that old royal palace, the revolutionary government would make the confiscated property of the church and aristocracy available to a wider public. By making collections that were once only available for private viewing accessible to the public—sometimes for free—the new republic hoped to establish its right to the property and its own higher aims of cultivating the tastes and knowledge of its newly enfranchised citizenry.[104]

And beyond these examples of national museums, there were lauded European research institutions that were looked upon as precedent. While a museum and library would become part of the designs for the Smithsonian, at first "advancing knowledge" was most often taken to mean the creation of a university or a research institute, and European scientific societies supplied another ready model for American officials. During Congressional proceedings in the House, University of Pennsylvania professor of chemistry Walter R. Johnson remarked that "the foundation of an institution for practical science [was], in itself, no novel project for the enlightened Government of a civilized nation to entertain."[105] He listed the Royal Institution and the Society of Arts in England, the Andersonian Institution in Scotland, the Polytechnic School and School of Mines in France, and the Gewerbverein in Germany as examples of such institutions. In addition, entities such as the Royal Society in London, the Accademia del Cimento in Florence, and the Academie des Sciences in Paris each had set forth the idea that the proper study of science involved some kind of combination of a museum, library, printing office,

[101] For more on Benjamin Franklin and his public works, see Lemay, T*he Life of Benjamin Franklin*, vol. 2.

[102] Sellers, *Mr. Peale's Museum,* 17-18.

[103] Eilean Hooper-Greenhill, *Museums and the Shaping of Knowledge* (New York: Routledge, 1992), 172.

[104] Ibid., 171-176.

[105] Congressional Proceedings, Rhees 185.

botanical gardens, and laboratories.[106] James Smithson had been a member of both the Royal Society (1660) and the Royal Institution (1799), so he would have imagined the Smithsonian Institution as a kind of replica of them when he wrote his will.

The research component of a potential institute was a key piece of a symbolically national institution. This was a common theme for the English, for example, who explicitly connected their empire with a national—indeed global—community of thinkers through the Royal Society. The Royal Society had been operating with a Royal charter since 1662. It set an early global standard for extending "the boundaries of empire" through the funding and cultivation of the arts and sciences. The English wished to portray themselves "as the universal lover and patron of every kind of truth," according to the Royal Society's first charter.[107] Their members were largely Oxford-educated elites who cultivated early branches of the sciences.[108] It was not just British elites, though, who were inducted into the Royal Society. Cotton Mather was the first American member of Royal Society, and soon after Benjamin Franklin followed in his footsteps.[109]

And precedent for a national institution did not simply come from Europe. Early in the nation's history, this idea had been broached. Not only had George Washington famously called for the creation of a national university in his last State of the Union message; since the early national period, public officials had debated the utility of private associations and public institutions.[110] American colonists even created some models of their own that inspired the design of the Smithsonian Institution. Benjamin Franklin's civic contributions, such as the Library Company of Philadelphia (1742) and the American Philosophical Society (1743) both increased and promoted the diffusion of knowledge in their own ways, through the establishment

[106] Hooper-Greenhill, *Museums and the Shaping of Knowledge*, 146.

[107] "Translation of First Charter, granted to the President Council, and Fellows of the Royal Society of London by King Charles the Second, A.D. 1662," accessed 6.15.2016. https://royalsociety.org/about-us/history/

[108] Hooper-Greenhill, *Museums and the Shaping of Knowledge*, 78 and 133-134.

[109] Peter Dobkin Hall, "Doing Good in the World: Cotton Mather and the Origins of Modern Philanthropy," *Documentary History of Philanthropy and Voluntarism in America*, (2003) accessed 6.15.2016. https://www.hks.harvard.edu/fs/phall/dochistcontents.html

[110] Sellers, *Mr. Peale's Museum*, 99.

of a lending library and scholarly society respectively. And each operated with non-governmental funding, from some combination of donations, the sale of "public shares," as well as membership and service fees.[111]

Charles Wilson Peale's struggles in transforming his Philadelphia Museum into a national museum demonstrated the complicated politics of funding national cultural and research institutions amidst this institutional and intellectual framework. Maneuvering in Franklin's vast network of associations and institutions, Peale repeatedly called for the creation of a national museum in the late-eighteenth century. He hoped the federal government or the Pennsylvania legislature might take over the funding of his Philadelphia Museum (1784). In 1790, Peale issued his first call for the public support of a national museum in America, which he published in newspapers and broadsides. The national museums of the world were all established with funding from private individuals, he wrote, but he wished for the promise of greater public funding to make the benefits of his collection for the nation. If the "Public" would support his "infant design," the Philadelphia Museum might be "a great national museum, or repository of valuable rarities, for more generally diffusing an increase of knowledge in the works of the Creator…"[112]

Despite Peale's personal connection to Franklin and Thomas Jefferson and many other public officials, his visionary call failed, and in some sense, it failed because as one editorial response to his call for public support explained:[113]

> In European Countries princes can, by a portion of the public treasure, promote science and the useful arts: our jealousy of liberty will not permit such liberality; and indeed in our present exigencies it is not very practical—But to make up for this, the generosity of individuals is amply sufficient. Thanks for Heaven, we are not poor; many of us can, without the least disadvantage, spare a dollar per annum; this contribution would arise from saving *one farthing every day*.

[111] See Lemay, *The Life of Benjamin Franklin*, vol. 2.

[112] Sellers, *Mr. Peale's Museum*, 46.

[113] Editorial, *Pennsylvania Packet,* March 27, 1790. For more see Sellers, *Mr. Peale's Museum*, 45-48.

This editorial reflects a resistance to European patronage models that relied on funding from government and aristocratic bodies. To preserve "liberty," the writer imagined a better American approach that would involve the popular funding of cultural institutions. In this framework, individual contributions would provide for the Philadelphia Museum, rather than the central government or elites.[114] This kind of popular funding and support has been emphasized as the essence of American voluntarism. Most especially, Alexis de Tocqueville noted Americans' affinity for forming associations outside of government and aristocratic institutions in this period.[115]

So while Peale would have supported the idea that his Philadelphia Museum offered a benefit to the public and relished the cultivation of popular appeal, government funding would have relieved the financial pressures he faced to provide those benefits.[116] With the urge to make the collection useful to a wider public came lower admission prices,[117] along with the need to cater to popular tastes to invite visitation.[118] If the museum was to gain the kind of highbrow respectability, dispensing what Peale and Franklin would have called "useful knowledge," then it would need the security of steady funding.[119] Peale would go on to create his own version of a "popular" museum that would run off moderately-priced admission fees, but his sons ultimately sold off the family's beloved collections to none other than P.T. Barnum in 1849.[120] Peale's lack

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[114] For more on Peale's request for public funds, see David R. Brigham, *Public Culture in the Early Republic: Peale's Museum and its Audience* (Washington: Smithsonian Institution Press, 1995), 34-37.

[115] Alexis de Tocqueville, *Democracy in America*, trans. Elizabeth Trapnell Rawlings, and ed. Michael Kammen, ed. (Boston: Bedford/St. Martin's, 2009). See Chapter V "Of the Use which the Americans Make of Public Associations in Civil Life" in Book Two.

[116] As historian David C. Ward put it, Peale did not run the Philadelphia Museum as a charitable institution, and that distinguished his efforts to promote useful knowledge from elite institutions. "Democratic Culture: The Peale Museums, 1784-1850," in *The Peale Family: Creation of a Legacy, 1770-1870*, ed. Lilian B. Miller (New York: Abbeville Press, 1996), 267-268.

[117] Ward, "Democratic Culture," 267.

[118] Cook, *The Arts of Deception*, especially chapter two; Brigham, *Public Culture*, especially chapter one.

[119] For more on what Peale and Franklin meant by "useful knowledge," see Brigham, *Public Culture*, 17.

[120] For a discussion of how financial pressures drove both the Peales and Barnum to cater to the highbrow and lowbrow tastes, see Cook, *The Arts of Deception*, especially chapter two.

of access to surplus wealth limited the extent to which his museum could grow; without government or private patronage, Peale's vision had failed to take flight.

Many of these precedents regarding research institutions and national museums would have been on the minds of the public officials interested in designing the Smithsonian Institution's approach to the increase and diffusion of knowledge. With the concept of a national institution already controversial and familiar to public officials, upon Rush's triumphant return, Congress argued over the desired application of the Smithson bequest for eight years, in fact. During that substantial interlude, representatives, multiple Presidents, scientists, and the nation's leading educators disputed *how* the Smithsonian should promote the increase and diffusion of knowledge. Most often they advocated for the creation of a national university, an astronomical observatory, or a "modern institute" for research.[121]

But the very fact that a national institute for knowledge-production would be established led, of course, back to suspicions about private wealth. In 1838 President Martin Van Buren solicited advice regarding the fund's application, and the letters he collected demonstrate that in the design, chartering, and management of early philanthropic institutions, state and federal policymakers were grappling with the complicated relationship between private wealth and the public governance.[122] In other words, as legislators avidly discussed the desired relationship between private funding and public institutions, they evidenced some hesitance to introduce the politics of private wealth into the spiritual politics of nation building. The House Select Committee tasked with determining the form and function of the Smithsonian Institution explained the significance of knowledge in nineteenth century philanthropy in biblical terms. The "Creator" only gave man—amongst all animated beings—"the power and the capacity of acquiring knowledge," the committee explained. Knowledge critically linked earth and heaven; it allowed men to improve their condition on earth and prepare for the afterlife: "Whoever increases his knowledge, multiplies the uses to which he is enabled to turn the gift of his Creator to his own benefit, and partakes in some degree of that goodness which is the highest attribute of

[121], "Proposed Applications of Smithson's Bequest," Rhees 837-900.

[122] Ibid., 837-900.

Omnipotence itself."[123] Individuals cultivating their own knowledge were moral. And in its broadest terms, promoting the increase and diffusion of knowledge collectively was both moral and a republican virtue.[124]

Enthusiasm for scientific advancements developed alongside the field of natural history, industrialization, and the Second Great Awakening. As historian Ronald Walters' work on antebellum reform has demonstrated, all of these shifts "led many men and women to assume that the world did not have to be the way it was and that individual effort mattered."[125] Whether one emphasizes the scientific, industrial, business, theological, social, or geographical underpinnings of "modernization," this was a moment when Americans outside of the elite began believing that "problems ought to be solved" and that individuals and society could be perfected, Walters argued.[126]

In this environment, how would American governmental or private patronage function? If the elite were no longer solely responsible for benevolent acts or reform measures, then what would American national institutions look like? As a federally created institution from a private bequest, of course the Smithsonian was different from popular antebellum reform efforts. But its form and function would have been heavily influenced by those popular movements. More than any other, John Quincy Adams provided the framework for how the Smithsonian could become a new model of national benevolence. Adams believed that funding education, like religion, was the "sacred obligation" of the people themselves, so he advocated that Smithson's bequest be managed by a disinterested board of national officials. Such an arrangement would avoid the "cancer of almost all charitable foundations—jobbing for parasites, and sops for hungry incapacity," and it would allow the Smithsonian to first appropriate funds for the creation of a national observatory.[127] Adams considered establishing a national observatory to be a "debt of

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[123] "Congressional Proceedings," Rhees 151.

[124] For more on the development of natural history museums and the cultural politics of taxonomic systems see Stephen T. Asma, *Stuffed Animals and Pickled Heads: The Culture and Evolution of Natural History Museums* (New York: Oxford University Press, 2001).

[125] Ronald G. Walters, *American Reformers 1815-1860*, rev. ed. (New York: Hill and Wang, 1997), 3.

[126] Walters, *American Reformers*, 16.

[127] John Quincy Adams to John Forsyth, October 8, 1838, Rhees 842-845.

honor to the cause of science and to the world of civilized man." He said that he believed that the United States had a "stain on [its] good name, in the neglect to provide the means of increasing and diffusing knowledge among men" about the "numberless worlds suspended over our heads."[128] And at this point, the casting of the Smithsonian institute as a national project, one that would take private wealth and carry it as part of a more popular project was largely settled. Despite early concerns with patronage, here, in the context of philanthropy at least, a centralized government would have some greater role, through the management of a private fund.

Congress Incorporates the Smithsonian Institution with a Special Charter

It was not until August 10, 1846—eight years after Rush deposited the gold sovereigns with the U.S. Treasury—that Congress passed an act establishing the Smithsonian Institution, and President James K. Polk signed it into law. In the end, the act provided for the Smithsonian to serve as a "geological and mineralogical cabinet; also a chemical laboratory, a library, a gallery of art, and the necessary lecture rooms."[129] With its broad array of activities, the Smithsonian was positioned to demonstrate its utility to the nation and its universal symbolic value.

As a federal trusteeship, the Institution was to be run by a board of regents composed of the Vice-President, the Chief Justice, the Mayor of the City of Washington, three members of the Senate, three members of the House, and six other non-members of Congress, two of whom had to be members of the National Institute and residents of Washington D.C. and the other four had to be inhabitants of states—no two of them of the same state. Congress would have the right to alter, amend, add, or repeal any of the provisions of the act.[130] And it further provided for the regents to select a place for the construction of a building for the Smithsonian on the "public

[128] John Quincy Adams to John Forsyth, October 11, Rhees 838, 846.

[129] "An Act to Establish the 'Smithsonian Institution' for the Increase and Diffusion of Knowledge among Men," 29th Congress, 1st Session, 10 August 1846.

[130] The inclusion of reservation clauses like this that provided for future government regulation over corporations was common. After the *Dartmouth College* case, in which Chief Justice John Marshall had ruled that a corporate charter was protected by the Constitution's contract clause in 1819, state legislatures frequently inserted reservation clauses in the charters they granted to public trusts in order to ensure they could amend their operations and charters in the future. For context, see: Lamoreaux and Novak, "Corporations and American Democracy: An Introduction" in *Corporations and American Democracy*, 9.

ground in the city of Washington lying between the Patent Office and Seventh Street."[131] Until that time Kristin Hass has explained, the Mall had been what the original capital-designer Pierre L'Enfant called an "immense T-shaped public park." Throughout the nineteenth century, however, the Mall became what Hass called a "national symbolic space" containing the Washington Monument, gardens, and eventually the Smithsonian Institution.[132]

But despite these characteristics, the Smithsonian Institution was not intended to be a government agency. As Congressmen had argued over the course of the previous decade, the Smithsonian Institution would be operated with the funds of a private trust, but Congress and private citizens would manage the growth and expenditure of those funds for the public benefit. The operational vision for the Smithsonian's administration was expressed most clearly by its first Secretary Joseph Henry in the "Programme of Organization" that he drafted for its Board of Regents in 1847. He began, Smithson's "property [was] bequeathed to the United States of America." It followed then that "the bequest [was] for the benefit of mankind. The government of the United States [was] merely a trustee to carry out the design of the testator." All of that being true, Henry argued, "The institution [was] not a national establishment, as [was] frequently supposed, but the establishment of an individual, and [was] to bear and perpetuate his name."[133] Claiming that the Smithsonian was not a "national" establishment may seem puzzling; Henry had a point though. The Smithsonian operated with the funds of a private trust; as such, there were distinct legal requirements for its management and operations.

But this purportedly private project became immediately bound up with a more public form, which Congress would ultimately work out. As Congressman had noted in their initial hearings on whether to accept the bequest and again while national leaders discussed what to do

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[131] *An Act to Establish the 'Smithsonian Institution' for the Increase and Diffusion of Knowledge among Men*, 29th Cong., 1st sess., August 10, 1846. See Kristin Ann Hass, *Sacrificing Soldiers on the National Mall* (Berkeley: University of California Press, 2013), 10-17. Hass writes that while the Mall would become a space for war memorials and remembering later in the twentieth century, with the founding of the Smithsonian Institution, the Mall became a space for the cultivation of knowledge and nation building. The 1893 World Columbian Exposition in Chicago further changed expectations for the Mall to become a version of the "White City" that drew popular attendance to the world's fair with interest in the development of civilization and economic development.

[132] Hass, 10-17.

[133] The Programme was included in the first annual report of the Board of Regents. Joseph Henry, "Programme of Organization of the Smithsonian Institution," 8 December, Rhees 847, 944.

with the bequest, there was talk of making it a corporation for the District of Columbia. Or officials also recommended that the Smithsonian receive what we could call a "federal charter" today. The distinction lay in whether Congress held the trust *in loco parentis patriae* for the citizens of Washington D.C., or if Congress was creating the Smithsonian Institution with a federal charter to operate as a national entity. This is a complicated distinction to make, however, because in the mid-nineteenth century, Congress had used special acts of incorporation to establish both District corporations and national entities. That means that when the Smithsonian was founded, it did not practically matter (even if it did rhetorically) whether it was a D.C. corporation or a federal corporation for the time being.

Ultimately, Congress chose to establish a federal corporation, and at a time when even the federal funding of lighthouses to promote domestic and international commerce was controversial—the chartering of the Smithsonian Institution was a remarkable exercise of federal power.[134] By 1836, Congress had chartered a total of [only] forty-six corporations.[135] While almost all those entities served Washington D.C., the very first entity to receive a federal charter in 1791 was the first Bank of the United States. Congress would not grant another federal charter like it until it created the second Bank of the United States in 1816, but in the meantime, it established twenty-one other entities to serve Washington D.C. Those entities included, for example, the Washington Canal Company (1802), the Columbian Library Company in Georgetown (1804), the Presbyterian Congregation in Georgetown (1806), the Farmers' Bank of Alexandria (1811), and the Fire Insurance Company of Alexandria (1814).[136]

While it is accurate to say that the D.C. corporations chartered by special acts of Congress are distinct from the Bank of the United States, they are all part of a very small number of corporate bodies that Congress has created since the nation's founding. The Bank of the United States was another matter altogether though. The government owned twenty percent of the bank's stock and limited its existence to twenty years, making the bank what one historian

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[134] For more on how Congress worked "through" corporations in the nineteenth century, see Balogh, *A Government Out of Sight;* Miller; "'The Lighthouse Top I See.'"

[135] Margaret Fennell, "Corporations Chartered by Special Act of Congress," Washington: The Library of Congress Legislative Reference Service, 1945, Revised 1948.

[136] Ibid.

has termed, a "semipublic institution."[137] As historians have shown, debates about the Bank of the United States launched multiple "bank wars" that had more to do with centralized banking and knitting together a national economy than national benevolence.[138] However, the fact that Congress charted a national bank set a relevant precedent for the Smithsonian Institution: when it served a national function, the federal government could charter a corporate entity for that purpose. Indeed, it was the Bank of the United States' second charter that led to *McCulloch V. Maryland* (1819) in which the court affirmed Congress' authority to incorporate a bank.[139]

Before Congress would charter the Smithsonian Institution in 1846, it would create two entities that pushed the tenuous boundaries between District corporations and national corporations. In 1818, Congress chartered the Columbian Institute for the Promotion of Arts and Sciences and in 1842 the National Institute for the Promotion of Science. The Columbian Institute, which established a museum and botanic garden, operated "under government patronage."[140] While it legally created the possibility of its interpretation as a voluntary association operating in Washington D.C. with many of its members hailing from the District, the institute also welcomed members from across the nation. At its inception, the institute had ninety "representative men of Washington" as members, including congressmen, scientific men, clergymen, prominent citizens, and prominent politicians such as the Secretary of War, the Secretary of the Navy, the ex-President Adams, the Chief of Engineers of the Army, and other

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[137] Edward S. Kaplan, *The Bank of the United States and the American Economy* (Westport, Connecticut: Greenwood Press, 1999), ix.

[138] See Jane Knodell, *The Second Bank of the United States: "Central" banker in an era of nation-building, 1816–1836* (New York: Routledge, 2017); Sharon Ann Murphy, *Other People's Money: How Banking Worked in the Early American Republic* (Baltimore: Johns Hopkins University Press, Forthcoming).

[139] The Constitution did not expressly provide for Congress or the President to charter corporations; however, as one Congressional Research Services Report recently explained, Congress has cited Article I, Section 8, clause 18 of the Constitution as the source of its power to charter corporations. Article I details the powers granted to the legislature, and clause 18 gives Congress the power to make all "laws necessary and proper" to carry out those powers granted to it by the Constitution See, Ronald C. Moe, "Congressionally Chartered Nonprofit Organizations ('Title 36 Corporations'): What they are and How Congress Treats Them," (Congressional Research Service, Updated April 8, 2004), 1-2; U.S. Const. art. I, § 8, cl. 18.

[140] Richard Rathburn, "The Columbian Institute for the Promotion of Arts and Sciences," *Smithsonian Institution United States National Museum Bulletin* 101 (Washington: Government Printing Office, 1917).

officials. And at its height, the institute had 1,600 members from Washington D.C. and beyond.[141]

While the Columbian Institute could safely be interpreted a voluntary association serving Washington D.C. (albeit under "government patronage"), the National Institute for the Promotion of Science was different. Joel Poinsett, a planter and naturalist from South Carolina who named the Poinsettia and eventually served as Secretary of War, led the charge to create the National Institute for the Promotion of Science in 1840. Poinsett had long desired the creation of a national museum to display the many curiosities acquired during scientific expeditions, so he used the creation of the National Institute as a move to shape how Congress managed the Smithson bequest. However, while Poinsett was successful in advocating for a national museum to be part of the Smithsonian, the National Institute remained a separate entity and its exhibitions of curiosities, arranged in the U.S. Patent Office, eventually waned in popularity.[142]

The National Institute's institutional form and ambitions are of particular importance to the development of the federal charter, though, because the institute expressly meant to have a "national character." Heads of government departments served as Directors of the Institute, and it envisioned itself "merely a trustee for the Unite States of the property which it possesses."[143] The fact that the National Institution understood its role as a "trustee *for* the United States" rather than operating *under* "government patronage," though, sets the National Institute apart. Its creators were at once imagining it as having a federal imprimatur while privately operating. However, National Institute members had asked Congress for an "appropriation."[144] They said, while they believed that the institution merited a "plenteous endowment," due to the financial condition of the government, they would content themselves with a more modest appropriation for their work which was "so truly national and so truly republican."[145] They were not

[141] Rathburn, "The Columbian Institute for the Promotion of Arts and Sciences," 1.

[142] See Pamela Henson, "'Objects of Curious Research:' The History of Science and Technology at the Smithsonian," *ISIS* 90 (1999), S249-S269.

[143] "Memorial of the Friends of Science who Attended the April Meeting of the National Institute," *Bulletin of the Proceedings of the National Institute for the Promotion of Science* vols. 1-4 (Washington: National Institute for the Promotion of Science, 1841-46), 386-387.

[144] Italics mine, Ibid., 387.

[145] Ibid., 387.

successful, though, and their struggle for funds demonstrates how essential the Smithsonian's private endowment was to its success in this period.

This history of the federal charter and Congress' use of it to establish the Smithsonian is essential to the history of Smithson's bequest, but also to the making of the U.S. nonprofit sector. Congress could easily have created the Smithsonian as a government agency or a quasigovernmental institution, which would have set an entirely different precedent for the management of large trusts to undertake public works and charity. Instead, however, they made it a private corporation.

A Precedent is Set: The Smithsonian becomes a Public Trust

Unlike the National Institute, the Smithsonian Institution came with an endowment of its own—one that had been put right into the hands of the federal government. But despite the oddities of its charter and its expansive powers, its members insisted it was a private institution. This was not just semantics. Because its founders considered it a private institution, the next chapter will show, it made the Smithsonian's charter relevant to the national foundations that would rise in the remainder of the nineteenth century. The richest American philanthropists quickly replicated its design when they incorporated their own foundations.

In this way, the Smithsonian established a legal precedent for creating national benevolent institutions with special charters to operate as "public trusts." The term "public trust" best captures the ways that the Smithsonian and the nation's first foundations were created from private trusts but were managed by public officials for distinctly public purposes. This model gave would-be philanthropists a way to design their foundations without raising public alarm about the expanding power of private wealth in society.

The history of the public trust also illuminates how the Smithsonian Institution developed at the intersection of government, business, and benevolent activity. Boundaries between for-profit and not-for-profit, as well as governmental and nongovernmental entities, were in the process of becoming, so Congressmen could imagine the Smithson endowment funding a library, research expeditions for natural resources, and a national museum. Government officials could populate its board, while a private citizen could serve as its Secretary. This model made public trusts more powerful with their proximity to government officials, but it also imbued the distribution of private wealth with an explicitly public purpose. Once a wealthy individual decided to give away their wealth for a public purpose, that wealth took on a public character.

While the federal government's role in creating the Smithsonian Institution was exceptional, the entwining of interests and, in fact, personnel to create earlier public trusts broadened the significance of emerging debates about government trusteeship; in fact, state and federal government officials served as trustees amongst many of the nation's largest, early benevolent institutions.[146] While the Smithsonian Institution laid debates about the politics of the public trust at the feet of the federal government, it was not the only foundation that forced Americans to confront the politics of the public trust in the mid-nineteenth century. If the foreign origin of James Smithson's half-million-dollar gift was unique, its size was not unparalleled.[147]

Even in the early nineteenth century and in these provincial United States, some Americans had million-dollar fortunes. Before Congress accepted Smithson's half-million dollar bequest, in fact, merchant and banker Stephen Girard had left a majority of his almost $7 million fortune to establish Girard College for the education of "poor white male orphans" in Philadelphia in 1831.[148] Girard left his bequest "in trust" to "the Mayor, Aldermen, and Citizens of Philadelphia" to establish and maintain the college.[149] Congress had spent years debating the legitimacy of the federal government serving as the trustee of Smithson's fortune. It was no different with Girard's gift and the city of Philadelphia; controversy ensued about whether the

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146 This holds true for the oldest benevolent corporations in America. For example, government officials comprised a significant portion of both Harvard and Yale's governing boards until 1870. For more on this see, Hall, "A Historical Overview of Philanthropy," 39.

147 An American writer made this point in a trade magazine shortly after the creation of the Smithsonian Institution. For a description of the major gifts that paralleled Smithson's, see E.P. Peabody's "Public Benefactions," *Merchants' Magazine and Commercial Review* xxxvi no. vi (1857), 667. The article was probably written by a distant relative of George Peabody, Elizabeth Palmer Peabody.

148 "Will of Stephen Girard," in *Stephen Girard, Founder,* ed., *Cheesman Abiah Herrick* (Philadelphia: Girard College, 1923), 184. In his will Girard bequeathed the vast majority of his close to seven million dollar fortune "in trust" to "the Mayor, Aldermen, and Citizens of Philadelphia" to establish and maintain the college, 178. Although Girard had no children, his relatives contested his will and the case was heard in the U.S. Supreme Court in 1844. The decision indicated that one of the major legal questions involved in the case turned on whether the city of Philadelphia was capable of receiving Girard's bequest. For more on the history of Girard College, see Cheesman Abiah Herrick, *History of Girard College* (Philadelphia: Girard College, 1927), 184.

149 Herrick, *History of Girard College,* 178.

city could legally serve as the trustee of Girard's gift. In fact, it would take a U.S. Supreme Court Case, *Vidal v. Girard's Executors* in 1844, to affirm that the city of Philadelphia's own charter allowing it, as a corporation, to accept Girard's benevolent trust.[150] In another instance, John Jacob Astor left a $400,000 bequest to found the Astor Library in New York in 1848. He envisioned the library as "essentially public in its character," and its trustees included the Mayor of the city of New York and the Chancellor of the state. [151] Both gifts were made posthumously, and like the Smithsonian, they operated as public trusts. They were entities created from private fortunes, but they were managed in part by government officials for specific public purposes.

The fact that the federal government granted a special charter to the Smithsonian Institution, however, makes it an exceptional moment in the early shaping of the American nonprofit sector. While controversial in its own right, the bequest that created the Smithsonian Institution did not ignite what would become the most explosive issues relating to the role of the public trust in American philanthropy. It was of foreign origin, and the money was left almost directly to the federal government. That meant that when Congress accepted Smithson's bequest, there was no public outcry about exploitative commercial activities that led to his wealth in the first place. Likewise, there were no discussions by state representatives about Smithson dodging estate taxes, and there was no suggestion that it would be more appropriate to incorporate the Smithsonian Institution in a state legislature rather than Congress. These concerns, however, did arise as American philanthropists used the Smithsonian as a model to create their own foundations.

[150] Philadelphia's charter invested it, as a corporation, "with powers and rights to take property upon trust for charitable purposes which are not otherwise obnoxious to legal animadversion." See *Vidal v. Girard's Executors*, 43 U.S. 127 (1844). For more on this seminal case in the history of trust law and American philanthropy, see Hall's "A Historical Overview of Philanthrop," 37.

[151] Astor Library Trustees, *Annual Report of the Trustees of the Astor Library of the City of New-York* (Albany: The Trustees, 1850), 3.

CHAPTER TWO

Wealth's Modes of Governance: The Public Trust in the Mid-Nineteenth Century

Just as Congress was chartering the Smithsonian Institution in the mid-nineteenth century, Alexis de Tocqueville famously proclaimed that American associational life was changing the contours of modern democracy. In addition to museums and research institutions like the Smithsonian, major universities, charitable organizations, as well as voluntary and fraternal associations all flourished in this period.[152] Kathleen McCarthy has described the first half of the century through the Civil War as the heyday of civic stewardship, a time when American reformers gave unprecedented amounts of both time and money to undertake public benefactions.[153] In Tocqueville's estimation, the developing nation's affinity for pursuing common interests was setting a new precedent for individuals to meaningfully counter government and aristocratic bodies through association.[154] Subsequently, historians have mused broadly over the role that this affinity for associations has played in American history, and Tocqueville's assertions about the

[152] For broad overviews of the rise of voluntarism and voluntary organizations see, Hall, "A Historical Overview of Philanthropy." Gerald Gamm and Robert D. Putnam attempted to quantify the rate of growth of voluntary associations in "The Growth of Voluntary Associations in America, 1840-1940," *The Journal of Interdisciplinary History* 29 no. 4 (1999). Also, see Neem, *Creating a Nation of Joiner*s.

[153]Kathleen D. McCarthy, *Noblesse Oblige: Charity and Cultural Philanthropy in Chicago, 1849-1929* (Chicago: University of Chicago Press, 1982) and *American Creed: Philanthropy and the Rise of Civil Society, 1700-1865* (Chicago: University of Chicago Press, 2011).

[154] Alexis de Tocqueville, *Democracy in America*. See Chapter V "Of the Use which the Americans Make of Public Associations in Civil Life" in Book Two.

relationship between associations and government have received particular attention. Most significantly, in his 1944 article "Biography of a Nation of Joiners," Arthur Schlesinger argued that Americans have "minimize[d] collective organization as represented by the state while exercising the largest possible liberty in forming their own voluntary organizations."[155] He drew a direct line from the First Continental Congress to the creation of the Boy Scouts in the early-twentieth century to illustrate a tradition of public-spirited voluntarism. As Congress' chartering of the Smithsonian Institution demonstrated though, government bodies have played a critical role in shaping the nation's early institutions. That state involvement flies in the face of a central tenet in the "nation of joiners" thesis offered by Schlesinger. In his powerful framework, until the New Deal and the rise of big government in the 1930s, Americans had a "weak state" that voluntary associations worked around rather than through.[156]

In recent years, however, historians have contested this institutional configuration of associations residing outside of government.[157] William Novak and other legal, political and economic historians have interrogated this thesis of limited government.[158] Understanding the legal and social development of American associations as what Novak calls "a mode of governance" has offered new insight into a politics of association that did not analytically separate the public and the private and the governmental and the nongovernmental—but rather

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[155] Arthur M. Schlesinger, "Biography of a Nation of Joiners," *American Historical Review*, 50 no. 1 (1944), 1.

[156] William J. Novak has described the historical and contemporary significance of the myth of the weak state in *The People's Welfare: Law & Regulation in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1996) and in "The Myth of the 'Weak' State," *The American Historical Review* 113 no. 3 (2008). See also, John, *Spreading the News.*

[157] Bloch and Lamoreaux, "Voluntary Associations, Corporate Rights, and the State;" Neem, *Creating a Nation of Joiners*; Kevin Butterfield, *The Making of Tocqueville's America: Law and Association in the Early United States* (Chicago: University of Chicago Press, 2015); John L. Brooke, *Columbia Rising: Civil Life on the Upper Hudson from the Revolution to the Age of Jackson* (Chapel Hill: University of North Carolina Press, 2010); Albrecht Koschnik, *"Let a Common Interest Bind Us Together:" Associations, Partisanship, and Culture in Philadelphia, 1775-1840* (Charlottesville: University of Virginia Press, 2007).

[158] Novak, "The American Law of Association." Additional works emphasizing the role that voluntary associations have played in the development of the American state include: Skocpol, *Protecting Soldiers and Mothers*; John, *Spreading the News*; Clemens, "The Rube Goldberg State," 187-215; and Balogh, *A Government Out of Sight*.

considered the legal creation and regulation of associations as a mode of governance itself.[159] Novak has explained:[160]

> Nineteenth-century legislators, judges, and commentators defended associations not as alternatives to a legal-constitutional state, but as constitutive components of it. Associations did not arise outside of and immune to coercions of public power as natural counterweights to the artificial sovereignty of the state. Rather they were in fact legally-constituted and politically-recognized delegations of rule-making authority and public resources.

This was true for all types of associations whether they were devoted to benevolence, business or religion, and so, Novak calls for both a comprehensive analysis of the varied associations that comprised nineteenth-century "American state, economy and civil society," as well as attention to the distinctions that law makers made between different types of associations.[161]

Work in this field promises to demonstrate the central role that voluntary associations have played in American political development, while uncovering distinct nineteenth-century associational politics and practices.[162] In this chapter, I analyze how the public trust continued to develop as a corporate vehicle for public benefactions in the nineteenth century. In doing so, I contribute to work on what Novak called the "legal-political construction of civil society," and I expand its attention to the pivotal role that surplus wealth played in the growth and regulation of civil society. Like the Smithsonian, other public trusts were created from private fortunes, but they were managed in part by government officials for explicitly and consciously "public" purposes. As a result, studying the evolution of these public trusts requires attention to the wealthy individuals who gave their fortunes away and their relationships with government

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[159] Novak provides a rich historiographical precedent for conceiving of American associations as a "mode of governance," rather than a check on state authority in American history. "The American Law of Association," 172.

[160] Ibid., 172.

[161] Ibid., 186.

[162] Recently, scholars have been publishing on this relationship between American democracy and the corporate form. Reich, Chordelli and Bernholz, eds., *Philanthropy in Democratic Societies*; Lamoreaux and Novak, eds., *Corporations and American Democracy*.

authorities who both crafted special legislation to foster that growth and stood in management roles after the creation of these institutions. My research shows that even before more famous Gilded-Age debates about the accumulation of wealth, Americans were creating legal and conventional social roles for the deployment of private surplus wealth in the undertaking of major public benefactions. I expand on this by paying attention to the pivotal role that surplus wealth played in the growth and regulation of civil society. As Americans worked out the desired relationship between private wealth and public works, they grappled with fundamental questions about the purpose of surplus wealth in American capitalism and the role that the wealthiest citizens should (or should not) play in its distribution.

Endowments as Novel Modes of Governance

The terms of the debates about surplus wealth and national development would change in the second-half of the nineteenth century, as American philanthropists deviated from Smithson's bequest in two important ways. First, increasingly, philanthropists gave their fortunes away during their lifetimes, and the power and influence this gave them raised new policy questions about the desired role of private wealth in public life. And, second, with the rise of banking and finance, endowed foundations offered founders a new vehicle to accumulate more wealth and social influence beyond the horizons of their natural lives. American bankers, businessmen, and eventually industrialists, had the financial expertise to endow their funds with stocks and bonds that they believed would grow in perpetuity. This vision of establishing endowments with hand-selected securities carved out a niche for the expertise of the self-made rich in philanthropy. It was the accumulators, with this approach, who had the know-how to grow America enterprise, economically and socially.

As American associational life expanded under these conditions, it would change the contours of what public works would receive funding to match the vision of civilization held by accumulators. It would also make public trusts operating with huge endowments new centers of power in society, as they shaped approaches to education, medical research, and agricultural development, for example. This began to accentuate the controversies surrounding the creation of the Smithsonian Institution. As philanthropists created trusts while they lived, they produced entirely new legal issues relating to the management of private property across generations—and in their own lifetimes.

Andrew Carnegie would come to describe this kind of living stewardship as "the proper administration of wealth" in his 1889 essay that would become *the* "Gospel of Wealth."[163] In the vision that Carnegie laid out in his essay, millionaires should act as "trustee[s] for the poor." Their surplus wealth, he suggested, would actually become "the property of the many." But that was an exaggeration; in Carnegie's vision the rich were still bound to administer their surplus wealth themselves "to produce the most beneficial results for the community" by exercising their "superior wisdom, experience, and ability to administer" the surplus.[164] In other words, the property would still belong to them or it would be in the hands of a body corporate following the sage wisdom of the nation's great accumulators. Although Carnegie's vision for the proper administration of wealth had many similarities to the characteristics of the public trust, it is fair to say that the ideas about civic stewardship that motivated mid-nineteenth century philanthropists were quite different than Carnegie's ideas about wealth's duty to advance civilization from the top down that he offered later in the century. The practices of the public trust in this earlier period made government officials the logical trustees of the nation's surplus wealth (not necessarily the philanthropist him or herself). And some of the philanthropists were not even trustees at their foundations—they left that to the public officials and private citizens they selected to populate their boards.

For example, New York inventor and businessman Peter Cooper began designing the Cooper Union for the Advancement of Science and Art in 1853, and he spent over $600,000 to buy land and to erect a building for the school in the city. Cooper obtained a charter from the New York legislature to formally establish the Cooper Union in 1857. He served on the board of trustees himself, but the charter also provided for the Supreme Court to "possess and exercise a supervisory power over the Corporation."[165]

Further, in 1867, George Peabody created the institution that set the legal and social trajectory for the growth of the public trust. He endowed the Peabody Education Fund with a $1

[163] Carnegie, "Wealth."

[164] Ibid., 660-662.

[165] Cooper Union for the Advancement of Science and Art, *Charter, Trust Deed, and By-laws of the Cooper Union for the Advancement of Science and Art* (New York: Peter Cooper, 1859). This quotation is from the final section of the original charter. Most of the trustees were connected to Peter Cooper by marriage or family; however, a number of them would go on to serve as elected officials in New York.

million endowment[166] (and he would increase that amount to $2 million in 1869) "for the promotion and encouragement of intellectual, moral, or industrial education among the young of the more destitute portions of the Southern and Southwestern States of our Union."[167] Unlike James Smithson and Stephen Girard, Peabody did not leave his fortune directly to a government body. Instead, he endowed the fund during his lifetime, and he selected a board of sixteen trustees to manage its operations. But public officials still played a pivotal role at the PEF. Trustees included General Ulysses S. Grant who would shortly become the eighteenth U.S. president, former New York governor Hamilton Fish who would join Grant's cabinet as Secretary of State, as well as governors from Massachusetts, Virginia, and South Carolina.[168] These trustees were not outsiders trying to influence public policy; they were policy makers using the PEF as a corporate vehicle to undertake public works. And that remained true until the PEF closed in 1914; multiple presidents and future Supreme Court justices would serve on the board during its existence.[169]

From the start, too, Peabody and his trustees imagined the fund fulfilling a distinct public purpose—to promote education in the South—and then dissolving once that purpose was achieved.[170] The Peabody Education Fund was different than what had come before it, because it combined cutting-edge legal, social and financial technologies of its time to reconfigure the operations and role for the public trust in America. Peabody was using his financial prowess to transform how an individual fortune could be used for public works. When he created the PEF,

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[166] Peabody's original gift creating the PEF is sometimes referenced as $1 million and at other times $2 million. The discrepancy results from Peabody indicating that he was giving $1 million to the trust in his letter, and then adding that he was also including bonds from the state of Mississippi, issued to the Planter's Bank. Those bonds, however, were repudiated by the state. See *Proceedings of the Trustees of the Peabody Education Fund, 1867-1914* vol. VI (Boston: Press of John Wilson and Son, 1875), 4.

[167] Letter from George Peabody to the first trustees of the Peabody Education Fund establishing the trust, February 7, 1867 in *Proceedings of the Trustees of the Peabody Education Fund*. 3.

[168] For a full list of the trustees, see *Proceedings of the Trustees of the Peabody Education Fund,* vol. I, iv.

[169] Multiple U.S. Presidents, Supreme Court Justices, and many of the nation's leading businessmen served on the board throughout the fund's existence. For a full list of all PEF trustees, see *Proceedings of the Trustees of the Peabody Education Fund,* vol. VI, vii-ix.

[170] Letter from George Peabody to the first trustees of the Peabody Education Fund establishing the trust, *Proceedings of the Trustees,* vol. I, 6.

he became one of the first philanthropists to single-handedly endow a philanthropic institution with securities he selected to try to ensure its long-term success. Soon after, John F. Slater, the Rockefellers, Carnegie, Anna T. Jeanes, and Olivia Slocum Sage would all build on these foundations as they created their own philanthropic practices through the early-twentieth century. Understanding how endowments like this permitted the wealthiest Americans to imagine their fortunes growing in perpetuity—and for their foundations to last forever—is critical to comprehending the economic, social, and governing power that foundations amassed in this period.

Joseph Henry, the first Secretary of the Smithsonian Institution, played a crucial role in promoting the endowment of institutions in the United States.[171] With the Smithsonian's place on the National Mall and its importance to national development established, Henry took up the work started by Benjamin Franklin and John Quincy Adams to foment support for the establishment of more endowed institutions in the United States.[172] To those who would listen, Henry encouraged would-be philanthropists to avoid funding the creation of buildings, which he considered a relic of "semi-barbarism." By endowing institutions for original scientific research, he argued, philanthropists would create "monuments of mind" that would "belong to high civilization."[173] As a prominent scientist and head of the Smithsonian, Henry moved in circles where he had ample opportunity to promote his vision. He encouraged James Lick, the richest man in California, to permanently endow a fund to assist astronomers and their assistants, and he advised leaders in higher education at University of California, Clemson, Johns Hopkins, and Princeton to promote and fund research in higher education.[174]

[171] For more on Henry see, Henson, "'Objects of Curious Research.'"

[172] Historian Howard S. Miller claimed that the Smithson bequest was the first private endowment of scientific research since 1796 when Benjamin Thompson, Count Rumford, gave five thousand dollars in trust for research into the nature of heat and light. The only similar gift, before 1870, was a portion of Bache's bequest to the National Academy of Sciences that was devoted to further research in the physical and natural sciences. See Howard S. Miller, *Dollars for Research: Sciences and Its Patrons in Nineteenth-century America* (Seattle, 1970), 125-126.

[173] Joseph Henry to George Ide Chace, 10 December 1866, Marc Rothenberg and Kathleen W. Dorman, eds., *The Papers of Joseph Henry*, eds., vol. 11 (Washington DC: Smithsonian Institution, 2007), 95-96.

[174] Ibid., xxxvi-xxxviii.

Henry, persuasively, imbued his passion for endowments with a spiritual vision for the nation's development, recalling the earlier vision that John Quincy Adams and other legislators had for establishing a national institution for the diffusion of knowledge. "I am not a believer in 'manifest destiny,' but on the contrary think that the condition of our country at a given future, must depend upon the wisdom of folly of those who exist in the preceding times," he wrote to Senator Roscoe Conkling in 1867.[175] Henry explained that he did not think that all human events were brought about "in accordance with an inexorable law." Rather, humans with knowledge of natural laws of the material universe could "produce new combinations and results which are entirely out of the ordinary course of nature." Those contributions had practical value, he explained:[176]

> Science not alone observes phenomena and deduces laws, from them, but also enables man actually to control phenomena, to perform as it were miracles, such as the creation of engines and inventions like those of the telegraph and others the effect of which is to change the character of civilization itself. It is in this sense that knowledge is power.

For Henry, the development of civilization required active scientific discovery. It also required surplus wealth, too.[177] This understanding of social progress was on display at the world's fairs that took place around the world in this period as celebrations of the rise of industrial capitalism. Historians of the fairs have emphasized their role in, above all, displaying machines and celebrating trade even while they delighted their millions of visitors with curiosities and delved into reformist politics with displays of sociological research.[178]

At the opening of the Peabody Institute in Baltimore in 1866, Henry had a chance to introduce his philosophy to George Peabody in person who clearly shared his passion for the

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[175] Joseph Henry to Roscoe Conkling, 29 March 1867, in *The Papers of Joseph Henry*, 122-124.

[176] Ibid., 122-124.

[177] Henson, "'Objects of Curious Research.'"

[178] Daniel Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge: Belknap Press, 1998). On the Great Exhibition of 1851 that Peabody contributed to in London, see *The Great Exhibition of 1851: New* Louise Purbrick, ed., *Interdisciplinary Essays* (Manchester: Manchester University Press, 2001); Jeffrey A. Auerbach, *The Great Exhibition of 1851: A Nation on Display* (New Haven: Yale University Press, 1999); Trachtenberg, *The Incorporation of America*; Rydell, *All the World's a Fair*.

increase of knowledge and national development. [179] (In fact, Peabody had supported American exhibitors at the Great Exhibition of 1851 in London when the U.S. government failed to do so.)[180] After a full day of ceremony and reception, Henry attended a dinner given by the trustees in Peabody's honor. As an unending succession of courses kept the men busy until 1:30 in the morning, Henry was called on to give an account of the Smithsonian.[181] At the dinner and in the opening lectures that Henry would give at the institute, he boldly criticized the Institute's spending a quarter of its own endowment on its grounds and building. In his own words, Henry said:[182]

> I endeavored in my introductory remarks to impress upon the Trustees and the public the importance of a proper disposition of the funds. I stated that money may be considered a kind of accumulated power which differed from other power in its capability of being so managed as to yield a constant supply of energy without diminishing the original quantity—that like other powers it could be exhausted in a single effort and instead of producing a series of results important to the city of Baltimore and the country it might be expended in the erection of a dead mausoleum a monument of the folly rather than the wisdom of the directors of the munificent endowment.

Henry's explanation of the "accumulated power" Americans could harness in managing capital through endowments makes their novelty in this period clear. Other entities, such as universities and religious institutions, had been created with endowments since the colonial period. However, preserving the principal of an endowment in its entirety for perpetuity was something new.[183]

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[179] Before creating the PEF, Peabody had already established the Peabody Institute in Baltimore in 1857, an intellectual and arts center, to which he gave over $1 million throughout his life. See, The Peabody Institute of the City of Baltimore, *The Founder's Letters and the Papers relating to its Dedication and its History up to the 1st of January, 1868* (Baltimore: George Peabody, 1868).

[180] William Dismore Chapple, *George Peabody* (Salem: Peabody Museum of Salem, 1948), 8-9.

[181] Joseph Henry to Harriet Henry, 26 October1866, *The Papers of Joseph Henry,* vol. 11, 79-81; Joseph Henry to Asa Gray, 31 October 1866, 81-83.

[182] Joseph Henry to George Ide Chace, December 10, 1866, *The Papers of Joseph Henry,* vol. 11, 95-96.

[183] Prior to the eighteenth century and the emergence of banking and finance, bequests consisted of revenues from land. Later, Benjamin Franklin was one of the first Americans to experiment with the possibilities of

The conditions were right for the accumulated power of endowments to flourish in the late-nineteenth century. In order to preserve an endowment in perpetuity, investment opportunities needed to exist in capital markets. Trustees had to be capable of managing the investment of an endowment in securities. Also, a basic level of surplus in the economy needed to exist that would permit the accumulation of wealth and the preservation of an endowment for future generations. Well before Carnegie's vision for surplus wealth in the advancement of American civilization, Henry had his own vision for the accumulated power of endowed institutions. This marks a vision of social enterprise that is predicated on national development—or the idea that United States officials and business people could create a better world through the accumulation and distribution of wealth. Unlike Carnegie though, institutions rather than individuals were the center of Henry's vision for the administration of the nation's surplus wealth.

Peabody was no hero to Henry though. Around that time, Henry wrote that he did not believe that men of great wealth like Peabody, Cornell and Packer had done enough to "consecrate minds" when they established their institutions. Diffusing knowledge that already existed was not the best way to advance civilization; while it was important, "it [was] not sufficient for a higher and more full development of humanity…"[184] Likely Henry was not so explicit with his criticism when he met Peabody; however, his perspective had an impact. The Peabody Education Fund, Peabody's next project, did not have an expensive building, and its aims went beyond the general diffusion of knowledge to the promotion of lasting public education institutions.

Peabody and others who endowed public trusts in the remainder of the nineteenth century would masterfully tie their business successes to the long-term growth and welfare of the societies in which they did business. Benevolence for these titans was not just a bequest at the time of one's death anymore; it was undertaking business to benefit society. They had the financial, and as the next section will show, the legal, tools to undertake their new vision.

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compound interest and long-term endowment. See, Hall, "Benjamin Franklin and the Origins of Secular Voluntarism."

[184] Joseph Henry to Roscoe Conkling, March 29, 1867; Joseph Henry to Asa Gray, October 31, 1866, *The Papers of Joseph Henry*, 122-124.

George Peabody's Mode of Governance and the Evolution of the Public Trust

George Peabody, indeed, worked hard to cultivate a public reputation for operating his businesses to benefit international commerce and global civilization. Peabody travelled the same unlikely path from modest means to extraordinary wealth that made Gilded Age titans Andrew Carnegie and John D. Rockefeller so famous.[185] Born in 1795, though, Peabody's road to riches lay in becoming an international merchant banker (not an industrialist). In an 1857 biography in *Hunt's Merchants' Magazine*, Peabody's commercial activities were new enough to merit explanation for readers.[186] Peabody established himself "as a merchant and banker," but "in conformity with American ideas," its authors explained. By that they meant, Peabody was not a banker in the English sense; he did not "pay out money" like the Rothschilds and the Barings. Rather, he "loan[ed] money, change[d] drafts, b[ought] stocks, [and] h[e]ld deposits."[187] In other words, Peabody traded in dry goods, but he also financed such trade for governments and prosperous individuals and companies; as he did so, he issued stocks and bonds.[188]

Born to a family struggling to support itself in Danvers, Massachusetts, Peabody was apprenticed in the drug and grocery business at the age of eleven. He had only two to three years of schooling before that, and throughout his life he told relatives and friends that the lack of an education had caused him some anxiety and difficulties in his career.[189] Unsurprisingly, education would become the centerpiece of Peabody's philanthropy. Before he was wealthy enough to give significant amounts of money away, though, he was busy using family

[185] The most comprehensive biography of George Peabody is Franklin Parker's *George Peabody: A Biography* with a foreword by Merle Curti (Nashville: Vanderbilt University Press, 1971). See also, Chapple, *George Peabody*. The first chapter of Ron Chernow's book on the House of Morgan focuses on Peabody, as well. Ron Chernow, *The House of Morgan: An American Banking Dynasty and the Rise of Modern Finance* (New York: Grove Press, 1990),

[186] Merchant banking was hardly unique to Peabody. Merchant activity was the primary way that New Yorkers built their fortunes in the first-half of the nineteenth century, for example. For more on the evolving relationship between merchants and banking activities in this period, see Sven Beckert, *The Monied Metropolis: New York City and the Consolidation of the American Bourgeoisie, 1850-1896* (Cambridge: Cambridge University Press, 2001), especially Chapter One "Accumulating Capital," 17-45.

[187] "George Peabody," *Hunt's Merchants' Magazine and Commercial Review* XXXVI (1857), 431.

[188] Chernow, *House of Morgan*, 4.

[189] Parker, *George Peabody*, 25.

connections to launch a career in the wholesale dry goods business. Eventually, he founded Riggs and Peabody in Baltimore as the junior partner. In that period, he frequently travelled to Southern states for raw cotton to export to England, and it established a connection between Peabody and the South that would endure in his philanthropy.[190]

By 1822, Riggs and Peabody expanded to Philadelphia and New York, and Peabody became senior partner. In this period, Peabody widened his operations, as he supplied credit for others to ship cargo. Selling cotton in Lancashire and returning with merchandise to sell in America was a lucrative part of Peabody's operations.[191] By 1837 he moved to London, and as he expanded his banking activities, he became one of the most successful American financiers in London.[192] It was there that Peabody's star truly rose when he established George Peabody and Company in 1843. Famously, Peabody took on Junius Spencer Morgan as a partner later in life, and by doing so he gave the house of Morgan its start.[193]

During Peabody's life in London he inserted himself in British society through acts of statesmanship and business that benefitted him financially and socially. Peabody marketed himself as the head of an American banking house in London. He was a leading seller of American state bonds, and when states threatened to default on payments to British creditors during multiple recessions, Peabody actively encouraged state repayments and secured British loans allowing them to do so.[194] He famously threw an annual Fourth of July dinner party that was attended by government officials and elites from both Britain and the United States. In fact, eventually the American government took over the dinner altogether. Throughout his career, Peabody displayed a shrewd understanding that statesmanship and international business success went hand-in-hand.

Peabody rose in the ranks of British society through the growth of his banking activities, but also through his philanthropies. In their work on the "financialization of philanthropy" in

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[190] Chapple, *George Peabody*, 2-5.

[191] Ibid., 5-7.

[192] Ibid., 7.

[193] Chernow, *The House of Morgan*; Chapple, *George Peabody*, 11.

[194] Chernow, *The House of Morgan*, 4-7.

Victorian England, historians Josephine Maltby and Janette Rutterford have argued that with the growth of securities markets and the broadening of the populations acting as investors, the form, function and purpose of philanthropy in British society changed in this period that was so formative to Peabody's philanthropies. Concepts and logics attached to finance, such as "investment and speculation, risk and return, [and] profit and loss" made their way into the design of charitable activities and the manner in which people evaluated the desired "returns" of charitable activity, they argue.[195] The authors look to model dwelling companies (these were low-profit housing companies, which Peabody was involved in) and to a shift in charity organizations selecting aid recipients based on their likelihood to repay or succeed, rather than charitable impact. While investing had previously been seen as a "self-interested activity," these activities, the authors argue, "brought together key preoccupations: the desire to be seen as a philanthropist and the anxiety to make profitable investments, in the social as well as the financial sphere."[196] While a number of historians have written about the manner in which market society and the rise of capitalism altered social relations, Maltby and Rutterford's research demonstrates how philanthropy, statesmanship, and business were, in many instances, inseparable in this period.[197]

Despite his devotion to accumulating capital, Peabody famously spent comparatively little on himself.[198] He lived in rented rooms, and he worked constantly with time off for the occasional fishing trip. Although Peabody had a daughter with a partner in Brighton, he did not publicly

[195] Josephine Maltby and Janette Rutterford, "Investing in Charities in the Nineteenth Century: The financialization of Philanthropy," *Accounting History* 21 no. 2-3 (2016), 265.

[196] Maltby and Rutterford, "Investing in Charities in the Nineteenth Century," 264.

[197] Scholars have long discussed the duality of market practices and social relations after Polanyi's work in *The Great Transformation*. Since the 1980s, cultural historians have plumbed the relationship between economy and society in works such as, Trachtenberg, *The Incorporation of America*; Halttunen, *Confidence Men and Painted Women;* Agnew, *Worlds Apart*; Marchand, *Creating the Corporate Soul*; Cook, *The Arts of Deception*; Davis, *The Circus Age*.

[198] This trope of the frugal millionaire is not unique to Peabody, so it is good to approach it with some skepticism. By many accounts though, Peabody rented rooms and he resisted spending money on trifles. Ron Chernow titled his chapter on Peabody, "Scrooge," in *The House of Morgan*, suggesting that Peabody was stingy in giving money to his relatives and prone to suspecting slights.

recognize either of them. He did not even include them in his will.[199] Instead, by the 1850s Peabody started to build his legacy in a more public fashion—all of his major donations would bear his name throughout his lifetime.[200]

Peabody's early charitable endeavors reflected a more popular nineteenth-century approach to giving—he supported local institutions and made contributions to charitable societies. He did not need to actively seek for opportunities either. He received upwards of 1000 "begging letters" per month.[201] From consumption, failed businesses, to "cold chronic lumber abscesses," men and women wrote to Peabody for help.[202] He also received requests for aid to charities and causes through established institutions. Churches, industrial schools, beneficent associations, hospitals, and budding scientists all wrote to Peabody hoping he would join their annual list of subscribers or contribute to their endowments.[203]

As Peabody's personal wealth grew, so did the scope of his gifts. One friend had chided Peabody that he must be hording his wealth with dreams of becoming the next James Smithson.[204] That was not so far off. First, in 1852 Peabody gave $20,000 to his native town of Danvers to create a Peabody Institute. Peabody did not sail back to Danvers to deliver the gift in person, but at the town's centennial celebrations, inhabitants opened a letter from Peabody explaining the gift. He said that he was paying a "debt" that he owed the previous generation.[205] In Peabody's estimation, at least rhetorically, he "owed" something to society.[206] Peabody did

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[199] Chernow, *The House of Morgan*, 9.

[200] Most biographies of Peabody at least include a few references to Benjamin Moran. Moran was a Secretary at the American Legation, and kept a journal in which he decried Peabody as a "hypocrite" and frequently complained about the hollowness of Peabody's philanthropies. See for example, Parker 63 and 120.

[201] Chernow, *The House of Morgan,* 14.

[202] For a sample of the requests for aid that Peabody received, see Boxes 201-202, George Peabody Papers 1795-1869, the Phillips Library at the Peabody Essex Museum.

[203] See Boxes 201-202, George Peabody Papers 1795-1869, Peabody Essex Museum.

[204] Chapple, *George Peabody,* 43.

[205] Parker, *George Peabody*, 59.

[206] Historian of Gilded Age philanthropy Kathleen McCarthy has argued that "civic stewardship," or "the notion that successful citizens owe[d] a dual obligation of time and money to the communities in which they ha[d] prospered," created a distinct form of American "noblesse oblige" in this period. In the United States, McCarthy

not assume responsibility for the dissemination of the funds. Instead, he instructed that Danvers citizens should hold a vote to formally accept the gift and then elect a board of twelve trustees who would create a lyceum for free lectures.[207] Peabody would establish additional institutes, the largest of which was the Baltimore Institute where he met with Henry.

Peabody also gave £150,000 (eventually he would increase that amount to £500,000) to establish the Peabody Donation Fund in London in 1862. The PDF operated in the milieu of model housing companies described by Maltby and Rutterford.[208] At first Peabody had considered giving money to education, but he was persuaded by prominent British charity reformers to direct his money towards housing the "deserving poor."[209] England's Charity Commissioners, the official body responsible for accepting and administering charities, had to arrange for the legal acceptance of Peabody's gift; they were even involved in the drafting of the trust deed, because there was no precedent for it. Peabody, as a foreigner trying to give away £150,000 while he lived, raised new issues.[210] Like Smithson's gift in the U.S., Peabody's trust was eventually accepted, and in describing his actions to trustees, Peabody again used the formulation of fulfilling a debt to a place and people who had helped him flourish.[211] Shortly thereafter Peabody was offered a Baronetcy by Queen Victoria, which he did not accept. However, he was gifted a portrait of the queen and a key to the city establishing himself as a major national benefactor.[212]

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explains, noblesse oblige did not refer to the duties attached to noble birth as it did in Old World hereditary aristocracies. Rather, with increasing urbanization, American philanthropists emphasized a commitment to the communities where they had made their fortunes. According to McCarthy the antebellum period was the heyday of civic stewardship when the connection between wealth and public service was strongest. In her framework, the Civil War is a kind of dividing line for how benevolence worked—exhibiting a trajectory away from civic stewardship towards philanthropy driven by social Darwinism and the concept of the self-made man. See, *Noblesse Oblige*, ix and 61.

[207] Parker, *George Peabody*, 59.

[208] Maltby and Rutterford, "Investing in Charities in the Nineteenth Century," 265-270.

[209] Parker, *George Peabody*, 105-106.

[210] Ibid.

[211] Chapple, *George Peabody*, 16.

[212] Chernow, *House of Morgan*, 14.

Then in 1867, Peabody began the foundation that would make him the grand patriarch of American philanthropy, replicating the Smithsonian Institution's operations as a private fund with a public purpose. He gave $1 million to establish the Peabody Education Fund. After the Civil War, Peabody perceived the perfect moment to come to the aid of his home country with great fanfare. While he was no abolitionist, even decrying the war as a folly that could have been prevented through negotiation, he seized an opportunity to emphasize reunion through a vision for collective national development.[213]

Peabody began to experiment, essentially, with new technologies for the public trust—in large part to help address what nineteenth-century Americans referred to as "the dead hand" problem of a donor's impact on future generations. This was the problem of trusts created for a narrow purpose that, over time, became of little use to society or even gifts that had a pernicious influence.[214] As Peabody developed his philanthropies while living in London, he would have been privy to the debates about the dead hand and charitable foundations that were sweeping the nation. The dead hand was a particularly contentious issue amongst British government officials and scholars of political economy in this period, because of the many thousands of charitable foundations that existed there. [215] Experts on charitable distributions went so far as to question the justice of allowing the nation's wealthiest citizens to posthumously dispose of their property to objects of their own choosing—in perpetuity. This "shackling of property," as one Charity Commissioner put it, allowed founders with no superior knowledge of social needs or the public good to remove property from society for useless or even pernicious purposes.[216] In the opinion of the commissioner, posthumously disposing of property was not a natural right, but one positively given by the government. Late in the century, British charity reformers and members

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[213] Parker, *George Peabody*, 114.

[214] Merrit M. Chambers, *Charters of Philanthropies: A Study of Selected Trust Instruments, Charters, By-Laws and Court Decisions* (New York: The Carnegie Foundation for the Advancement of Teaching, 1948), 33.

[215] Sir Arthur Hobhouse, *The Dead Hand: Addresses on the Subject of Endowments and Settlements of Property* (London: Chatto and Windus, 1880); Thomas Chalmers, *Use and Abuse of Literary and Ecclesiastical Endowments* (Glasgow: W. Collins & Co., 1827); Adam Smith wrote against the use of endowments for youth education in Book V of *Wealth of Nations*.

[216] Sir Arthur Hobhouse, "A Lecture on the Characteristics of Charitable Foundations in England," delivered at Sion College 12 March 1868 (London: Longmans, Green, and Co., 1868), vi.

of the Charity Commission, which regulated British charities, observed that thousands of philanthropic trusts existed. These trusts, they feared, did not reflect an interest in charity but in the whims of their founders.[217]

In the United States, there were not thousands of trusts with the same capabilities as those in Britain. While American surplus wealth and civil society were growing rapidly in this period, the questions that policy makers faced were distinct. The legal apparatus creating American civil society was heavily influenced by British laws, but unlike Great Britain, there was no centralized body that oversaw the development of American philanthropy. The British created a permanent Charity Commission in 1853, and their philanthropic practices had developed under Elizabeth's 1601 Statute of Charitable Uses.[218] American laws regarding charity blended with the legal infrastructure of voluntary associations and all other types of corporate entities. States created laws governing the purpose and regulation of charities as corporate bodies, and that led to variation in the regulation and corporate privileges granted to charities.[219]

But this was no issue to Peabody. When he created his education fund, he used a deed of gift to transfer $1 million to his trustees. Charles Winthrop helped Peabody to draft the letter, and he selected trustees, as well.[220] Winthrop was a descendant of John Winthrop, and he trained in Daniel Webster's law office. He was a key public figure of the period. The letter, as they designed it, ensured that the PEF would maintain possession of the trust when Peabody died; it also described the purpose of the fund and instructions for its administration.[221] For example, after describing the purpose of the fund as southern education, Peabody wrote that he gave trustees "permission to use from the principal sum, within the next two years, an amount not exceeding forty per cent;" he named Winthrop chairman; and he indicated that the fund could be

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[217] Ibid.

[218] For a history of charitable laws in Great Britain see Jones, *History of the Law of Charity.*

[219] Bloch and Lamoreaux, "Voluntary Associations, Corporate Rights, and the State;" Levy, "On Altruism and the Origins of Nonprofit Philanthropy," 19-43.

[220] Parker, *George Peabody*, 161

[221] Letter from George Peabody to the first trustees of the Peabody Education Fund establishing the trust, February 7, 1867 in *Proceedings of the Trustees of the Peabody Education Fund, 1867-1914* vol. VI (Boston: Press of John Wilson and Son, 1875).

closed after thirty years if trustees deemed it appropriate. Peabody also designated that if the trust was dissolved, it should be distributed to educational institutions in the South.[222]

Although Peabody was not a trustee of the PEF, the specificity of this deed of gift provided him with a great deal of administrative power at the foundation while living and after his death. However, Peabody wrote that he left "the details and organization of the Trust" to the trustees. [223] In fact, the Peabody Education Fund's charter referenced the letter explicitly; its trustees were authorized "to hold, manage, invest, collect, control, administer, and dispose of the money and bonds given by the said George Peabody in the letters hereinbefore set forth."[224] This was important, because it seemingly lifted the shadow of the "dead hand" from Peabody's gift, but it also obligated trustees to consult his trust letter.

Most often, when philanthropists created a new institution, they named a group of trustees to manage their gifts. Those trustees would then apply for a corporate charter from a state legislature or the federal government to manage the trust as a body corporate. In this way, philanthropists were not managing the public distribution of their wealth directly; instead, a board of trustees used corporate entities to manage and distribute their fortunes. By designing the PEF and inviting government officials to serve as trustees, Peabody adroitly eschewed the issue of the dead hand. In Peabody's world, by leaving his funds in trust to a group of men who would create a corporate body to manage his gift was a resolution to some of these questions.

However, although they might have allayed fears regarding the dead hand, the corporate bodies that grew out of this benevolence became increasingly powerful. Part of what made the public-trust model so influential in this period was the corporate privileges contained in their charters. In the mid-to-late nineteenth century, if a foundation wanted to operate in perpetuity with an unlimited endowment, it needed a special charter. Although states were granting corporate charters to nonprofit corporations at an increased rate with the rise of general incorporation laws, restrictions on the number of years a nonprofit corporation could exist, the

[222] Ibid., 3-6.

[223] Ibid.

[224] An Act to Incorporate the Trustees of the Peabody Education Fund, in *Proceedings of the Trustees*, 26.

amount of funds it could hold, and the specifications of its purpose required with general incorporation laws all combined to make special charters the norm for the largest public trusts.[225]

After Peabody distributed his trust letter, trustees also quickly created a committee to investigate forming a corporate body during their first meetings. They appointed Governor Hamilton Fish and William M. Evarts to procure an act of incorporation, and in about two months they had a special charter from the New York legislature.[226] Fish was a former governor and senator of New York and Evarts was a New York lawyer and statesman who would soon serve at the federal level, so their success is unsurprising.

In the charter process that PEF trustees went through in New York, you can see the way these developments in incorporation were being negotiated in terms of society's expectations (and limits) for wealth—and the ways people began to get comfortable with the public trust. With the first general incorporation laws in the nation, the availability of special charters, and PEF trustees' connections to public officials in the state, New York became the primary choice of the incorporators of foundations well into the twentieth century.[227] When New York revised its Constitution in 1846 it crafted its general incorporation laws to be the most sweeping in the nation.[228] Historians have explained the shift towards general incorporation in New York and other states as the result of popular discontent with the "special privileges" and "corruption" associated with special legislation.[229] There were no debates at the convention regarding

[225] In "Voluntary Associations, Corporate Rights, and the State," Bloch and Lamoreaux write that "ceilings on income and property remained the only common constraints on the rights of incorporated voluntary associations, and by the end of the nineteenth century some states had eliminated even those, 53. However, legal memos by foundation trustees and their legal advisers suggest that there were more limitations for public trusts that pushed them to apply for special charters even in the early twentieth century. See, for example, Geo. Welwood Murray to John D. Rockefeller Jr., Apr. 7, 1899, Folder 147, Box 15, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[226] See *Proceedings of the Trustees* from March 20-21, 1867, 15-17.

[227] Ronald E. Seavoy, "Laws to Encourage Manufacturing: New York Policy and the 1811 General Incorporation Statute," *The Business History Review*, 46 no. 1 (Spring, 1972).

[228] Bloch and Lamoreaux, "Voluntary Associations, Corporate Rights, and the State ," 40-41. Stanley N. Katz, Barry Sullivan, and C. Paul Beach, "Legal Change and Legal Autonomy: Charitable Trusts in NY, 1777-1893," *Law and History Review* 3 (Spring 1985): 51-89.

[229] Katz, Sullivan, and Beach, "Legal Change and Legal Autonomy."

concerns about the size and power of nonprofit corporations; however, New York would include charitable corporations amongst its general incorporation statutes.[230] In particular, the act of April 12, 1848, allowed individuals to incorporate for “benevolent, charitable, scientific, or missionary purposes” by securing permission from a Supreme Court Justice and then filing a certificate with the Secretary of State. However, these corporations were limited to holding real estate up to $50,000 and personalty up to $75,000.[231] Such property limitations would not have worked for the Peabody Education Fund, but the convention had provided for corporations to be created by special act “in cases where in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws…”[232] This loophole left room for the creation of enormous public trusts like Peabody’s. And more significantly, it set a precedent for the special chartering of public trusts in New York. While some entities would obtain federal charters, the majority would obtain special charters from New York. These entities included, for example, the Russell Sage Foundation, the Carnegie Corporation of New York, and the Rockefeller Foundation.[233]

When attorneys advised the creators of the nation’s first foundations, though, they had a choice: apply to Congress or a state legislature for a special charter. At the moment that Peabody established his fund, in fact, the federal government was issuing a number of federal charters to Reconstruction-Era institutions. Had Peabody left his trust to the United States of America at his death like Smithson, perhaps Congress would have used the funds to supplement funding to federally-created government agencies and corporations, such as the Freedmen’s Bureau. Or it is not hard to imagine Congress giving all or part of the funds to Howard University, which received a federal charter in 1867 or the Colored Union Benevolent Association, which received a federal charter in 1865. While it would have been an expansion of either institution’s purpose to manage Peabody’s bequest, it is not hard to envision one or both entities establishing normal schools for the education of black teachers or even of creating a plan for developing education

[230] Ibid.

[231] New York Session Laws, 1848, 71st Legislature, Chap. 319, 447- 449.

[232] New York, Constitution of 1846, Article 8, Section 1.

[233] Chambers, *Charters of Philanthropies,* 8-9.

for African American children in the South. None of that happened, of course. But, the federal government continued to issue federal charters for both District corporations and national institutions in this period.

Despite the rise of federal charters granted to benevolent works, along with federal approbation of his gift, the PEF obtained a special charter from NY. After Peabody established his trust, Congress gave him a gold medal in honor of his benevolence, and President Andrew Johnson visited Peabody at the Willard Hotel after the first meeting of the trustees to thank him in person. Allegedly Johnson welcomed the gift and hoped it would reunite the country.[234] These actions of federal approbation suggest that Peabody might have been able to get a federal charter, but would he have wanted one? Peabody's belief in reunion and the politics of federalism during Reconstruction would have made the federal charter undesirable to him. The PEF's New York charter distinguished it from abolitionism and federally-funded Reconstruction-era reform and development agencies. With a state charter, the PEF chose to form alliances with southern state and county officials at the local level, and it could avoid questions about economic and racial justice. In fact, abolitionist William Lloyd Garrison chastised Peabody for his choice. He publicly ridiculed Peabody for esteeming the heroism of the Southern people, evidenced by his willingness to work with and through southern elites and institutions.[235] One critic of Peabody's philanthropies even published an anonymous letter in newspapers accusing Peabody of profiting off the Civil War. He never made contributions to the Sanitary Commission, and he gave money to the poor of London while he failed to support the Union army, the writer alleged.[236] In the end, these accusations had little impact on Peabody's gift and its perception by public officials, but by eschewing federal regulation in this case, Peabody had indeed made a choice to distinguish his benevolent work in the south as offering reunion rather than reform. However, officials did not immediately find that suspect—Peabody was operating in more universalist terms, much like Smithson, in his repeated claims to desire the advancement of the nation.

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[234] Parker, *George Peabody*, 164.

[235] Franklin Parker, "Robert E. Lee, George Peabody, and Sectional Reunion," *Peabody Journal of Education*, 78 no. 1 (2003), 91-97.

[236] Ibid., 159.

To undertake that vision, Peabody and Winthrop included almost an equal balance of board members from southern and northern states. Around the March 1867 meeting of the trustees, Winthrop who had been named Chairman, asked southern trustees for their opinion on how the fund should be spent.[237] Some advocated for the funds to be spent for feeding and clothing southerners, while others advocated that the funds benefit the children of the formerly wealthy in the South. These suggestions did not satisfy Winthrop, so he reached out to Barnas Sears for his opinion. Sears had worked to establish public education in Massachusetts as part of the Massachusetts State Board of Education, and he firmly believed that developing a system of public education required popular, local support. Legislation should follow public sentiment rather than the reverse, he argued. So rather than advocating that the PEF establish schools for the poor in the south, he recommended that the fund assist southern leaders and organizations in their crusade for publicly supported education institutions in the south.[238] The board approved of his vision, and Sears would serve as the fund's field agent from 1867-1880.

The Limits of the Public Trust in Pursuing the Public Good

After creating the PEF, Peabody received a gold medal from Congress. The medal showed his profile with a statuette of Benevolence crowning him with a laurel wreath, as well as palmetto trees with black and white children playing under their shade.[239] In Peabody's letter creating the trust, he had characteristically described his gift as a "duty and a privilege." In addition to specifying that the fund should be used for education in "destitute portions of the Southern states," though, Peabody indicated that the funds should be "distributed among the entire population, without other distinction than their needs and the opportunities of usefulness to them."[240] When Congress gave Peabody the gold medal thanking him for his "great and peculiar

[237] Earl H. West, "The Peabody Education Fund and Negro Education, 1867-1880," *History of Education Quarterly* 6 no. 2 (Summer, 1966).

[238] Ibid.

[239] Chapple, *George Peabody*, 20.

[240] Trust letter, *Proceedings of the Trustees*, 3.

beneficence," they noted his intention that the funds should be "distributed among the entire population without any distinction…"[241]

However, the Peabody Education Fund would fail to make black education a priority in its work. Worse than that, it would hurt the cause of black education in three important ways. First, as W.E.B. Du Bois described in *Black Reconstruction in America,* the Peabody Education Fund lobbied for the elimination of a clause prohibiting separate schools in the original draft of the 1875 Civil Rights Bill.[242] In addition, Barnas Sears attempted to bully Louisiana officials into eliminating the state's prohibition of racial separation in education.[243] Finally, the fund had an abysmal record in contributing to African American education. Under Sears' leadership, trustees distributed about $1.2 million, and of that sum, about 6.5 percent or $75,750 went to schools specifically serving African Americans.[244]

Of course, the body of people that the term public encompasses can be highly expansive and extremely exclusive. As we have seen, the vision of civilization that the Smithsonian Institution and the Peabody Education Fund worked to develop was certainly targeted towards advancing white European civilization. And, in line with that developmental vision, the racial politics of many northern philanthropists interested in black southern education in this period saw black education as a means of advancing the interests of the nation at the expense of material and social justice for formerly enslaved African Americans. In other words, northern reformers articulated a southern "negro problem" as a question that threatened the development of civilization. In a speech made in front of the Alabama legislature in 1899 praising their funding of public education, the then agent of the PEF Jabez Lamar Monroe Curry, emphasized that Americans were "bound, hand and foot, to the lowest stratum of society;" and that lowest

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[241] "A Resolution Presenting the Thanks for Congress to George Peabody," March 16, 1867, reprinted in *Proceedings of the trustees*.

[242] W. E. B. Du Bois, *Black Reconstruction in America, 1860-1880* (New York: The Free Press, 1998), 663.

[243] William P. Vaughn, "Partners in Segregation: Barnas Sears and the Peabody Fund," *Civil War History* 10 no. 3 (1964).

[244] Earle H. West, "The Peabody Education Fund and Negro Education, 1867-1880," *History of Education Quarterly*, 6 no. 2 (1966), 4.

stratum, according to Curry, African Americans without property, were threatening to drag down the “white race” and its “free institutions.” The most benevolent act—to benefit the entire nation, then, was strengthening free public education for black southerners.[245]

While public officials served on the boards of public trusts and worked with public trusts to implement public education, that fact hardly guaranteed that they would pursue just social causes or even that the public officials selected would hold antiracist, reformist politics. This is not to say that the entirety of the PEF’s work had pernicious consequences. Du Bois also stated that the PEF helped to establish the public school system in the South.[246] Over time, the PEF did redouble its efforts to establish public education in the South by working with local schools at the county level to foment support for tax-payer supported education; it established the Peabody Normal College to produce more teachers for southern schools; and it advanced efforts to provide curriculum for the preparation of teachers.[247] To undertake those works the PEF would pay the salaries of supervisors, staff, and support associations that were often formally elected and managed by state boards of education.[248] Given their board structure, too, the PEF had access to public officials and community leaders in the South who could aid in their campaign to foment support for tax-supported education.[249]

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[245] “Address of Dr. Curry to the Legislature of Alabama, Feb 1, 1889, Peabody Education Fund Collection, Box 1 Folder 23, Vanderbilt University Special Collections and University Archives. This kind of rhetoric can also be found in the work of other northern funds for southern education, see for example, Jackson Davis, *The Jeanes Visiting Teachers* (New York: Carnegie Corporation of New York, 1935). In his trust letter to endow a foundation dedicated to African American education, John F. Slater expressed the idea that making African Americans “good citizens” would benefit the country. See, “Letter of the Founder,” March 4, 1882 , in John E. Fisher, *The John F. Slater Fund: A Nineteenth Century Affirmative Action for Negro Education* (Lanham: University Press of America, 1986), 148-150.

[246] Du Bois, *Black Reconstruction in America*, 664.

[247] George A. Dillingham, *The Foundation of the Peabody Tradition* (Lanham: University Press of America, 1989).

[248] The PEF’s general agents submitted quarterly reports to board members. Their contents describe the myriad ways that the PEF worked directly with public officials and entities. For example, see “Report of the General Agent to the Trustees of the Peabody Education Fund,” Peabody Education Fund Collection, Box 9 Folder 10, Vanderbilt University Special Collections and University Archives. Also see the 1908 Report of the General Agent in Wickliffe Rose,” Box 10 Folder 8.

[249] See Barnas Sears’ first reports included in *Proceedings of the Trustees of the Peabody Education Fund, 1867-1914*, vol. 1, especially 38-57.

The Peabody Education Fund was the first of a number of foundations dedicated to education that formed in the late-nineteenth century. All of the other similar funds received special charters and used the PEF as a model. The John F. Slater Fund incorporated in 1882 with a $1 million endowment to uplift "the lately emancipated population of the Southern states…by conferring on them the blessings of Christian education."[250] The Rockefellers endowed the General Education board with $10 million in 1903 to promote education in the United States "without distinction of race, sex, or creed."[251] And Anna T. Jeanes left $1 million to Booker T. Washington and Hollis Burke Frissell to endow the Negro Rural School Fund (also known as the Anna T. Jeanes Foundation) in 1907.[252] However, attributing the Peabody Education Fund, or any of the northern funds for southern education, with the successful development of black education after 1867 would be facetious.[253] Historians of education have written about these funds' influence on education in detail;[254] rightly, many historians have emphasized the limited impact that they had on Southern education in comparison to grassroots charitable and educational endeavors funded by African American associations in the South.[255] Additionally,

[250] See, "Letter of the Founder," March 4, 1882 , reprinted in Fisher, *The John F. Slater Fund*, 148-150.

[251] An Act to Incorporate the General Education Board, Jan. 12, 1903, 57th Cong. Sess. II Chs. 90, 91.

[252] See Arthur D. Wright, *The Negro Rural School Fund, Inc., 1907-1933* (Washington, D.C.: The Negro Rural School Fund, Inc., 1933).

[253] Works on the history of black education and uplift in the south have emphasized the grassroots, community-based public work and charitable activities that black communities engaged in themselves. See, for example, James D. Anderson, *The Education of Blacks in the South, 1860-1935* (Chapel Hill: University of North Carolina Press, 1988); Leslie Brown, *Upbuilding Black Durham: Gender, Class, and Black Community Development in the Jim Crow South* (Chapel Hill: University of North Carolina Press, 2008); William H. Watkins, The White Architects of Black Education: Ideology and Power in America, 1865-1954 (New York: Teachers College Press, 2001); Eric Anderson and Alfred A. Moss Jr., *Dangerous Donations: Northern Philanthropy and Southern Black Education, 1902-1930* (Columbia: University of Missouri Press, 1999).

[254] Anderson, *The Education of Blacks in the South;* Carl F. Kaestle, *Pillars of the Republic: Common Schools and American Society, 1780-1860* (New York: Hill and Wang, 1983); David B. Tyack, *The One Best System: A History of American Urban Education* (Cambridge: Harvard University Press, 1974).

[255] African American communities developed their own schools and educational resources out of necessity. They could not count on obtaining a charter to create a corporate body. Historians Naomi Lamoreaux and Ruth Bloch have demonstrated southern legislatures "routinely denied free blacks and slaves the right to congregate" and discriminated against abolitionist groups. Bloch and Lamoreaux, 12

the missionary societies and the Freedman's Bureau played vital roles in the development of education resources during Reconstruction, too.[256]

The Peabody Education Fund would close by 1916, and leave a majority of its trust to fund the Teachers College at Vanderbilt.[257] By the early twentieth century, Wickliffe Rose the general agent of the Peabody Education Fund no longer believed that private benevolence offered the best path in developing public education. Schools should be "paid for by the people" through taxation and "administered as a public business," he argued.[258] Citizens had enough individual surplus wealth to pay taxes, and so the "public business" of education was to be carried out by southern states themselves. By supporting small, private schools across the south, northern benefactors were actually hurting the development of an effective education system in the south, he believed. However, because Peabody had planned for the closing of the fund in his trust letter, trustees had a method and rationale for its closing at their fingertips. In the end, Peabody's trust letter had created a remarkably flexible design that allowed trustees to put the funds to better use in the early twentieth century than they might have been had the PEF continued its operations. In one important respect at least, Peabody's vision for combatting the dead hand had worked.

Just as this triumph for state capacity crested, though, an even wealthier group of philanthropists demonstrated their ability and their intention to outspend state and federal governments on social welfare initiatives. As the next chapter will show, Andrew Carnegie famously built public libraries, John D. Rockefeller funded medical research to stanch the spread of communicable diseases that haunted American communities, and Olivia Slocum Sage would fund social science research into some of the nation's greatest problems. The balance of private and public funding of public works was constantly shifting, and never in the same direction. But

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[256] Anderson, *The Education of Blacks in the South;* Kaestle, *Pillars of the Republic*; Tyack, *The One Best System.*

[257] The closing of the PEF involved legal questions about how to terminate a public trust. The Peabody Education Fund Collection at Vanderbilt University tells that story in legal correspondence and internal memoranda.

[258] Wickliffe Rose, "Outline Report of the General Agent to the Trustees of the Peabody Education Fund," 1908. Peabody Education Fund Collection, Box 10 Folder 8, Vanderbilt University Special Collections and University Archives.

as we will see, those later founders were not quite as aggressive in limiting the dead hand. They were more interested in building powerful institutions.

The Private Foundation as Public Trust

Despite the qualities that make the PEF a public trust, the Peabody Education Fund has been consistently described by American historians as its opposite: as the first in a long line of privately endowed philanthropic foundations in America.[259] Peabody's decision to use his fortune to endow the PEF during his lifetime has imbued it with the honor (and the weight) of having inspired future wealthy Americans, such as Rockefeller and Carnegie, to follow his example and to actively shape the philanthropic foundations they created during their own lifetimes. The Peabody Education Fund has been cast as the beginning of private philanthropy. However, just as it is a mistake to conceive of the Smithsonian as a creature of the federal government, it is equally unwise to imagine that the PEF was a wholly private institution.[260] It is best understood as a public trust.

By analyzing the PEF as a public trust like the Smithsonian Institution, this chapter has shown how the contours of American philanthropy and the creation of the nonprofit sector shift in American history when we see the duality of the public and the private. Rather than labeling philanthropy as "private" or autonomous from government activity, through the Peabody Education Fund and the development of the public trust, national benevolence becomes part of how American governance strategy developed in the nineteenth century—and it was, in fact, a way that private money began to have a say in the complex modes of governance of the nineteenth century. The public trust makes clear how wealthy philanthropists could participate in the governing process and build networks with public officials through their philanthropy and

[259] Hammack and Anheier, *A Versatile American Institution,* especially chapter one "Foundations in the United States;" Zunz, *Philanthropy in America*, 10.

[260] Barry Karl and Stanley N. Katz David provide a longer history of the trusts and other types of institutions that preceded the nation's first foundations in "The American Private Philanthropic Foundation and the Public Sphere. Hammack and Anheier critically examine this emphasis on foundations in the history of American philanthropy, including the Peabody Education Fund's role as a symbol of "private power" in *A Versatile American Institution*, 1.

growing capital. The prestige and influence a philanthropist would gain through pursuing philanthropy while living was (and remains) unparalleled.

All of this complex negotiation of the boundaries of private and public money, private and public purpose, and the nation-building capacity (and ownership) of surplus wealth is clear in George Peabody's philanthropy. He used a corporate body to expand the power of his wealth beyond his lifetime, and as he did so, he and his advisers adapted the public trust model to American foundations. To do this, he and his advisers developed new legal and financial technologies that offered a collective vision for the public purpose of private wealth in American society. Equally important to that vision, though, was the New York legislature who granted the fund its charter. The legal and financial history of the public trust reveals that Americans were making decisions about how to coordinate private and public spending.

This would not last, though; the negotiated outcome that created the public trust model would falter. In the Progressive Era, the growth of American fortunes and the rise of antimonopoly politics would change the balance of power that allowed the public trust model to operate. As wealth had more power in society, citizens grew increasingly suspicious of philanthropic activity. And with corporate power featuring heavily in public debates about monopoly capitalism, the corporate bodies that made public trusts function were regarded as suspect. Under these new conditions, the relationship between governance and benevolence would transform. The next chapter will address what happened to the public trust model in the Gilded Age.

CHAPTER THREE

A New Species of Corporation:
The Public Trust's Evolution in the Gilded Age

Gilded-Age commercial development produced more American surplus wealth than ever before with much of it heavily concentrated amongst the nation's richest citizens.[261] By 1910, the top ten percent of American wealth holders owned about eighty percent of the nation's total wealth.[262] Further, the expansion of railroads and corporate consolidation beginning in the 1880s that ended with the great merger movement at the turn of the century famously transformed industrial capitalism and knitted together an increasingly national marketplace.[263] As these seismic shifts fueled technological development, immigration and urbanization, they also produced popular questioning of the desired role of large corporations in American

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[261] Thomas Piketty, *Capital in the Twenty-First Century*, trans. Arthur Goldhammer (Cambridge: Harvard University Press, 2014), 347. For a discussion of the growing power of the rich in this period see, Zunz, *Philanthropy in America*, especially chapter one.

[262] Piketty, *Capital in the Twenty-First Century*, 348.

[263] In his path breaking work, Robert Wiebe described the twilight of America as "a society of island communities" in the 1870s, as small producers and farmers encountered the combined forces of industrialization, urbanization, and immigration. Robert H. Wiebe, *The Search for Order, 1877-1920* (New York: Hill and Wang, 1967), xiii. Historians have also examined the rise of industrial capitalism and the corporate form in the late nineteenth century in terms of its commercial, social, and cultural influence and upheaval. Classic texts include, Lamoreaux, *The Great Merger Movement*; Trachtenberg, *The Incorporation of America*; and of course, Alfred D. Chandler Jr., *The Visible Hand: The Managerial Revolution in American Business* (Cambridge: Belknap Press, 1977).

democracy.[264] While some saw surplus wealth accumulated by large corporate bodies as the driving force behind the advancement of civilization, to others it was the road to a new American despotism with men like John D. Rockefeller and Andrew Carnegie presiding over Standard Oil and U.S. Steel.[265]

The concentration and skewed distribution of resources famously put surplus wealth at the center of many Progressive-Era debates about the state of American political economy and laissez-faire capitalism. Business people, government officials, political economists and social reformers all debated and negotiated the role that surplus wealth should play in economic and social development, as well as the role that state and federal governments should play in its management and distribution.[266] These policy debates regarding surplus wealth and the corporate form would take place popularly and at the highest levels of government.

For the wealthy, the promises of the public trust and the grand potential of their wealth would be a bright point of the times. In 1889, Andrew Carnegie wrote that the problem of the age was "the proper administration of wealth, so that the ties of brotherhood [might] still bind together the rich and poor in harmonious relationship."[267] For Carnegie, the increasing distinction of wealth and poverty itself was a sign of the development of civilization—a necessary condition that fueled social and economic progress.[268] According to John D.

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[264] Historians have offered nuanced understandings of how Populists and other American reformers responded to commercial development and articulated its relationship to progress. See Charles Postel, *The Populist Vision* (New York: Oxford University Press, 2007). Also, see Olivier Zunz on how the growth and increase of corporations "aroused anew a characteristic American anxiety: the fear that dubious ethical standards, excessive profits, and rising inequality were threatening national values," in *Making America Corporate*, 1. By the 1890s, with the great merger movement and the birth of a new antimonopoly politics centered on bigness, Americans indicted corporations as soulless. See, Marchand, *Creating the Corporate Soul*, 7.

[265] Andrew Carnegie adapted the work of Herbert Spencer on social Darwinism to emphasize the role that great wealth holders played in the moral and material progress of the nation. For more on his numerous books, essays and articles on this topic, as well as examples of how other industrialists adopted his views and others contested them, see David Nasaw, *Andrew Carnegie* (New York: Penguin Books, 2006), especially chapter twelve. See also Andrew Carnegie, *Autobiography of Andrew Carnegie* (Boston: Houghton, 1920).

[266] See Roseanne Currarino, *The Labor Question in America: Economic Democracy in the Gilded Age* (Champaign: University of Illinois Press, 2011); Postel, *The Populist Vision*.

[267] Carnegie, "Wealth," 42.

[268] Such were the developmental politics of the period—Herbert Spencer had famously adapted Darwin's work on evolution to human society, and Carnegie became an eager disciple of his worldview. He seized on the idea that

Rockefeller Sr. and his closest advisers, the corporation was the medium "right at hand" for the wealthy to undertake careful gifts. In fact, using the corporate form for philanthropic grants was essential to prevent "giving unwisely" and to make "careful investigations," they argued.[269]

But after multiple recessions, seemingly originating with the rich, and social movements led by small producers and wage-laborers, tying the rich and the poor in brotherhood did not seem all that likely. In any case, this question of tying rich and poor together was not destined to be solely answered through the better administration of surplus wealth by the rich themselves. The volatility of the business cycle, as well as labor strikes and Populist movements were putting new pressure on wealth to validate its increased role in American democracy.[270] At the federal level, in 1890 and at the height of the Gilded Age, Congress passed the Sherman Antitrust Act, which promised the federal prosecution of the unlawful restriction of trade and was directed at the holders of the nation's surplus wealth. Legal disputes about the meaning and desired application of the Sherman Antitrust Act dominated the courts through the early twentieth century. And as the judiciary debated the desired role of trusts in American capitalism, books and novels popularized the legal disputes. In fact, historians of Populism in the Gilded Age have emphasized the level with which alternative visions of progress and political economy saturated Americans from all classes and regions.[271] Henry Demarest Lloyd described the threatening "bigness" of monopoly corporations that controlled the average American's access to the necessities of life in *Wealth against Commonwealth*.[272] Henry George's widely-read *Progress*

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progress involved both moral and material advancement, and that the most fit would rise to the top of society while the less fit would struggle to survive. For more on Carnegie's relationship with Spencer and his ideas, See Nasaw, *Andrew Carnegie*. For more on how both Rockefeller and Carnegie interacted with Herbert Spencer and his philosophy see, Richard Hofstadter, *Social Darwinism in American Thought* (Boston: Beacon Press, 1964), 44-50. Herbert Spencer was famously prolific. For his writings on charity, see *The Principles of Ethics*, vols. I and II (New York: D. Appleton and Co., 1912), especially vol. II parts V and VI regarding positive and negative beneficence.

[269] *Incorporation of Rockefeller Foundation, Hearing on S. 6888, Before Comm. on the District of Columbia*, 61st Cong., (1910) (Statement of Starr J. Murphy), 8.

[270] See Currarino, *The Labor Question in America;* Postel, *The Populist Vision*.

[271] Postel, *The Populist Vision*; John Thomas, *Alternative America* (Cambridge: Belknap Press, 1983); Steve Weinberg, *Taking on the Trusts* (New York: W.W. Norton, 2008).

[272] Henry Demarest Lloyd, *Wealth against Commonwealth* (New York: Harper & Brothers, 1894).

and Poverty explored how "social difficulties" were "engendered by progress itself."[273] And Edward Bellamy's popular novel *Looking Backward: 2000-1887* shared a vision of the ultimate destination of monopoly capitalism as a socialist utopia where one corporate syndicate operated in the interest of "common profit" rather than personal enrichment.[274]

Under these conditions, Americans wanted to know more about how many millionaires the country had produced and what those millionaires were doing with their wealth. Further, additional policy debates about the protective tariff and the federal income tax made information about the number of great fortunes in the nation, as well as how they were made, matters of even greater curiosity.[275] Political economists and social reformers published numerous books and articles on great American fortunes and the distribution of wealth through the early twentieth century.[276] Two newspapers even attempted to provide complete lists of the millionaires in the country. The *New York Tribune's* financial editor reported that there were 4,047 millionaires in the United States in 1892, and in 1902 the *New York World* claimed that there were 3,561 millionaires.[277]

Martin Sklar called the debates Americans were having about monopolies, trusts, combinations and competition, essentially, preoccupations with the "corporate question." For policy makers, Sklar explained, these debates were less about zero-sum choices between monopoly and competition, as well as laissez faire and regulation; rather they were rooted in determining the respective regulatory roles that large corporations and the government should

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[273] Henry George, *Progress and Poverty: An Inquiry into the Cause of Industrial Depressions and the Increase of Want with Increase of Wealth*, Twenty-fifth Anniversary Edition (Garden City: Doubleday, Page & Co., 1923), 8.

[274] Edward Bellamy, *Looking Backward: 2000-1887* (New York: Dover Publications, Inc., 1996), 27.

[275]In his introduction to *New Light on the History of Great American Fortunes: American Millionaires of 1892 and 1902,* Sidney Ratner discusses other lists of local fortunes that Americans drafted in the mid-nineteenth century, as well as their motivations for doing so. Sidney Ratner, *New Light on the History of Great American Fortunes: American Millionaires of 1892 and 1902* (New York: August M. Kelley Inc., 1953).

[276] For many examples, see Ratner, *New Light on the History of Great American Fortunes*.

[277] Both lists are included in full in Ratner's *New Light on the History of Great American Fortunes.* For more on these lists and their authors' methods, see Merle Curti, Judith Green and Roderick Nash, "Anatomy of Giving: Millionaires in the Late 19th Century, *American Quarterly* 15 no. 3 (1963), 418-419.

play in managing the market.[278] Of course, government subsidy and regulation of corporate bodies were controversial long before the late nineteenth century. Charters to banks and public works, for example, produced national debates about government subsidy and regulation much earlier.[279] And the creation of both the Smithsonian and the Peabody Education Fund have demonstrated the central role that special charters played in the controversial development of national philanthropy through the legal creation of the public trust. But the Gilded Age debates made corporations the eye of the storm.

Large corporations were so controversial, because in addition to swallowing up or squeezing out small producers, they were known to acquire unfair advantages. Historians have used railroads as the prime example of this trend; first celebrated as the epitome of progress, they were eventually widely regarded as the epitome of corruption.[280] Richard White's work on the history of transcontinental railroads emphasizes the manner in which these commercial developments were entwined with government subsidy. Like public trusts that required government support to flourish, transcontinental railroad corporations produced private wealth because their creators leveraged "large public subsidies and particular legal privileges."[281] Federal and state governments created the conditions for railroad entrepreneurs to flourish in the name of the "public good," but the particular kind of good they produced regularly resulted in personal enrichment and government receivership.[282]

Given the public trust's existence as a special, wealth-driven mode of governance in the nineteenth century, it is of little surprise that it would change in this cultural environment, when great fortunes and the corporate form were so suspect. And it is precisely at this moment that historians have located the birth of the modern philanthropic foundation, with its grant-making

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[278] Sklar, *The Corporate Reconstruction of American Capitalism*, 179-184.

[279] Lamoreaux and Novak, *Corporations and American Democracy*, see introduction.

[280] See White, *Railroaded*, xxvi; Postel, *The Populist Vision*, 11; Kammen, *The Mystic Chords of Memory: The Transformation of Tradition in American Culture* (New York: First Vintage Books Edition, 1993), 48.

[281] White, *Railroaded*, xxvi.

[282] See also Gerald Berk, *Alternative Tracks: The Constitution of American Industrial Order, 1865-1917* (Baltimore: Johns Hopkins University Press, 1994).

approach to advancing civilization.[283] A small number of the richest of the rich included in the lists of millionaires followed Peabody's example, creating living trusts; these rich also began to create more and more corporations that would have many of the characteristics of the earlier public trusts. But the millionaires began to deviate from some of the traditional practices of public trusts too. For example, experts began to replace government officials on boards of trustees and foundations began to operate with broader purposes—not just one particular purpose. And government state and federal legislators tasked with granting these trusts special charters to form corporate bodies increasingly flinched at the idea that they were not only validating the business practices of the nation's most controversial monopolies, but also that they were sanctioning the governing role that foundations played in society. As earlier debates about the public trust already revealed, such conferrals of power in the chartering process to pursue public works not only allowed philanthropists to perpetuate their names, they allowed the superrich who created living trusts to influence social and economic policy; these were special modes of governance. But as the corporate form and the government's role in the chartering process took on heightened significance, the public trust model that had facilitated the creation of enormous foundations was forced to adapt.

In this chapter, I explore this development away from the traditional public trust to something recognizably new--and how the nation's largest holders of surplus wealth negotiated this development at the height of Gilded-Age debates about the corporate form, the accumulation of wealth, and its distribution. In particular, I focus on the efforts of John D. Rockefeller Sr., Andrew Carnegie, and Olivia Slocum Sage, who all faced social and legal challenges as they endowed major funds in this period. By analyzing how they and their legal advisers designed their trusts, as well as how legislatures regulated the corporate bodies they created, I argue that increasing pressure from philanthropists and public officials to separate their public works from their business operations and from the government led to the rise of a new species of corporation more akin to the private foundations we know today--and something fairly unlike the old public trust model popular in the mid nineteenth century. I also show that nonprofit corporations were at

[283] See, for example, Hall, *Inventing the Nonprofit Sector* and "A Historical Overview of Philanthropy, Voluntary Associations, and Nonprofit Organizations in the United States, 1600-2000;" Karl and Katz, "Foundations and Ruling Class Elites," and "The American Private Philanthropic Foundation and the Public Sphere 1890-1930."

the center of debates about the corporate form in this period. Historians have paid far greater attention to the ways in which privileged access to capital and incorporation shaped the evolution of the business corporation, but nonprofit corporations were the true eye of the storm as they united concerns about material and social development that commercial corporations could only gesture at bringing together.

Philanthropists Proclaim a New Species of Corporation (The Future, Partially Realized)

In the early-twentieth century, the nation's largest benefactors offered an answer to the corporate question in their own way, by giving surplus wealth a supposed permanent, mollifying role in society. Trustees at the Russell Sage Foundation, the Carnegie Foundation for the Advancement of Teaching, and the Rockefeller Foundation each published announcements in newspapers and professional journals describing the creation of philanthropic foundations—a "new species of corporation" in the words of Cornell President and Carnegie Trustee Jacob Gould Schurman.[284] Their foundations could exist in perpetuity, hold unlimited endowments, maintain self-perpetuating boards, and their charters were "elastic" so they could change the focus of their grants at any time.[285] With these unprecedented corporate privileges, the nation's rapidly increasing surplus wealth would be held in absolute ownership by new, permanent artificial individuals.[286] And while the purpose of the business corporation was to return profits to

[284] Jacob Gould Schurman who coined the term "new species of corporation" was the President of Cornell and a trustee for the Carnegie Foundation for the Advancement of Teaching. Jacob Gould Schurman, "The Rockefeller Foundation Bill," April 22, 1910, Folder 245, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center. Leonard Ayres who published on the "seven great foundations" was the head of the Russell Sage Foundation's Education Department. See, Ayres, "The Seven Great Foundations." And Frederick T. Gates and Starr Murphy, both Rockefeller Foundation trustees, led efforts there to convince the press that foundations offered the nation new efficiencies in organizing the nation's social relations. See for example, Frederick T. Gates, "Corporate Privileges," Folder 17, Box 1, Frederick T. Gates Papers, Rockefeller Archive Center. And *Incorporation of Rockefeller Foundation, Hearing on S. 6888, Before Comm. on the District of Columbia*, 61st Cong., (1910) (Statement of Starr J. Murphy).

[285] For a detailed discussion of the corporate privileges unique to foundations, see Leonard Ayres, "The Seven Great Foundations," *The Journal of Education* 72 No. 8 (1910).

[286] In a series of undated memos, John D. Rockefeller's personal adviser Frederick T. Gates described how corporate privileges, such as limited liability or the protection of personal assets, "immortality" permitting corporations to exist forever, permission to amass unlimited capital, and the easy change of ownership with stocks all combined to remove "natural limitations" on business. Frederick T. Gates, "Corporate Privileges," Folder 17, Box 1, Frederick T. Gates Papers, Rockefeller Archive Center.

shareholders, this new vision for the nonprofit corporation articulated the purpose of its unique existence as extending the benefits of corporations to social management and the development of civilization.

This was something new entirely, promising something different than the public trusts of the past century that had envisioned working closely with and through public officials. The nation's surplus wealth was no longer to be managed through living public trusts that would be closely affiliated with government-sanctioned public works. Rather, it was to become its own source of power—with its own form of governance—a sort-of spin off, private mode of governance.

The greatest of this new species can be found in an article entitled "Five Great Gifts," published in 1907, by Daniel C. Gilman, former President of Johns Hopkins University and the then President of the Carnegie Institute of Washington, in *Outlook*. He argued that recent benevolent gifts from George Peabody, John Slater, John D. Rockefeller, Andrew Carnegie, and Olivia Slocum Sage, when taken together, revealed "a new force in civilization." And that force, Gilman argued, was likely "to have still further development."[287] Gilman chose to write this in one of the nation's most widely read news magazines "to arrest attention" to the "influence of good examples," he wrote.[288] Already men and women had followed in these benefactors' footsteps, he noted, and he hoped more gifts would promote national development in the future. Then in 1911, Leonard Ayres, head of the Russell Sage Foundation's Education Department joined Gilman's cause, and he declared that a new corporate form had been created. In his words, Ayres described what we now call philanthropic foundations as "national benefactions that [were] in a class by themselves."[289] This "class" was distinguished by four criteria, he explained: they had endowments greater than one million dollars; they were explicitly nonsectarian; they should be national or global in focus; and their charters should be elastic enough to permit the

[287] Daniel Gilman, "Five Great Gifts," *The Outlook* 86 No. 13 (1907): 648.

[288] Ibid., 657.

[289] Ayres, "The Seven Great Foundations," 11-12. For more information on Ayres and his study see David Hammack, introduction to *Seven Great Foundations* (Cambridge: Hauser Center for Nonprofit Organizations, 2007).

organizations to adapt their missions with changing future conditions. [290] In making his case, Ayers produced a list of "seven great foundations" that allegedly had these qualities, including his own employer, the Sage Foundation, and analogous organizations, such as the Peabody Education Fund, the General Education Board, and the Carnegie Institution of Washington.

Ayres' "Seven Great Foundations"[291]

Foundation	Date Chartered	Charter Type	Mission	Endowment (Millions)
Peabody Education Fund	1867	New York	Education	$2
Slater Fund	1882	New York	Education	$1
Carnegie Institution of Washington	1902	D.C. to Federal	Research	$22
General Education Board	1903	Federal	Education	$53
Carnegie Foundation for the Advancement of Teaching	1906	Federal	Teacher Pensions	$15
Russell Sage Foundation	1907	New York	General	$10
Anna T. Jeanes Foundation	1908	New York	Education	$1

As leaders in philanthropy proclaimed the newness of the foundation model in these triumphant terms, one could easily have missed the policy innovations and debates about philanthropic foundations that their legal establishment ignited—the corporate privileges that Ayres identified as unique to foundations were highly contentious, in fact.

Many of the charters of the foundations included in his list did not, however, hold all of the corporate privileges he included in his definition of a foundation. For example, all of the foundations in his list, except the Russell Sage Foundation, specified public purposes in their charters that were decidedly not "general." The longer history of the public trust shows that changes in the legal and social vision for foundations were not rooted in necessity, as many

[290] Ayres, "The Seven Great Foundations," 11-12.

[291] This table was created from Ayres, "The Seven Great Foundations," as well as the articles of incorporation for each of the foundations.

historians have claimed.[292] The superrich had been using special charters for decades to create large foundations. They were after something else—other than a corporate vehicle—with these new corporate privileges.

In fact, the longer history of these "new species" starts with the public trust and the experimentation that took place around the corporate form. Throughout this period, philanthropists and their advisers experimented with different types of corporations and privileges to undertake their public works in the early twentieth century. And those experiments would alter the practices and shape of the public trust. The nation's largest funds continued to receive special charters through the early twentieth century, so the administrative and legislative records regarding those experiments offer insights into how state and federal representatives imagined the role of public trusts in monopoly capitalism.

However, by experimenting and making their case for yet more privileges, they were dramatically altering the earlier legal and social role inhabited by the public trust. By 1911, though, foundation leaders were discussing the possibility that new economic legislation would "preclude the acquisition of surplus wealth" and prevent the giving of "large continuing gifts."[293] Philanthropists and their advisers were predicting that the state might prevent the accumulation of large fortunes, or at least, they would prevent their distribution through foundations. Public sentiment, foundation leaders thought, would lead government officials to increase taxation and give money away for public works itself.[294] While these fears certainly guided the superrich and their advisers as they designed their foundations, there was no clear path to the new species of corporation as their articles proclaimed. This is why understanding what leaders in philanthropy meant by new species of corporation and philanthropic foundation in this period is critical to advancing our history of the public trust at this moment. In the following sections, I focus on the

[292] See, for example, Hall, *Inventing the Nonprofit Sector*, 5; Karl and Katz, "Foundations and Ruling Class Elites," and "The American Private Philanthropic Foundation and the Public Sphere 1890-1930."

[293] George Foster Peabody to Frederick T. Gates, Nov. 5, 1911, Box 57, George Foster Peabody Papers, Manuscript Division, Library of Congress, Washington, D.C. See Hollis B. Frissell, Principal of the Hampton Normal and Agricultural Institute, express his belief that the government would limit large gifts in the future in his letter to George Foster Peabody, Nov. 10, 1911, Box 57, George Foster Peabody Papers, Manuscript Division, Library of Congress, Washington, D.C.

[294] George Foster Peabody to Frederick T. Gates, Nov. 5, 1911, Box 57, George Foster Peabody Papers, Manuscript Division, Library of Congress, Washington, D.C.

incorporation process of major early-twentieth century foundations. I focus on Carnegie, Rockefeller and Sage, because they combined elements of the public trust with the emerging private-foundation model.

Heaven Born: John D. Rockefeller's Corporate Bodies Required Special Privileges

Before creating his eponymous foundation in 1913, John D. Rockefeller created multiple nonprofit corporations in the late-nineteenth and early-twentieth centuries that heavily influenced the rise of private foundations as a "new species of corporation."[295] In 1890, Rockefeller gave one of his first notable gifts to the University of Chicago, and then in the early-twentieth century he and team of advisers developed numerous endowed institutions, including the Rockefeller Institute for Medical Research (1901), the General Education Board (1903), and the Rockefeller Sanitary Commission for the Eradication of Hookworm Disease (1909). Along the way, they used various types of corporations to undertake their work. At times, they described their foundations as "public trusts" rather than "private possessions," but for the most part, their vision of philanthropy centered on adapting the form of the private business corporation to manage their philanthropy. [296] As one of Rockefeller's advisers explained, his approach in philanthropy was the same as his approach to investing money in business: "[i]n a business enterprise he desires to get dividends upon his capital. In a philanthropic enterprise he desires to get dividends payable not in money but in the welfare of humanity."[297] Those dividends while payable to humanity were not necessarily the property of all of humanity. And that is a key distinction that would become more contentious over time. Nevertheless, the Rockefellers did not begin by imagining

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[295] Rockefeller's commitment to tithing and his many gifts to religious institutions have been well documented along with the development of his larger philanthropic institutions. For example: Ron Chernow, *Titan: The Life of John D. Rockefeller, Sr.* (New York: Random House, 1998); Allan Nevins, *Study in Power: John D. Rockefeller, Industrialist and Philanthropist* (New York: Charles Scribner's Sons, 1953); Raymond B. Fosdick, *The Story of The Rockefeller Foundation (*New York: Harper & Brothers, 1952); Frederick T. Gates, *Chapters in My Life* (New York: The Free Press, Macmillan Publishing Company, 1977); John D. Rockefeller, *Random Reminiscences of Men and Events* (New York: Doubleday, 1908).

[296] "The Genesis of the Investigation," 1915, Folder 150, Box 20, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

[297] *Incorporation of Rockefeller Foundation, Hearing on S. 6888, Before Comm. on the District of Columbia*, 61st Cong., (1910) (Statement of Starr J. Murphy), 8.

their work in philanthropy as a new species of corporation; they began with older, tested corporate vehicles.

For example, in 1901 when Rockefeller incorporated his institute for medical research dedicated to "the prevention and treatment of disease," he and his advisers did not obtain a special charter from the New York legislature like George Peabody had.[298] Rather, Rockefeller incorporated the institute as a New York membership corporation, and he stacked the board with medical doctors.[299] That decision caused administrative problems in the future though. To begin, Rockefeller had provided the institute with $200,000 to purchase real estate in New York and another $1 million, but by 1907 he wanted to endow the medical institute with a larger sum. His advisers could not figure out how to facilitate that under New York's membership corporation laws though, which limited the property a membership corporation could hold to $3 million. Additionally, trustees of a membership corporation would also need to act as directors. This was another problem with the membership corporation, because with an endowment, Rockefeller and his advisers envisioned a separate board of trustees who would manage the endowment, and a board of directors comprised of medical doctors who could direct the institution's research and programs.[300] Rockefeller and his advisers eventually decided that to achieve their vision for the institute, they would need a special charter. They would need some means of achieving the deployment of their wealth.

So in 1908, Rockefeller's attorney, who worked on both his business and philanthropic matters, Starr J. Murphy began meeting with the governor of New York Charles E. Hughes (a

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[298] Certificate of Incorporation of The Rockefeller Institute for Medical Research, Folder 407, Box 41, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[299] *The Rockefeller Institute for Medical Research: History, Organization, and Equipment* (New York: The Rockefeller Institute for Medical Research, 1914).

[300] Starr J. Murphy to John D. Rockefeller Jr., Feb. 13, 1907, Folder 410, Box 41, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center. In the same letter, Murphy described his discussion with Frederick Gates about the composition of their board of directors. Gates advocated for a self-perpetuating board of trustees. However, Murphy expressed an affinity for appointing representative individuals from major universities to provide geographical diversity and a wider array of interests on the board. Tethering the success of the institute to the nation's leading universities in the name of medical advancement appealed to Murphy. In the end, the self-perpetuating board structure won out for its practical benefits over the representative qualities of Murphy's vision.

family friend) and Senator Alfred Page to advocate for the special charter.[301] Murphy had graduated from Columbia Law School and practiced law in Montclair, New Jersey before joining the Rockefellers' personal staff in 1904.[302] The institute had already developed a serum that cured epidemic meningitis, Murphy explained, and to keep developing into the future, its trustees required a special act of the New York legislature to ensure its operations could continue in the future.[303] The legislature had granted a special charter to the Russell Sage Foundation the previous year, Murphy reminded the governor.[304] That spring, the bill to issue the institute a special charter passed without a hitch.

Rockefeller founded his next major institution in 1902. It was really his first major grant-making foundation that approached the type of the foundation eventually described as a "new species of corporation." This time, he and his advisers obtained a federal charter to endow the General Education Board[305] with $10 million to promote education in the United States "without distinction of race, sex, or creed."[306] The Rockefellers had been persuaded by the Peabody Education Fund and the Slater Fund that education was a field they wished to enter with their philanthropy. In 1899, Rockefeller and his son engaged New York lawyer Geo Welwood Murray to provide an overview of the legal documents they would need to establish an "educational fund

[301] Starr J. Murphy to Simon Flexner, Feb. 6, 1908; Starr J. Murphy to Senator Alfred R. Page, Feb. 6, 1908, Folder 410, Box 41, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[302] Starr J. Murphy met Frederick Gates who first employed him to complete research on a potential Rockefeller medical institute. Murphy took up Frederick Gates' role in advising the Rockefellers on their philanthropic activities as Gates moved towards retirement. John Ensor Harr and Peter Johnson, *The Rockefeller Century* (New York: Scribner, 1988), 61. "Starr J. Murphy Dies in Florida," *The New York Times*, April 5, 1921.

[303] Starr J. Murphy to Senator Alfred R. Page, Feb. 6, 1908, Folder 410, Box 41, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[304] Starr Murphy to Governor Charles E. Murphy, Apr. 23, 1908, Folder 410, Box 41, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[305] Histories of the General Education Board include: Raymond Fosdick, *Adventure in Giving: The Story of the General Education Board (*New York: Harper and Row, 1962); Joan Malczewski, "Weak State, Stronger Schools: Northern Philanthropy and Organizational Change in the Jim Crow South," *The Journal of Southern History* 75 no. 4 (November 2009).

[306] An Act to Incorporate the General Education Board, Jan. 12, 1903, 57th Cong. Sess. II Chs. 90, 91.

or trust."[307] Such a move, with the GEB and the Rockefeller Institute for Medical Research, suggests that far from a special charter being a foregone conclusion in creating foundations in this period, that the superrich were still uncertain and searching for the best manner to incorporate their philanthropies. Further, it suggests that while the public-trust model of American philanthropy had spread by the early twentieth century, it was not so instantiated as to have overdetermined the legal creation of foundations in the early twentieth century.

The surviving correspondence between the Rockefellers and their legal advisers reveals the considerations that they were entertaining as they incorporated their foundations at the turn of the century. Surprisingly, even after the creation of so many public trusts, in his memos, Murray went back to the basics. He described the Rockefellers' options to create the fund as a trust or as a corporation. They could use a deed to appoint trustees of their choosing and define the purpose of a trust, but New York statutes prohibited the creation of a trust that would persist for "more than two lives."[308] That wouldn't do. But, courts had consistently held that the law of perpetuities did not apply to property held by charitable corporations. With that precedent, Murray believed, they were "practically shut up to the corporate method."[309] He then went on to discuss the advantages of a special charter over general incorporation. Most general acts provided for some kind of "visitation or control by the state," so George Peabody and John F. Slater had chosen to incorporate their funds with special charters from New York, he noted. In detail Murray explained that the legislature had included Peabody and Slater's letters of gift in their articles of incorporation "thus making [their] letters the exact definition of the powers and duties of the corporation." He then went on to explain the concept of general incorporation and special incorporation.[310] Murray alerted them to the fact that if they wanted a special charter, they might consider engaging public officials to serve as trustees. At the Peabody and Slater funds all of the trustees were "notable and numerous," nationally-recognized public figures. He "gravely

[307] Geo Welwood Murray to John D. Rockefeller Jr., April 7, 1899, Folder 147, Box 15, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[308] Ibid.

[309] Ibid.

[310] Ibid.

doubt[ed] if [they] could secure the passage of a similar special act unless [they] were willing to name a board of trustees as broadly representative." [311]

By 1902, the Rockefellers were ready to incorporate the GEB, but they still were not sure where they should do so. This time, they enlisted the assistance of founding GEB trustee William H. Baldwin Jr. who had completed his legal training at Harvard and went on to become a president of the Long Island Railroad and a trustee of the Tuskegee Institute. With his help, they considered obtaining a charter from Washington D.C. (by then, Washington D.C. had its own general incorporation laws), Virginia, New Jersey, New York, and a federal charter from Congress. They weighed the benefits of general and special charters as well.[312] Each jurisdiction had different advantages and disadvantages. A general charter from D.C. might limit them to property of an annual income not to exceed $25,000; additionally, its statutory exemption from taxation technically only seemed to apply to buildings within the district that were used for education or charity. They could hope for lax enforcement or attempt to secure the passage of a federal law exempting property like their endowment. With the CIW and other D.C. societies, they thought they might be able to lobby Congress to pass a general law for the exemption of charitable corporations in D.C. That all might cause some delay, though, and it might be just as easy to get a special charter from Congress, they thought.[313] Virginia might only extend its tax exemption to property used within the limits of Virginia making it an unlikely choice. New Jersey placed a limit on the property a charitable corporation could hold of $500,000, and they would be liable to taxation on the property that they did not use in the state. New York seemed more favorable due to its permissive general incorporation laws that had previously attracted the Peabody Education Fund.

However, despite all of New York's advantages, incorporating in the nation's capital had its own allure. In particular, Frederick T. Gates saw a federal charter as particularly valuable.[314]

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[311] Ibid.

[312] Letter to William H. Baldwin, Jr., Feb. 14, 1902, Folder 145, Box 15, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[313] Ibid.

[314] Frederick T. Gates, "The General Education Board," Folder 28, Box 2, IV2A03, Frederick T. Gates papers, Rockefeller Archive Center.

The GEB's purpose was to be so expansive to be unimpeachable, and the institution could serve all of the nation's states. That kind of broad benefaction would give the GEB a "public esteem."[315] Gates suggested that Rockefeller philanthropies that were chartered in states were left vulnerable to "hostile legislation control or repeal."[316] Or, Gates explained, that the charters could be "temptations" to the states. A "state might wish to limit the benefactions to its own boundaries, or to direct the benefactions to state hospitals, charities, normal schools or what not." That had been the case in Europe, Gates explained. Even in England, he argued, the nation claimed the right to confiscate property or convert it "with slight formalities or none."[317] A charter from Congress could offer the Rockefellers more security—it was less likely that the federal government would interest itself in the foundation's operations, Gates thought.

Buttressing Gates favorable opinion of the federal charter was the fact that by the early twentieth century, a federal charter seemed like a reasonable tool to facilitate philanthropy that would operate "nationally." As Ayres list of early foundations demonstrates, almost half of the nation's first foundations had federal charters, but some thirty-four educational and charitable organizations received federal charters from 1889-1907, including the Rockefeller-funded General Education Board (1903), the Carnegie Institution of Washington (1904), and the Carnegie Foundation for the Advancement of Teaching (1906).[318] As we have seen, while the federal charter has a much larger history, the wealthy attempting to use the federal charter for their national foundations was a new use of the charter in the early twentieth century.[319] The Smithsonian Institution that had obtained a federal charter was created from a bequest and not a

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[315] Ibid.

[316] Ibid.

[317] Ibid.

[318] *The Rockefeller Foundation*, Comm. on the Judiciary, H.R. Rep. No. 592 (1912): 6. Jerome Greene, "The Proposed Incorporation of the Rockefeller Foundation in the District of Columbia," Folder 245, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center. This document indicates that between 1889 and 1907 Congress established a precedent of granting federal charters to "philanthropic institutions having a national scope." Greene listed the American Academy of Rome (1905), the American Historical Association (1889), the Carnegie Institute of Washington (1904), the Carnegie Foundation for the advancement of Teaching (1906), the General Education Board (1903), and the National Child Labor Committee (1907).

[319] Fennell, "Corporations Chartered by Special Act of Congress."

living trust. At the time, though, uses of the federal charter had expanded; it was being used to incorporate voluntary and charitable associations that operated nationally, such as the American Historical Association, the Red Cross, and eventually the Boy Scouts.[320]

Given Gates arguments about the benefits of the federal charter, the Rockefellers obtained a federal charter in 1903. A few other choices the Rockefellers made while creating the GEB impacted the development of foundations in this period, too. Like previous public trusts, the GEB selected its trustees by a "representative principle." In the beginning the approach was necessary, Gates explained. They needed the prestige of distinguished names, and their purpose was further legitimated by its "territorial representativeness." But with this approach, Gates wrote, trustees "came not for the good they might do but for what they could get." After twenty-five years of operation, Gates would eventually advocate for the end of their representative selection. They no longer needed the prestige or the services of these individuals.[321] Finally, Gates advised Rockefeller that he should consider endowing the GEB with cash rather than stocks. It would have left "no room in the minds of the meanest for the suspicion of your absolute good faith in the whole transaction," Gates suggested.[322] It would also allow Rockefeller to avoid the disclosure of any of his securities.[323] If Rockefeller preferred to give securities, though, Gates compiled a list of securities that he recommended Rockefeller chose from; ominously, they included railroad companies and funds from the U.S. Steel Corporation.[324]

As the next chapter will show, the Rockefellers would soon run headlong into antimonopoly politics of the Progressive Era as they attempted to create even larger philanthropic trusts. The role that private wealth should play in promoting the public good became increasingly contentious in the early twentieth century. The tainted money scandal in the spring 1905, illustrates the new, widespread skepticism about Rockefeller's vision of civilization

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[320] Ibid.

[321] Frederick T. Gates, "The General Education Board."

[322] Frederick T. Gates to John D. Rockefeller, September 26, 1905, Folder 157, Box 16, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[323] In his letter, Gates claims that other advisers noted this. Ibid.

[324] Frederick T. Gates to John D. Rockefeller, September 28, 1905, Folder 157, Box 16, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

and surplus wealth that they were beginning to face. After Rockefeller's closest philanthropic advisers, Frederick Gates and Starr Murphy, worked out a $100,000 donation for international missions with the American Board affiliated with the Congregational Church, Boston Congregationalist ministers openly denounced the gift and demanded that the American Board return it to the Rockefellers.[325] The objectors noted the "morally iniquitous and socially destructive" nature of Standard Oil, and they insisted that the Congregational Church should set an example in refusing the gift.[326] These debates continued for years, and they were popular reading in the national press. Washington Gladden, a leader in the Congregational Church, who had been writing publicly against Standard Oil since the late 1880s published widely on his opposition to the Rockefeller gift, and this debate echoed earlier critiques of Standard Oil and John D. Rockefeller Sr. that had been occurring for at least twenty years.[327]

Carnegie's "Gospel of Wealth": the Government Rethinks the Public Trust

The philanthropist who had been out-spending Rockefeller in the late-nineteenth century was Andrew Carnegie. In addition to creating the Carnegie Corporation of New York to "promote the advancement and diffusion of knowledge and understanding" with a special charter from New York in 1911, he endowed many other philanthropic institutions that walked a fine line between operating as public trusts and private foundations. For example, in 1881, Carnegie began making gifts to establish libraries. He created libraries at his companies (often after labor disputes), and eventually he worked with cities and municipalities to establish public libraries if they would take over their maintenance and operations.[328] He first approached Pittsburgh in 1881, but the

[325] Gates explains his relationship with the Rockefeller family in detail in his memoir: *Chapters in My Life* (London: The Free Press, 1977). Frederick Gates met John D. Rockefeller Sr. while serving as the Executive Secretary of the National Baptist Education Society. Gates advocated for the creation of a major university in Chicago, and he lobbied John D. Rockefeller Sr., a lifelong Baptist, for his support. After planning for the creation of the University of Chicago, Rockefeller invited Gates to join his personal staff in New York. While he first managed a portion of his business affairs, he eventually became Rockefeller's chief philanthropic adviser.

[326] Soskis, "The Problem of Charity in Industrial America," 261-265.

[327] Ida Tarbell began serializing "The History of the Standard Oil Company" in *Mc Clures Magazine* in 1902, and the articles were published as a book in 1904. The influence of her "muckraking" on the Rockefellers' image was immense.

[328] Nasaw, *Andrew Carnegie*, 211 and 326.

Pittsburgh City Councils did not accept the gift, because officials didn't believe they had the authority to use public monies for a library.[329] By 1887, however, Pennsylvania passed a law allowing for the levying of taxes for such purposes and asked Carnegie to renew his offer; by 1889 they had funding for multiple libraries. By the end of his life, Carnegie had spent about $41 million establishing more than 2,500 libraries around the world.[330] A few other major gifts include his 1891 gift to establish Carnegie Hall, his donation in 1895 to create the Carnegie Museums of Pittsburgh, he created the Carnegie Dunfermline Trust in 1903 to benefit the residents of his birthplace in Scotland; he created the Carnegie Foundation in 1903 to erect and maintain a courthouse at the Hague; he incorporated the Carnegie Foundation for the Advancement of Teaching in 1905 with $10 million. This list is not comprehensive, but it displays the international character of Carnegie's gifts, as well as his willingness to leave funds to city governments into the twentieth century. Although in "Wealth," Carnegie distinguished between leaving funds for a public purpose in trust and administering one's surplus while living, he combined those categories with ease in his own philanthropy. By example, at least, Carnegie was strengthening the public-trust model in many ways.

By the early twentieth century, Carnegie tried to create a larger foundation, and at first his vision included key characteristics of the public trust. But when Carnegie attempted to obtain a federal charter to create the Carnegie Institution of Washington, government officials and social workers had a more cautious response to his gifts. In the words of Carnegie biographer David Nasaw, Carnegie offered President Theodore Roosevelt $10 million to establish the CIW in November 1902 as a "national trust."[331] However, as newspapers widely proclaimed, Roosevelt politely declined such an arrangement. While he wished for good relations with Andrew Carnegie, at that moment, the government could not accept securities from U.S. Steel to establish the CIW. Carnegie shifted gears, and decided to incorporate the CIW as a public trust like the Smithsonian Institution. He and his advisers proclaimed the gift a bit differently. In December 1901, Carnegie announced his intention to endow a research institution with $10

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[329] Ibid., 211-212.

[330] Ibid., 607.

[331] Ibid., 611-612.

million. Newspaper articles speculated that his fortune amounted to something like $200 million, and he had already given away $40 million to libraries and universities.[332] His latest gift, though, was to be different—Carnegie was asking the government to serve as the trustee of this latest gift, an article in the *American* proclaimed. "Mr. Carnegie's plan does not propose a national university in the sense that an appropriation will be asked or needed," the author explained. "The government [was] simply to be the trustee of the magnificent endowment, just as it administer[ed] the fund bequeathed by Smithson."[333]

Despite Carnegie's shift in framing, Congress was still reluctant to grant him a federal charter though. It took the CIW years to obtain its federal charter, in fact. Like Frederick T. Gates predicted to Rockefeller, Congress was loath to charter a public trust with $10 million in U.S. Steel bonds. As a reporter at the *Sun* wrote, "the question ha[d] been raised whether it would be politic to accept [the Steel Company securities] in view of the agitation against combinations."[334] Another article "Gift Not Yet Accepted" asserted that President Roosevelt was pressuring Carnegie to offer cash rather than U.S. Steel securities.[335]

Carnegie received some good advice from Charles Walcott, who was a CIW trustee and would become Secretary of the Smithsonian in1907; he suggested that Carnegie incorporate his foundation with a District charter and wait a couple years to approach Congress for a more permissive charter. By this time, Washington D.C. had its own laws of incorporation like many of the states (that were separate from federal incorporation laws), and the CIW easily obtained a District charter. In fact, it was Walcott who drew up the District charter for Carnegie.[336] Trustees

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[332] "May Oppose the Gift: Carnegie's Offer Said to be in Steel Company Securities," *Sun*, December 11, 1901.

[333] "Carnegie's Gift for a Great University," *American*, Dec. 13, 1901. Additional articles that emphasized that Carnegie was placing his fund in the hands of the government include: "Fund for Education: Mr. Carnegie not to Endow a National University," "Millions for Great Educational Schemes," *Herald*, Dec. 10, 1901; "Gift of $10,000,000: Carnegie is said will found Great University in Washington," *Sun*, Dec. 10, 1901.

[334] "May Oppose the Gift: Carnegie's Offer Said to be in Steel Company Securities," *Sun*, December 11, 1901.

[335] "Gift Not Yet Accepted: Administration would Prefer Cash from Mr. Carnegie," Sun, Dec. 13, 1901.

[336] Charles Walcott to John D. Rockefeller Jr., January 27, 1911, Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center. Walcott presented this information to John D. Rockefeller Jr. after requesting Rockefeller-Foundation funding for the Smithsonian Institution on January 11, 1911.

included the President of the United States, the President of the Senate, the Speaker of the House, the Secretary of the Smithsonian Institution, and the President of the National Academy of Sciences as ex officio trustees, and they held their first meeting to organize the trustees at the office of the Secretary of State.[337] However, in their very first meeting, CIW trustees discussed renewing their efforts to obtain a federal charter.[338] Their efforts were fueled by speculation that the District laws they incorporated under restricted the amount of income the fund could receive.[339] CIW trustee, Supreme Court Justice Edward D. White wrote Walcott in 1902 explaining that, even as a trustee, he could not express a legal opinion about the limitations of their Washington D.C. charter; however, he could say that if the trustees saw fit to diversify their endowment, which was sill entirely invested in bonds of the Steel Trust, they would be in a better position to obtain more favorable legislation from Congress to develop their operations. They could accomplish "great work," but for that to happen, the CIW had to "overcome the reluctance of public men to given even an implied sanction to so great a combination as the Steel Trust."[340]

By 1904, Carnegie and his advisers applied for a federal charter. Elihu Root and John Cadwalader prepared the CIW's new charter.[341] The Speaker of the House had personally told Root that he would favor the bill and assist in its passage. However, he also insisted that the CIW should strike out its government officers and any mention of submitting reports to Congress. The CIW should "stand on its own legs and not appear to be a creature of the Government," the

337 "Statement of Purpose of CIW," January 1902, Carnegie Institution of Washington Administration Records, Washington D.C.

338 "Memorandum of Agenda. First Meeting of Trustees of the Carnegie Institution," Jan. 29, 1902, Folder John Billings 1902-1913, Trustee Files, Carnegie Institution of Washington Administration Records, Washington D.C.

339 Charles D. Walcott to Edward D. White, Feb. 15, 1902, Folder Edward D. White 1902-1903, Trustee Files, Carnegie Institution of Washington Administration Records, Washington D.C. The CIW's first charter was obtained under sections 599 to 604 of the March 3, 1901 codes of Washington D.C. See the Articles of Incorporation of the Carnegie Institution of Washington included in the CIW's Year Book No. 1, 1902 (Washington: CIW, 1903).

340 Edward D. White to Charles D. Walcott, March 4, 1902, Folder Edward D. White 1902-1903, Trustee Files, Carnegie Institution of Washington Administration Records, Washington D.C.

341 John L. Cadwalader to Charles D. Walcott, March 21, 1904, Folder John L. Cadwalader 1903-1914, Trustee Files, Carnegie Institution of Washington Administration Records, Washington D.C.

Speaker insisted.[342] Root and Carnegie did not object to this request, so they proceeded. The CIW did receive a federal charter successfully, but by the time it did, its character as a public trust was irrevocably altered. The CIW was decidedly not, in fact, it was prohibited from being, a "creature of the government." As Congress tried to distance itself from Carnegie's "tainted money," it actually empowered private wealth to operate with more autonomous power. Eventually, this would have major consequences on the evolution of the public trust and the development of the American nonprofit sector.

The Russell Sage Foundation: a New Foundation and a New Vision for the Public Trust

When Oliva Slocum Sage created the Russell Sage Foundation in 1907, she and her advisers would push the public trust even further towards operating as a "private corporation" rather than a public trust. Most often referenced as the first general-purpose foundation in the United States,[343] the RSF promised to use its $10 million endowment to improve the "social and living conditions in the United States of America."[344] The New York legislature granted her foundation a special charter without any amendments or delays.[345] The lack of pushback, in part, was because RSF trustees applied to the New York legislature (rather than US Congress) for a special charter, as well as the fact that they did not include public officials amongst their trustees. Instead, Sage and her philanthropic adviser Robert W. de Forest, stacked the board with professionals in social work and charity. That decision, more than any other, offered the RSF a new path to making its own way as a public trust. But it was not a public trust that operated with public officials on its board; rather it harnessed the close relationships that leaders in social work

[342] Ibid.

[343] O'Connor, *Social Science for What?*

[344] New York Senate, An Act to Incorporate the Russell Sage Foundation, March 13, 1907, no. 793 int. 665. Accessed in Folder 14, Box 2, Series 2: Corporate History, Subgroup 1, Russell Sage Foundation records, Rockefeller Archive Center.

[345] Like other major foundations, the RSF trustees used their political connections to ensure the passage of bill to incorporate their foundation with a special charter. In this case, New York senator George B. Agnew and Assemblyman Ezra P. Prentice assisted in their efforts. See Robert de Forest to Olivia Slocum Sage, April 13, 1907, Folder 14, Box 2, Series 2: Corporate History, Subgroup 1, Russell Sage Foundation records, Rockefeller Archive Center.

were acquiring with public officials as they undertook social reforms to benefit the working poor in the midst of industrialization and urbanization.

De Forest himself, in fact, had been the president of the Charity Organization Society of New York for almost twenty years, he was appointed by Governor Roosevelt to serve on the New York Tenement House Commission, he had been president of the National Conference of Charities and Correction in 1903, and he was a trustee at numerous New York charities, as well as the Metropolitan Museum of Art. Other board members shared De Forest's specialization. Cleveland H. Dodge, Daniel C. Gilman, John M. Glenn, Helen Gould, Gertrude M. Rice and Louisa Schuyler were all named as original trustees. The public nature of their interest in benevolent work was undeniable. Dodge was chairman of the Executive Committee of the Red Cross in New York and an officer of the YMCA, as well as a trustee of the American Museum of Natural History. Gilman was president of Johns Hopkins University, was the president of the Baltimore Charity Organization Society, the first president of the CIW, and a GEB trustee. Glenn was prominent in the national conferences for charities; he headed up the Baltimore Department of Public Charities. Rice was the president of the State Charities Aid Association of New York for years, and she was appointed to New York's Board of Education. Schuyler was the founder and an officer of the New York State Charities Aid Association, as well-known for her work on the Sanitary Commission during the Civil War.[346]

Regardless of the social prestige of the social-work leaders on the board, though, Robert de Forest was surprised by the lack of pushback on the "vagueness of purpose" in their charter.[347] De Forest had been savvy though. He intentionally arranged positive press while they applied for a special charter from the New York legislature. In his interviews and in the information he provided publicly, he emphasized Sage's "wise" approach to giving away her fortune.[348] De Forest could reach out to his friends, like Edward Devine the publisher of

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[346] "Mrs. Sage a True Philanthropist," *New York Observer*, March 21, 1901. See also, John M. Glenn, Lilian Brandt, and F. Emerson Andrews, *Russell Sage Foundation, 1907-1946* vol. 1 (New York: Russell Sage Foundation), 9-10.

[347] Robert de Forest to Lawrence Veiller, March 16, 1907, Folder 11, Box 1, Series 1: Mr. Russell Sage, Subgroup 1, Russell Sage Foundation records, Rockefeller Archive Center.

[348] This view of Russell Sage was widespread. For example, see: "A Blast that Rocked the Nation: Poor Russell Sage is Blown into Unwelcome Notoriety," *Toledo Times*, Nov. 20, 1932; "Sage Self Denial," *Survey*, Nov. 9, 1918.

Charities, to aid his cause in this public relations campaign.[349] Beyond that, though, de Forest hoped to keep their intentions as quiet as possible until they had their charter. He was not entirely sure that there would not be pushback on its "undefined" nature. However, if the special charter failed, they had planned to obtain a charter under New York's membership corporation laws and then apply for a special charter at a later date, like the CIW did.[350] Unlike the CIW though, Olivia Slocum Sage was named as the President of the RSF's board of trustees (although she did not attend meetings). Sage did not have to worry about putting a great deal of distance between herself and her foundation. The general narrative around her contribution was that she was flouting her husband's miserly tendencies by giving his fortune away. That made her a heroine.

De Forest began advising Sage on the creation of her foundation after it became publicly known that she had inherited her husband's money after his death in 1906. Russell Sage, the famously miserly New York financier once found guilty of usury, left his wife $65 million dollars in his will. This resulted in what de Forest called her "philanthropic problem," when she received over 20,000 written request for aid in about six months.[351] De Forest went through the letters for Sage, but he also began to advise her on how to give away her new wealth. Sage would go on to give away $35 million to charitable, religious, and educational institutions while living and she bequeathed over $36 million at the time of death.[352] De Forest was close with many of the most famous leaders in social work at the time, including Edward Devine, Jeffrey Brackett, and John M. Glenn. And they all relished the idea that de Forest would be able to work with Sage to

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"Margaret Olivia Sage," Folder 1, Box 1, Series 1: Mr. Russell Sage, Subgroup 1, Russell Sage Foundation records, Rockefeller Archive Center.

[349] Robert de Forest to Edward Devine, March 12, 1907, Folder 11, Box 1, Series 1: Mr. Russell Sage, Subgroup 1, Russell Sage Foundation records, Rockefeller Archive Center.

[350] Robert de Forest to Henry de Forest, Mar. 9, 1907, Folder 11, Box 1, Series 1: Mr. Russell Sage, Subgroup 1, Russell Sage Foundation records, Rockefeller Archive Center.

[351] Robert de Forest to Oliva Slocum Sage, February 7, 1907, Folder 11, Box 1, Series 1: Mr. Russell Sage, Subgroup 1, Russell Sage Foundation records, Rockefeller Archive Center.

[352]John M. Glenn, Lilian Brandt, and F. Emerson Andrews, *Russell Sage Foundation, 1907-1946*, vol. 1 (New York: Russell Sage Foundation), 3.

channel her newfound personal wealth into what they considered the most important social causes of the twentieth century.[353]

De Forest sent Sage a memorandum detailing the makings of a foundation. Much of de Forest's language from the memo made it into final draft of the RSF's charter.[354] For example, de Forest wrote that the foundation could focus on the "improvement of social and living conditions." It should have a broad mission and avoid address social problems that might be dealt with by others; rather, it should focus on addressing the "larger and more difficult problems" facing society. One of the most remarkable elements that he added was an early gesture towards what foundations today call "program related investments." [355] In De Forest's words, some portion of the fund's capital should be invested in "betterment which themselves produce income, such as tenement houses or boarding houses for women." In the end, Sage decided to authorize trustees to invest at most one-quarter of the principal of the fund in businesses devoted to social improvement, which would likely produce an annual income of no less than three per cent for the fund.[356] While the RSF is often associated with social work and Rockefeller and Carnegie are granted the mantle of what we call "philanthrocapitalism" today, the RSF was actually a far more remarkable leader in combining business and philanthropy.[357] In fact, the relationship between legislatures and philanthropy did not sit well with de Forest. He wrote a friend also in social work,[358]

[353] See Edward Devine to Robert de Forest, Dec. 16, 1906; Jeffrey Brackett to Robert de Forest, October 26, 1906; Robert de Forest to John M. Glenn, October 23, 1906, Folder 11, Box 1, Series 1: Mr. Russell Sage, Subgroup 1, Russell Sage Foundation records, Rockefeller Archive Center.

[354] Robert de Forest to Olivia Slocum Sage, December 10, 1906, "Suggestions for a Possible Sage Foundation," Folder 11, Box 1, Series 1: Mr. Russell Sage, Subgroup 1, Russell Sage Foundation records, Rockefeller Archive Center.

[355] These PRI's remain controversial even today. For more on program-related investments see: Paul Brest, "Investing for Impact with Program-Related Investments," *Stanford Social Innovation Review* (Summer 2016).

[356] Olivia Slocum Sage, Trust Letter, April 19, 1907, Folder 12, Box 2, Series 2: Corporate History, Subgroup 1, Russell Sage Foundation records, Rockefeller Archive Center.

[357] Matthew Bishop and Michael Green, *Philanthrocapitalism: How the Rich can Save the World* (New York: Bloomsbury Press, 2008).

[358] Robert de Forest to John M. Glenn, March 16, 1907, Folder 11, Box 1, Series 1: Mr. Russell Sage, Subgroup 1, Russell Sage Foundation records, Rockefeller Archive Center.

I am seriously disturbed about what seems to me to be a socialistic or paternalistic attitude on the part of many of our professional philanthropists. There is a disposition to ignore individual initiative and individual freedom as the fundamental basis of social progress. There is a pathetic expectancy of results from legislation, and the politicians, some of them, seem to think philanthropy a good play to the gallery. There is a real danger to our cause from a union of mushy philanthropy and self-seeking politicians.

De Forest, it seems, saw keeping philanthropy private and separate from legislation as an opportunity to emphasize liberalism in American philanthropy and social welfare work. The politics of his vision would grow throughout the twentieth century.

Despite this perspective, however, it also true that as de Forest worked with sage to develop the RSF, and they modeled it on the GEB and the CIW, both of which de Forest noted, enjoyed a great deal of public approval for their work in education and scientific research, respectively.[359] This is an important point, because despite the legislative troubles that founders might have had in chartering their institutions, they still enjoyed a great deal of public approval. Sage shared their interest in improving the lives of the working classes, de Forest noted, but he suggested that the RSF eliminate the dead hand from its operations by making its charter sufficiently elastic so the fund could undertake any method of work at any time. The possible extension of public funding of education, the hospital systems, playgrounds, tenements, libraries and museums made such an approach necessary and right.[360] This, in many ways, was de Forest's contribution. He encouraged elasticity, or a general purpose that could change over time. As we saw with the PEF, though, that elasticity would not necessarily produce a foundation more

[359] As de Forest advised Sage, he also drew from his experiences as a trustee of the Phipps Houses, a foundation with a million-dollar endowment dedicated to building model tenements; and he also was aware of the operations of the Burke Foundation, which established convalescent homes to ameliorate the condition of the poor with its several-million-dollar endowment. Robert de Forest to Olivia Slocum Sage, "Suggestions for a Possible Sage Foundation," December 10, 1906; and see also, C.W. Yost to Robert de Forest, Folder 11, Box 1, Series 1: Mr. Russell Sage, Subgroup 1, Russell Sage Foundation records, Rockefeller Archive Center.

[360] Robert de Forest to Olivia Slocum Sage, "Suggestions for a Possible Sage Foundation," December 10, 1906; and see also, C.W. Yost to Robert de Forest, Folder 11, Box 1, Series 1: Mr. Russell Sage, Subgroup 1, Russell Sage Foundation records, Rockefeller Archive Center.

responsive to public needs; sometimes donor guidelines could in fact ensure that a foundation would serve the public good in a beneficial way.

After the announcement of the Sage Foundation there were more telltale signs of radical changes to come in American philanthropy. A *Post* article praised the munificence of Sage's gift but immediately pointed out its small size in relation to the "gigantic problem" that its purpose indicated. It could be "suggestive and inspirational," but little else on a national scale. While you could lessen the symptoms of "ignorant poverty," no charitable endeavor could wholly eliminate the "vicious tendencies" of modern society.[361] In other words, it would take government investment in public welfare, or private philanthropy was going to have to get much bigger. With fortunes growing, it seemed like either approach was possible.

The Growing Commercialization of Charity and the Decline of the Public Trust

During the first decade of the twentieth century, journalists weighed in on the relative efficacies and value of different philanthropic policies. In 1903, one author proclaimed the virtues of the Standard Oil Company for establishing a pension fund as the definition of "sensational philanthropy." As the author touted this philanthropy as achieving some meaningful redistribution of wealth, it ridiculed Andrew Carnegie's more "orthodox" method of providing libraries and funding cultural institutions. To achieve philanthropy that would be philanthropic and charity that would be charitable, the author argued, one could not provide for aging employees with food for thought, it could not clothe them with Shakespeare's plays, house them with Herbert Spencer, or give them a "sense of independence" with the latest novels. Joining money and the people who needed it was the real philanthropic initiative that the wealthy should emphasize.[362]

Then in 1907, an anonymous author published "The New View: The Danger of Endowments" in the *Survey*, a leading journal in the burgeoning field of social work expanded critiques of foundations. The author, he or she explained, was writing in response to a "radical group of magazine writers" who argued that benefactions were actually malefactions, "like

[361] "The Sage Foundation," *Post*, March 13, 1907.

[362] "Mr. Carnegie, Please Notice," *Puck*, January 14 1903, 52, 1350.

kerosene on a burning house."[363] While the *Survey* magazine and its predecessor *Charities and the Commons*, which were affiliated with the Charity Organization Societies, had devoted much praise to the incorporation of the General Education Board and the Russell Sage Foundation, the author noted that the rise of endowments had "their own dangers" without "extraordinary vigilance and breadth of sympathy."[364] At the end of the piece, the author imparted a warning that would resurface over the course of the next decade:

> The brutal power of concentrated wealth is ever present in these endowments. If used judiciously, wisely, with breadth of sympathy, with sufficient safeguards against abuse and incidental injury, they may be in all ways beneficent. If used carelessly, with class prejudice, or personal favoritism, or in disregard of the social effects of making or withholding grants, then neither the good intentions of the donors nor the possible balance of good accomplished will prevent their becoming also malefactions to the extent of their misuse.[365]

This perspective, that endowments could be benefactions or malefactions, depending on their management, brought increasing attention to the founders and board members who were managing the nation's surplus wealth. It also re-raised the question: what kind of safeguards should exist to protect citizens from the potentially pernicious interests of its richest citizens seeking to endow their philanthropic works?

In the mind of one public official, what he saw as the increasing relationship between commercial and charitable interests could do nothing good for the nation's social welfare. On May 5, 1913 during a speech on trusts and combinations, California Senator John D. Works lamented, "[e]ven the charities of the present day have become commercialized…They are carried on as a business."[366] As he stood before the U.S. Senate and the president, he exhorted them to address the inadequacies of the Sherman Antitrust Laws that sought to maintain

[363] "The New View: The Danger of Endowments," *Charities and the Commons* (April-Oct 1907), 355.

[364] Ibid., 355.

[365] Ibid., 356.

[366] "Trusts and Combinations," John D. Works papers, BANC MSS C-B 423, The Bancroft Library, University of California, Berkeley.

competition and reduce collusion among for-profit corporations, and he warned against the effects such practices might have amongst nonprofit corporations invested in influencing social welfare and corporate policy.

Senator Works' fears about the commercialization of charity brought attention to the increasing number of charitable foundations forming in the early twentieth century. Beyond the Rockefellers, Carnegie, and Sage, other rich citizens were following their lead to establish philanthropic foundations, too.[367] The number was still modest (probably closer to twenty or thirty rather than Ayres' seven great foundations); but just as monopolies and trusts amongst for-profit corporations inspired policy debates at this moment, nonprofit corporations, which proposed to use the corporate form for social good, inspired intense popular and regulatory responses.[368] The efficiencies of the corporate form, along with what seemed like limitless endowments, shifted the national conversation regarding charitable policy. In the end, it was these charitable institutions' likeness to massive corporations that incited the greatest dissent and support for their existence.

Intellectuals, activists, and Progressive-Era politicians, like Senator Works, debated the role that private wealth should play in the shaping of public life. In Senator Works' speech he argued that the United States government should not "farm out…the right and power to educate the people of the country" to men like John D. Rockefeller who made their money through "extortion, oppression, and crime."[369] By doing so the American people would become "receivers of stolen goods," and such a practice would make the United States' major educational institutions "subservient to the interests and views" of men like John D. Rockefeller.[370]

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[367] For a more comprehensive list of foundations in the early twentieth century, see Frederick Warren Jenkins and Elizabeth Lowell Black, "American Foundations for Social Welfare: A Selected Bibliography," *Bulletin of the Russell Sage Foundation Library*, no. 11 (June 1915).

[368] See Jenkins and Warren, "American Foundations for Social Welfare: A Selected Bibliography"; M. M. Chambers, Charters of Philanthropies: A Study of Selected Trust Instruments, Charters, By-Laws, and Court Decisions (New York: Carnegie Foundation for the Advancement of Teaching, 1948).

[369] "Blistered Fingers," *The Washington Post,* May 6, 1913.

[370] Ibid.

Senator Works' remarks reflect a deep anxiety about the management of surplus wealth in the U.S. industrial economy. His comments bring attention to the shifting relationship between the government, business, and charitable institutions in the early twentieth century. If, as Works suggested, the private wealth held by men like John D. Rockefeller was stolen or even accumulated at the expense of the working and middle classes, what rights could the state and private citizens have to manage that wealth? In Senator Works' words, "[a]s a matter of simple justice and right the money thus accumulated belongs not to the dispenser of these charities but to the men, women, and children whose underpaid toil accumulated the fund."[371] Senator Works contended that charitable foundations were "doing more, perhaps, than almost any other influence to make this nation a country of mendicants and beggars."[372] He proceeded: "[o]ne of the millionaires of the day conceived that an easy and convenient way of ridding himself of some of his useless and burdensome millions and at the same time exalting himself would be the giving away of public library buildings."[373] Undoubtedly referencing Andrew Carnegie's efforts to establish thousands of public libraries around the world, Senator Works decried, "[t]hese municipalities have made themselves the objects of charity, and more of them are begging for like favors. Any self-respecting community should be ashamed to accept charity of this kind under any circumstances."[374]

The public trust was in danger of declining due to fears of private wealth's influence over public officials. However, the ascent of the private foundation model threatened to make wealth its own source of power—with even less oversight. In the next chapter I explore what happened to the public trust with antimonopolism on the rise. Would it retain its public character, or would it become more like the private corporations rising in its midst?

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[371] "Trusts and Combinations," John D. Works papers, BANC MSS C-B 423, The Bancroft Library, University of California, Berkeley.

[372] "Blistered Fingers," *The Washington Post*, May 6, 1913.

[373] Ibid.

[374] Ibid.

CHAPTER FOUR

Antimonopolism and a New Politics of Surplus Wealth: Breaking the Public Trust in the Progressive Era

In the first decades of the twentieth century, Rockefeller's personal wealth soared, increasing from $200 million in 1901 to $900 million in 1913.[375] Investing even a modest portion of that capital in a public trust had the potential to establish a much larger role for surplus wealth in American society. A foundation with hundreds of millions of dollars would not just be *a* mode of governance that operated *with* public officials for public purposes. As one independent-oil producer warned, such a foundation would have created "a corporation superior to the national government itself."[376]

After the controversies surrounding the Carnegie Institution of Washington's federal charter, including its U.S. Steel securities and Congress' insistence that it was not a creature of the government, the likelihood of a future public trust receiving a federal charter was unlikely. However, despite that, in 1910, the Rockefellers submitted a bill to Congress to incorporate the

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[375] W.D. Rubinstein, ed., *Wealth and the Wealthy in the Modern World*, (New York: St. Martin's Press, 1980), 20-21.

[376] "Sees Danger in Such a Plan: Rockefeller Charter Opposed by Hisgen," *Boston Globe*, March 13, 1910.

Rockefeller Foundation with what one critic called an "extraordinary" federal charter. [377] In the first version of the charter submitted to Congress, the foundation's stated object was:[378]

> [T]o promote the well-being and to advance the civilization of the people of the United States…and of foreign lands in the acquisition and dissemination of knowledge; in the prevention and relief of suffering; and in the promotion of any and all of the elements of human progress.

Compared to the far-narrower purposes of earlier public trusts, the Rockefeller's "general-purpose" broke from the norms of establishing national benefactions to undertake specific public works. While Robert de Forest had emphasized the elasticity of the Russell Sage Foundation's charter internally, he had been careful not to emphasize that particular element of the foundation's charter publicly. He celebrated it in private correspondence, and even noted that he was surprised that the New York legislature had not pushed back on the "vagueness of purpose" in their charter.[379]

However, the Rockefellers were not shy about the expansive purpose of their foundation; Frederick Gates announced the Rockefeller Foundation's broad purpose to any journalist who would listen.[380] The Rockefeller Foundation also deviated from precedent in other ways, as well. To undertake its broad mission, it might have established or aided other institutions in order to carry out its broad purpose. In short order, that element of the charter raised questions about the Rockefeller Foundation's potential impact on other charitable institutions. In addition, the foundation was to exist in perpetuity, to amass an unlimited endowment, and to be run by a self-perpetuating board of trustees—those trustees alone would be responsible for defining what the foundation meant by "human progress." And, at least at first, there was no hint of public officials

[377] "George W. Da Cunha, "Open Letter," March 8, 1910. S. 2675 (SEN 62A-E1); 62nd Congress; Records of the U.S. Senate, Record Group 46; National Archives, Washington, DC.

[378] *Incorporation of Rockefeller Foundation, Hearing on S. 6888, Before Comm. on the District of Columbia,* 61st Cong., (1910).

[379] Robert de Forest to Lawrence Veiller, March 16, 1907, Folder 11, Box 1, Series 1: Mr. Russell Sage, Subgroup 1, Russell Sage Foundation records, Rockefeller Archive Center.

[380] See, for example, "Oil King's Salmoner," *The Washington Post*, March 4, 1910.

serving as trustees, or for that matter, even experts in the field of social work.[381] With all of these unprecedented characteristics, the Rockefeller Foundation was indeed, a new species of corporation. Its potential size combined with its expansive purpose made it truly exceptional.

As members of the House of Representatives and the Senate held hearings to debate the bill to incorporate the Rockefeller Foundation with a federal charter, multiple U.S. presidents were involved in debates about the charter, and it unleashed a national argument about the merits of laissez faire capitalism and the appropriate role for surplus wealth in advancing civilization.[382] However, it was really the Rockefellers' business activities that made already contentious issues surrounding the public trust truly explosive. While Congressional representatives debated the bill to incorporate the Rockefeller Foundation, the Supreme Court ruled on the iconic Standard Oil Antitrust case. In 1909 the U.S. Department of Justice had sued Standard Oil under federal anti-trust law in Congress, and by 1910 the Federal Circuit Court ruled in the government's favor and ordered the dissolution of Standard Oil. Five days after the introduction of the bill to incorporate the Rockefeller Foundation in the U.S. Senate on March 11, 1910, Standard Oil appealed to the Supreme Court. By May 1911, the Supreme Court upheld the lower court's ruling to break up the Standard Oil trust. Without a doubt, in creating the Rockefeller Foundation, Rockefeller and

[381] The initial trustees included John D. Rockefeller, John D. Rockefeller Jr., Frederick Gates, Starr Murphy, and Charles O. Heydt. Rockefeller Jr., Gates, and Murphy all held positions in Rockefeller's office in charge of philanthropic matters, and they held positions in the General Education Board, the Rockefeller Institute of Medical Research and the Rockefeller Sanitary Commission for the Eradication of the Hookworm Disease. Charles O. Heydt had previous served only in Rockefeller's office in charge of philanthropic matters. After amendments were made to the bill in 1912, Simon Flexner (a scientist and a trustee of the Rockefeller Institute and a member of the Sanitary Commission), Edwin Alderman (President of the UVA and a member of the General Education Board. He was added because a member of the House wanted a Southerner represented on the board.), Harry Pratt Judson (President of the University of Chicago and member of the General Education Board), and Wickliffe Rose (member of the General Education Board and Director of the Sanitary Commission) were added to the board then, as well. "Incorporators of the Rockefeller Foundation," Folder 245, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[382] For examples of the impassioned response the Rockefeller Foundation's charter elicited, see Thomas Hisgen, an independent oil producer's condemnation of the gift. A number of national papers covered Hisgen's statements. See, for example, "Hisgen Sees Great Danger: Prepare for our Emperor if Charter is Granted, He Says," *The New Your Times*: March 13, 1910; "Sees Danger in Such a Plan: Rockefeller Charter Opposed by Hisgen," *Boston Globe*, March 13, 1910; "The Rockefeller Foundation," *The Survey* March 26, 1910: 983-984. Also, see "George W. Da Cunha, "Open Letter," March 8, 1910. S. 2675 (SEN 62A-E1); 62nd Congress; Records of the U.S. Senate, Record Group 46; National Archives, Washington, DC.

Gates hoped to shift conversations about the significance of his personal wealth and the Standard Oil trust by emphasizing the public utility of both. This approach was less a conspiracy and more common sense for Rockefeller and Gates who viewed the modern corporation and all of its legal privileges as indicative of the advancing of civilization.[383] In the minds of many, however, the infamous Standard Oil octopus was aggressively expanding its tentacles. Not only did the Rockefellers wish to monopolize the oil industry; they also wished to control how the nation defined human progress and to dictate the form that social welfare initiatives would take. Public or private, that kind of moneyed, expansive power was controversial.

It was especially provocative, because the Standard Oil Trust was infamous by this time for driving small producers into the ground to enrich Standard Oil shareholders. Perhaps more than any other person Rockefeller had benefited from the rise of corporate capitalism. The nation's first and one of its largest trusts, his Standard Oil Company set industry practices and controversially controlled prices as it drew oil from company-owned wells, transported that oil through company pipelines, housed the oil in company tanks, and then packaged and distributed the product in a similarly self-enriching fashion. [384] The impact that capital-fueled coordination had on Rockefeller's competitors and small and medium-sized producers stoked decades of debates about how state and federal governments should regulate corporations with the power to control markets and access to essential goods and services.[385]

Historians of the Progressive Era have framed these controversies over concentrated economic power as the "trust question" or the "monopoly question."[386] These questions related to how businesses should lawfully operate and compete in the American economy, but they also addressed the impact that those practices had on social relations. When the U.S. Supreme Court ruled on the infamous Standard Oil antitrust case, justices not only determined whether or not

[383] In undated memos Frederick T. Gates laid out his views on corporations and their privileges see: "Corporation Privileges" and "Corporation," Folder 17, Box 1, Frederick T. Gates Papers, Rockefeller Archive Center.

[384] Lamoreaux, *The Great Merger Movement,* 1.

[385] For histories of the Standard Oil Company and the Standard Oil antitrust investigation see: Ida Tarbell, *The History of the Standard Oil Company Vol I and II (*New York: Peter Smith, 1950); Chernow, *Titan.*

[386] See, for example, Sklar, *The Corporate Reconstruction of American Capitalism*; Richard Hofstadter, *The Age of Reform;* Louis Galambos, *The Public Image of Big Business in America*.

Standard Oil executives had broken the law while conspiring to restrain trade and commerce in the oil industry, Justice White's opinion introduced a longer history of the concept of monopoly and the possibility of monopolies promoting the public good. One of the questions under consideration was whether or not the Standard Oil monopoly ultimately benefited consumers by providing cheap oil, or if its executives sought to "unlawfully acquire wealth by oppressing the public and destroying the just rights of others."[387] The problem was, both of these things could have been true at the same time—aligning private profit and the public good would take active oversight. So, as Naomi Lamoreaux has argued, despite disputes about how and why monopolies formed, calls for more government regulation grew in this period.[388]

As the history of the public trust has demonstrated, American millionaires had another vision for how to align profit and the public good—and it had nothing to do with breaking up commercial monopolies. For them, it involved the creation of the world's largest philanthropic trusts. A number of historians of American philanthropy have mentioned the Rockefeller Foundation's attempt to gain a federal charter in the context of the Rockefeller's broader philanthropies.[389] They have accurately linked debates about the federal charter to the politics of the monopoly question and the culture of antimonopolism in the Progressive Era. But that connection has been used to dismiss debates about the Rockefeller Foundation's federal charter as having more to do with antimonopoly fervor than the foundation itself.[390] Others have argued that the Rockefeller Foundation's charter was no different than previous charters and lacking in any "startling innovations."[391] These assertions, however, are not supported by contemporary reactions to the bill identifying it as a new corporate form. As one leader in the field of social work put it at the time, such an example of "record-breaking philanthropy," with its unmatched

[387] *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1 (1911), 47.

[388] Lamoreaux, *The Great Merger Movement in American Business.*

[389] See John Ensnor Harr and Peter J. Johnson, *The Rockefeller Century* (New York: Macmillan Publishing Company, 1988); Hall, *Inventing the Nonprofit Sector*; John Lankford, *Congress and the American Foundations in the Twentieth Century* (River Falls: Wisconsin State University, 1964); Karl and Katz, "The American Private Philanthropic Foundation and the Public Sphere.

[390] Hall, *Inventing the Nonprofit Sector*, 189. John Ensnor Harr and Peter J. Johnson, *The Rockefeller Century* (New York: Macmillan Publishing Company, 1988).

[391] Lankford, *Congress and the American Foundations*, 12.

endowment, enhanced "public interest" in the "reconsideration of fundamental questions of policy" relating to perpetual endowment.[392] In the end, the Rockefeller Foundation's federal charter expanded the scope of critiques of foundations generally, by making them relevant to larger policy issues about foundations and other philanthropic and charitable institutions.

Two fundamental policy questions guided legislators and public observers as they considered the Rockefeller Foundation's charter. First, they asked: what corporate privileges should philanthropic foundations be afforded by government? In other words, should their corporate charters give them the privilege to exist in perpetuity, to hold unlimited endowments, and to select their own board members? Second, they asked, what role should the federal government play in regulating national and international philanthropic foundations? If Congress granted the Rockefeller Foundation a federal charter, it would be setting a precedent for the federal government to guide the increasing involvement of nonprofit corporations in the American economy. Although the federal government was increasingly issuing federal charters to charitable organizations of various sorts, state governments chartered most nonprofit corporations, so this was an important regulatory decision.

In this chapter, I argue that the Rockefeller Foundation's attempt to gain a federal charter led to the dismantling of the public trust while it signaled the birth of a new species of corporation. Not only did the Rockefeller Foundation's charter lay the groundwork for the chartering norms of future foundations, it inspired increased calls for philanthropy that would be "responsive" to popular conceptions of human progress—not just the will of one group of trustees. When the Rockefellers created a "corporate body" to manage their wealth, it transformed national conversations about the justice of the accumulation of wealth and the virtues and vices of its accumulators. The corporate form of the Rockefeller Foundation became the focal point of discussions about how surplus wealth should be managed in the American economy, rather than the justice of how John D. Rockefeller Sr. had acquired his wealth. In other

[392] Edward T. Devine, "Social Forces: The Rockefeller Foundation," *The Survey* v 23 (Oct-Mar 1909-1910), 903. For more examples of the substantive policy issues the foundation immediately inspired see, See, for example: Edmund F. Merriam and Joseph S. Swaim, eds. *The Watchman* 92 No. 10 (March 10, 1910). Folder 255, Box 25, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center; "George W. Da Cunha, "Open Letter," March 8, 1910. S. 2675 (SEN 62A-E1); 62nd Congress; Records of the U.S. Senate, Record Group 46; National Archives, Washington, DC. Edward T. Devine, "Social Forces: The Rockefeller Foundation," *The Survey* v 23 (Oct-Mar 1909-1910).

words, discussions about his fortune turned from whether or not it was "tainted" to the pernicious influence the funds might have on society when dispensed through a more powerful corporate body. As one of his closest advisers put it, when Rockefeller Sr. imagined creating the Rockefeller Foundation, he wished to create a "philanthropic enterprise" to get dividends payable not in money but in the welfare of humanity."[393] This application of corporate strategy to transform corporate profit blurred the lines of charity and business. By the end of the debates about the Rockefellers' federal charter, it was possible to rationalize the existence of foundations through their efforts to create an "organized, systematized benevolence."[394]

The Rockefellers' Advisers Develop an "Elastic" Charter for "Human Progress"

As Rockefeller's money piled up, Gates urged him to undertake the "final and complete" disposition of his wealth through a "great trust."[395] Rockefeller had a "moral responsibility," Gates urged him, to devote his great wealth to human progress in perpetuity. As they dreamed up the contours of what would become the Rockefeller Foundation, though, they oscillated between envisioning the fund as "public" and as a Rockefeller family trust. Because the trust would hold hundreds of millions of dollars, it would necessarily be of a "public character," Gates explained; due to its size its administration would be "a matter of public concern and inquiry and public criticism as any of the functions of the government are now." [396] On the one hand, with his comments about the publicness of Rockefeller's enormous trust, Gates certainly was encouraging Rockefeller to see his foundation as a public trust. However, Gates also believed that the foundation should be as "elastic" as possible so that the Rockefellers and their trustees could change the grants undertaken by the foundation at any time.[397] Over time, this chapter will show,

[393] *Incorporation of Rockefeller Foundation, Hearing on S. 6888, Before Comm. on the District of Columbia*, 61st Cong., (1910) (Statement of Starr J. Murphy), 8.

[394] "Mr. Wickersham and the Rockefeller Foundation," *Chicago Record-Herald*, May 9, 1911, Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[395] Frederick T. Gates to John D. Rockefeller Sr., June 3, 1905, Folder 57, Box 3, Frederick T. Gates Papers, Rockefeller Archive Center.

[396] Ibid.

[397] "Oil King's Salmoner," *The Washington Post*, March 4, 1910.

it became clear that what that really meant was that the Rockefellers should have as much control over the distribution of their wealth through the trust as possible. These ideas of public character and private control were not necessarily at odds, but they did make the concept of the public trust something quite different to behold. Gates and Rockefeller Sr. were not thinking of their foundation as vehicle for distributing the nation's surplus wealth, like George Peabody. The wealth they would be distributing was the Rockefellers, and they wished to manage it in perpetuity however they pleased.

The origins of the Rockefeller Foundation predate the height of the Standard Oil debacle, and they suggest that even as they designed their foundation there was no obvious choice for the management of their nascent vision for their latest fund. Late in 1906, Rockefeller Sr. spoke to his son about turning over "considerable sums of money" to a large "trust" that would be devoted to "philanthropy, education, science and religion."[398] Rockefeller had demonstrated a commitment to charity as a lifelong Baptist, but this foundation was to be so different from his previous philanthropic initiatives that the Rockefellers and their advisers were unsure about how to incorporate and manage the project.[399] At first John D. Rockefeller Jr. advocated for the creation of three separate trusts: one devoted to the "promotion of Christian Civilization" globally, another with the same purpose to operate in the United States, and a third trust to hold funds for their previously chartered organizations, including the University of Chicago, The General Education Board, and the Rockefeller Institute for Medical Research.[400] Such an organization, which divided the philanthropic institutions by purpose, would align with the Rockefellers' previous philanthropic practices; however, the plan did not suit their desire to simplify their administrative burden. In the early twentieth century, the Rockefellers were looking to consolidate their philanthropy. The question was: what type of nonprofit corporation would best enable them to achieve that?

[398] John D. Rockefeller Jr. to John D. Rockefeller, Dec. 31, 1906, Folder 240, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[399] Major biographies of John D. Rockefeller include: Chernow, *Titan*; Harr and Johnson, *The Rockefeller Century*; Fosdick, *The Story of the Rockefeller Foundation*.

[400] John D. Rockefeller Jr. to John D. Rockefeller, Dec. 31, 1906, Folder 240, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

By this time, as we have seen, Rockefeller Sr. had already created multiple nonprofit corporations that required legal, financial, and operational oversight, as well as program management. Rockefeller's personal advisers, Starr Murphy and Frederick Gates, offered an alternative vision. Gates emphasized that in order to execute a more expansive vision of philanthropy, the foundation's charter would have to be above all "elastic."[401] Foundation trustees would invest in institutions and individuals based on the changing needs of each generation in perpetuity. Their "elastic" charter would have offered them the ability to keep the purpose of the foundation, its geographic focus, the length of its grant projects, and the size of its endowment entirely at its trustees' discretion, which would change over time.

Heightening the importance of their new trust's elasticity, they decided to apply for a federal charter. As noted, this was brave after the Carnegie Institution of Washington had struggled mightily to obtain its federal charter a few years earlier. In fact, historians have wondered at the Rockefeller's decision to pursue a federal charter.[402] Historians Barry Karl and Stanley Katz have explained, "Rockefeller, at least, sought some kind of federal support for his philanthropic activities through his request for a [federal] charter." However, they also concluded, "It is by no means easy to see what he actually thought he was doing, what changes in the attitude and direction of federal policy toward social welfare he thought he was advancing." However, by considering the history of the General Education Board and its federal charter, we can see that Frederick Gates provided an answer to this question. The Rockefellers and their advisers saw the federal charter as a safeguard against states meddling with their articles of incorporation—a federal charter was more "secure" from such interference, they thought. Further the prestige a federal charter offered was valuable to the Rockefellers, and Gates welcomed a public fight over the justice of what he saw as Rockefeller's good works. Also, while the Rockefeller Foundation's failed federal charter has garnered more attention than the successes that preceded it, as we have seen, the Rockefellers' pursuit of a federal charter was not unusual or exceptional, even if it was unwise.

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[401] "Oil King's Salmoner," *The Washington Post*, March 4, 1910.

[402] Karl and Katz, "The American Private Philanthropic Foundation and the Public Sphere," 257.

It was Starr J. Murphy who suggested combining their philanthropies under one organization.[403] When preparing to draft a charter for the Rockefeller Foundation, he advocated for applying directly to Congress for a federal charter similar to the one they held for the General Education Board, but "broad enough to enable [them] to hold and administer funds for any charitable, educational, religious or scientific purpose, not for pecuniary profit." [404] Such an approach would solve all of their "problems," he argued, and in a moment of inspiration, Murphy noted: "It would be a great holding company."[405] However, the concept of a holding company, a corporation that exercised power and influence by owning stock in other corporations, and its affiliation with Standard Oil, made this plan both bold and magnificently out of touch with corporate reform efforts of the period.[406]

The foundation would operate like a holding company, because Rockefeller Sr. could give any amounts of money to the foundation, and the foundation could give money directly to causes or it could fund the work of other institutions. And it would solve their "problems," because Rockefeller could give any sum of money to the corporation at any time, he could specify "how the money was to be used" in the deed of gift, he could insert a condition in the charter indicating that all appropriations would be subject to his or his son's approval, and finally, it could operate in perpetuity.[407] This meant that unlike the General Education Board, its grant projects would not be limited to the field of Southern education and agriculture. As Starr

[403] In histories of the Rockefellers and their philanthropic work, Frederick Gates is most often credited as the visionary who transformed John D. Rockefeller Sr.'s giving practices. Gates claims this mantle for himself in his memoir: "…I gradually developed and introduced into all his charities the principles of scientific giving." While Gates' role in influencing the Rockefellers' philanthropy circulates through histories of the Rockefeller's philanthropy, legal memos and correspondence held at the Rockefeller Archive Center demonstrate the extent to which Starr J. Murphy contributed in drafting the bill to incorporate the Rockefeller Foundation and managing its chartering process. Gates, *Chapters in My Life*, 161.

[404] Starr J. Murphy to John D. Rockefeller Jr., Jan. 17, 1907, Folder 240, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[405] Ibid.

[406] Woodrow Wilson, "Address to a Joint Session of Congress on Trusts and Monopolies," January 20, 1914. In a 1914 speech, President Woodrow Wilson included holding companies amongst elements of trusts that should be abolished through new antitrust measures.

[407] Starr J. Murphy to John D. Rockefeller Jr, Jan. 17, 1907, Folder 240, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

Murphy proposed this novel legal vision for the Rockefeller Foundation, he inspired debates about what kind of corporate privileges a foundation should have—particularly about what kind of undue power a philanthropic "holding company" might amass, particularly one with a federal charter. Murphy, however, attempted to steer the Rockefellers away from a federal charter, which would invite political opposition. [408] He advocated for an application to the New York legislature for a special charter.[409]

Frederick Gates agreed with Murphy at first; Gates doubted whether Congress would give them a perpetual charter at all. He wrote, "I doubt extremely if such a charter as we want can be put through Congress and secure the signature of the President...I would accordingly organize in New Jersey and transfer to a Congressional charter if and when we get it."[410] However, while he agreed that the Rockefeller Foundation's direct association with John D. Rockefeller might make its passage in Congress difficult; he did not believe that such difficulties should be decisive. The possibility of political opposition and attendant publicity seemingly amused Gates: "Will the question of tainted money come up! Will Mr. Rockefeller's enemies (for no doubt he has enemies in Congress) make a bitter fight against his right to give away his own money as he may deem best!"[411] Gates continued, "I would not hesitate to throw this charter right into the arena and let the wild beasts fight over it …I cannot but think that his enemies will do themselves and their cause an serious injury if they carry their opposition to the point of

[408] "The Rockefeller Foundation: Should we Seek a Charter from Congress or from the Legislature of the State of New York?," Folder 248, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[409] Puzzlingly, Murphy did all of the same legal research that Rockefeller advisers had done when they created their earlier foundations. In addition to noting the benefits of New York's generous incorporation laws, he explained that the New York legislature was a far more "conservative body than Congress" and Mr. Rockefeller was far better known in the state. He argued: "This State is accustomed to big things in a financial way, and the influence of men of large affairs is apt to be more potent in the Legislature of this State than in any other legislative body in the country." "The Rockefeller Foundation: Should we Seek a Charter from Congress or from the Legislature of the State of New York?," Folder 248, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[410] Frederick T. Gates to John D. Rockefeller and John D. Rockefeller Jr, Jan. 23, 1907, Folder 240, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[411] Frederick T. Gates "Memorandum on Mr. Murphy's Report On The Question Of Charter" January 2, 1908. Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

refusing him the opportunity to serve mankind…" Here, one can start to glean Gates' motivation for supporting the federal charter. He welcomed a fight over the charter for the positive attention it might bring Rockefeller Sr. He added, "the very best service" that Rockefeller's enemies could do him would be to protest his philanthropy.

> Mr. Rockefeller has given away vast sums of money…That is a feature of his character and life which is never mentioned by his enemies, and in all the attacks on him as a business man and on the Standard Oil Company, and in all the confiscatory laws and judgments, not a syllable is ever found to the effect that these funds are being used for the benefit of humanity. May it not be just as well now to throw this matter right into Congress and right up to the President?[412]

Rockefeller's advisers had come to imagine a federal charter as establishing a direct relationship between Rockefeller's successes in business and his efforts to serve the nation—in the accumulation and redistribution of his wealth. While reformers repeatedly criticized Rockefeller Sr.'s character and his business practices, Gates wanted the public to witness his attempt—whether it was successful or not—to develop a national foundation.[413]

The Rockefellers and their advisers then spent years working with members of Congress to draft a bill.[414] In 1909 John D. Rockefeller Jr. corresponded with his father-in-law Senator Nelson Aldrich, who had represented Rhode Island since 1881 and was known as "a devoted

[412] Frederick T. Gates "Memorandum on Mr. Murphy's Report On The Question Of Charter" January 2, 1908. Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[413] Karl and Katz, "The American Private Philanthropic Foundation and the Public Sphere 1890-1930." Karl and Katz argue that Rockefeller's willingness to accept increased federal regulation for the Rockefeller Foundation indicates "his desire for an acknowledgment of the Rockefeller Foundation's legitimacy in the eyes of the national public" (255).

[414] John D. Rockefeller Jr. to John Spooner. January 15, 1908; John Spooner to John D. Rockefeller Jr. February 3, 1908. Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center. From 1907 onwards, the Rockefellers and their advisers redrafted multiple charters and continued to work their connections in Congress. John D. Rockefeller Jr. courted senators' approval. He sent representatives drafts of the charter and incorporated their feedback. He even invited one senator to appear at his Young Men's Bible Class, along with Jacob Riis. In return, senators provided feedback.

servant of the trusts,"[415] about finally introducing the bill to incorporate the Rockefeller Foundation in Congress.[416] Aldrich had successfully guided the bill to incorporate the Rockefeller's General Education Board through Congress in 1904. Instead of introducing the bill himself, however, Aldrich worked behind the scenes to connect Rockefeller's attorney Starr Murphy with Senator Jacob Gallinger.[417]

Gallinger chaired the Committee of the District of Columbia, which would be the first Congressional body to debate the bill and its contents. He was a Republican from New Hampshire and served in the Senate from 1891 to 1918. He was known as a conservative and endorsed the re-nomination and re-election of President Taft in 1912.[418] Starr Murphy met with the senator and had a "pleasant chat" about the bill. Gallinger assured Murphy that he would introduce the bill and if necessary when it was eventually referred back to the committee, he would invite Murphy to appear before the Committee.[419] Gallinger kept his promise and when the Committee on the District of Columbia scheduled a hearing on the incorporation of the Rockefeller Foundation for March 11, 1910, he invited Starr Murphy to appear. With the advantage of his previous communications with Senator Gallinger, Murphy arrived at the Senate hearings prepared. The Committee let him speak virtually uninterrupted for almost an hour. Through his testimony, the Rockefeller's self-congratulating vision of their social entrepreneurship, as well as, the contours of the opposition to the foundation become crystal

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[415] Chernow, *Titan,* 352.

[416] Nelson Aldrich to John D. Rockefeller Jr. February 4, 1907; John D. Rockefeller Jr. to Nelson Aldrich. February 8, 1907; John D. Rockefeller Jr. to Nelson Aldrich. February 16, 1907. Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center. Rockefeller Jr. corresponded with Senator Aldrich as early as 1907 about the contents of the bill and its likelihood of passage in Congress. In fact, it was Aldrich who recommended that section two of the charter include "in the prevention and relief of suffering."

[417] John D. Rockefeller Jr. to Jacob Gallinger. February 15, 1910. Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[418] Leonard Schlup, "Consistent Conservative Jacob Harold Gallinger and Presidential Campaign of 1912 in New Hampshire," *International Review of History and Political Science* 21, no. 3 (1984).

[419] John D. Rockefeller Jr. to Nelson Aldrich. March 1, 1910. Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

clear. Unlike Robert de Forest, the Rockefellers were committed to shining a light on what they saw as their philanthropic innovations.

Murphy emphasized the Rockefeller Foundation's likeness to previously chartered foundations, and then quickly pivoted to address one of the more contentious aspects of the Rockefeller Foundation's charter.[420] The language in the Rockefeller Foundation's charter had been spoken of as "indefinite," and, indeed that was intentional. The scope of the foundation was to lack definite limits. In fact, it was to be "so elastic that it may respond to the demands of humanity as the years go by…"[421] Murphy continued:

> The charities of the fourteenth century are not the charities of the twentieth century…and it is eminently desirable, it seems to me, that the tendency of philanthropy in the future should be that the dead hand should be removed from charitable bequests and that the power to determine to what specific objects they should be applied should be left in the hands of living men, who can judge of the necessities and of the needs in the light of the knowledge which they have as contemporaries, and not that they shall find their hands tied by the will of the man who is long years dead.[422]

This being the case, Murphy argued, further specificity was not possible, as further definition would be imposing limitations on the type of work the foundation might undertake.

Murphy next attempted to convince his audience that the grant-making model to be employed by the Rockefeller Foundation would create strong institutional networks amongst charities, while it would not grant the Rockefellers and their associates any kind of undue influence in shaping social welfare policy. In Murphy's words: "It ha[d] always been the practice of the donor to work through existing agencies, so far as that is possible; never to supplant, but always to supplement."[423] For that reason, the bill provided for the foundation to "cooperate with

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[420] *Incorporation of Rockefeller Foundation, Hearing on S. 6888, Before Comm. on the District of Columbia*, 61st Cong., (1910) (Statement of Starr J. Murphy), 5.

[421] Ibid., 7.

[422] Ibid., 7.

[423] Ibid., 9.

existing agencies," or even to provide "floating endowments."[424] As Murphy explained, if an enterprise was worthy of "perpetual support," the Rockefeller Foundation could "turn over a portion of our funds to it in the way of endowment."[425] However, if the enterprise became obsolete, the Rockefeller Foundation could withdraw the endowment and put the funds to another use. Again, Murphy had hit on one of the most alarming elements of the Rockefeller's charter—their ability to shape charitable networks. While Murphy's testimony certainly outlined the potential efficiencies of a limitless charter, he unwittingly highlighted its potential to over determine the nation's charitable policies and practices. This potential expansion of corporate power inspired years of debates about the bill.

The Dangers of a "Limitless" Charter

After the introduction of the bill, the Rockefellers received a number of letters in support of their efforts.[426] Generally, these letters emphasized Rockefeller's position as a rich man living through a time of economic transition in which large fortunes were inevitable. They focused on Rockefeller's personal position in order to establish the righteousness of his corporate power. However, to others, Rockefeller's exceptional abilities and his exemplary character were not relevant to deciding the corporate privileges, which should be permitted the Rockefeller Foundation. However, for others, the corporate privileges contained in the foundation's charter were precisely the issue.

The Watchman, a Baptist journal, published an article on the proposed Rockefeller Foundation, which they proclaimed was "unparalleled in the history of the world." With its desired corporate privileges the foundation would have "unprecedented powers." Usefully, this would have prevented the possibility of any further "tainted money" disputes, because the Rockefellers would garner so much influence in their charitable networks that would no one would complain about the source of their wealth. Even more astutely, the authors noted that as

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[424] Ibid., 10.

[425] Ibid., 10.

[426] J.B. Engstad to John D. Rockefeller, Mar. 3, 1910; J. Aldrich Smith to John D. Rockefeller Jr., Apr. 6, 1910; Homer Folks to John D. Rockefeller Jr., Apr. 5, 1910, Folder 254, Box 25, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

Rockefeller sought to manage his wealth in an "incorporated body while retaining the name [Rockefeller]," the family would be eliminated from the Foundation while it opaquely controlled the foundation's assets through a veil of trusteeship.[427] When Rockefeller's wealth "became the property of a corporation, [it] became impersonal," they explained, and then it would not directly be "claimed by anyone." The article concluded, by this act Mr. Rockefeller was removing himself from the equation," and he would become simply a part of the board.[428] As the funds became "impersonal," their relationship to the Rockefellers became less direct. Although he would be a trustee, Rockefeller could always assert that the foundation was run and managed by a greater board of trustees. This expansion of Rockefeller's corporate power without perceivable limits threatened the values of reformers invested in limiting the power of large corporations.

George W. Da Cunha, an architect of Upper Montclair, NY, further developed this critique in an open letter (published in the *NYT*) to the senior senator from each state decrying the "dangerous precedent" that would be set by incorporating the Rockefeller Foundation with an "extraordinary charter."[429] Da Cunha called the charter "special," a piece of "class legislation" that would be in line with "the granting of charters by crowned heads with extraordinary powers." Through the foundation, the funds would be hard to trace back to the Rockefellers when placed in an "incorporated body." Da Cunha was concerned that by establishing the foundation, the Rockefeller's would have made a portion of their fortune immune from inheritance and income taxation. This was the moment when the nation was ratifying the Sixteenth Amendment establishing the federal income tax, so Da Cunha's thoughts on the foundation in relation to taxation reflect the possible impact that the foundation might have on

[427] "Raps Rockefeller Charter," *The New York Times*, March 10, 1910. S. 2675 (SEN 62A-E1); 62nd Congress; Records of the U.S. Senate, Record Group 46; National Archives, Washington, DC. Edmund F. Merriam and Joseph S. Swaim, eds. *The Watchman* 92 No. 10 (March 10, 1910). Folder 255, Box 25, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[428] Edmund F. Merriam and Joseph S. Swaim, eds. *The Watchman* 92 No. 10 (March 10, 1910). Folder 255, Box 25, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[429] "Raps Rockefeller Charter," *The New York Times*, March 10, 1910. S. 2675 (SEN 62A-E1); 62nd Congress; Records of the U.S. Senate, Record Group 46; National Archives, Washington, DC.

the Rockefellers' tax contributions, rather than how taxation actually worked in that period.[430] Da Cunha noted, "there will be no heirs only successors in the corporate body; there being no heirs as each generation of Rockefeller's pass away, there can [be] no inheritance tax collected" from successors. As the federal income tax and personal and corporate tax deductions did not exist yet, the idea that the Rockefeller Foundation was taking money out of the national economy and it would be controlled by Rockefeller and his associates seemed unjust. There was a greater benefit to the Rockefellers in establishing their foundation than to the nation, which would lose the value of the potential inheritance taxes that Rockefellers' progeny would pay on his securities at the time of his passing. Such a loss would not necessarily be limited to the Rockefellers. He warned, "there can be no excuse hereafter for not granting similar charters to any and all the wealthy families of the land. They in turn, (interests being similar), could combine and form one of the greatest aggregations of money in the world and one that could dominate and overcome all opposition." However, in fact, "No guarantee can be had that the successors to the original incorporation will continue to use the money for the purposes for which the charter shall be granted."[431] Da Cunha's quite practical critique of the corporate privileges in the charter amounted to a much darker vision of how the Rockefeller Foundation and other foundations might overpower national and foreign governments.

Edward Devine, an economist and early leader in the field of social work who had happily aided his friend Robert de Forest's creation of the Russell Sage Foundation a few years earlier, powerfully developed similar critiques of the Rockefeller Foundation's charter. However, in Devine's case, his response to the Rockefeller Foundation's charter influenced the trajectory of the bill due to his eminent position in the growing field of social work. Known as the "dean of social welfare," Devine ranked highly in the New York Charity Organization Society, he was a professor of social economics at Columbia, and he published widely. Devine edited the *Survey* magazine, which had a readership of about twenty thousand people who mostly included

[430] Ajay K. Mehrotra, *Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation* (Cambridge: Cambridge University Press, 2013).

[431] George W. Da Cunha, "Open Letter," March 8, 1910. S. 2675 (SEN 62A-E1); 62nd Congress; Records of the U.S. Senate, Record Group 46; National Archives, Washington, DC.

"lawyers, scientists, economists and doctors."[432] Frequent contributors included Jane Addams, John R. Commons, Jacob Riis and Florence Kelley.

While most of the content he published about philanthropy in *The Survey* affirmed a belief in the possibility of foundations positively shaping national fields, such as education, the debates about chartering the Rockefeller Foundation led him to criticize the antidemocratic nature of the board structure at foundations. After the bill was introduced in the Senate, Devine responded with an article in *The Survey* that emphasized the unprecedented nature of the Rockefeller Foundation and called for increased Congressional oversight.

It was Devine who said that the exceptional nature of the Rockefeller foundation's charter should enhance "public interest" in the "reconsideration of fundamental questions of policy" relating to perpetual endowment.[433] With his critical commentary Devine expanded the scope of critiques of the foundation by making them relevant to larger policy issues about foundations and other philanthropic and charitable institutions. Never a foe of foundations, generally though, Devine asserted, "[i]n conception and purpose the Rockefeller Foundation compares favorably with the wisest and most generous of all previous donations for the promotion of human welfare."[434] However, there should be "limitations to which this and all other endowments are subject arising from our imperfect human nature and fallible judgment."[435] He explained that the quality of the benefactions would rely entirely on the trustees' "wisdom," and "freedom from class prejudice."[436] Thus, with the wrong trustees the Rockefeller Foundation could lead to support for institutions and agencies that worked against human progress.[437] It was

[432] Graham Adams, *Age of Industrial Violence 1910-1915: The Activities and Findings of the United States Commission on Industrial Relations* (New York: Columbia University Press, 1966): 26. *I can't remember where I found the readership number—I have to find that and cite it. The New York Charity Organization Society originally published the magazine under the title *Charities and the Commons,* and the Russell Sage and the Carnegie Foundations funded its production. However in April 1909 the magazine's editors saw an opportunity to attract a larger audience, and they changed the publication's name to the *Survey* to better "spread the news of social advance and to recruit workers in behalf of the common welfare." *The Survey* v 22, April 3, 1909.

[433] Edward T. Devine, "Social Forces: The Rockefeller Foundation," *The Survey* v 23, 1909, 903.

[434] Ibid., 901.

[435] Ibid., 901.

[436] Ibid., 902.

[437] Ibid., 902.

not long ago, Devine argued, that the Inquisition and slavery were deemed essential elements of human progress.

Devine also addressed the Rockefeller Foundation's exemption from taxation. While Rockefeller Sr. and his fellow incorporators declined to specify the exact amount of money he planned to give to the foundation, the press speculated wildly about the potential size of the foundation's endowment. If the foundation's property and funds were to be exempt from taxation, Devine explained, taxpayers would be "furnishing annually in perpetuity one-third of the resources of the Foundation."[438] Devine argued, "[t]he question fairly arises whether the withdrawal forever of so large a sum or sums from taxation does not in effect constitute the nation a partner in the benevolent enterprise, and whether this and other grounds of public interest do not deserve emphatic recognition in the charter."[439] Put another way, with unprecedented corporate privileges, the foundation was neither public nor private. It was a "partner" in benevolence. As such, the government should take care in specifying its unique relationship to the foundation.

However, how that private-public partnership would operate to promote "public interest" was highly controversial. The bill to incorporate the Rockefeller Foundation provided for it to send financial reports annually to the secretary of the interior in addition to being subject to alteration at the pleasure of congress. Devine advocated for additional provisions for government oversight in the form of three major amendments to the charter. First, he advocated for the government to have some role in the selection of trustees. Second, the annual income of the foundation should be expended and the indefinite increase of the foundation's endowment forbidden. And third, within a period of something like one hundred years, the endowment should be expended in its entirety—both principal and interest.[440] For Devine, these proposed amendments would make the institutional structures of the foundation more democratic. The federal government would play an active role in managing the foundation, and its board and grants would be more likely to be representative of the public's best interest. These amendments would soon dominate future discussions of the bill.

[438] Ibid., 902.

[439] Ibid., 902.

[440] Ibid., 902.

In fact, during his speech before Congress, Starr Murphy had taken pains to emphasize the federal government's managerial role in shaping the Rockefeller foundation and the larger charitable sector. The "Government always has control of charitable corporations," he argued. There was precedent for Congress to decide that a charitable corporation had acted in a manner "inimical" to the "public welfare" and to seize its endowment. He cited the case of the Mormon Church in 1890, which as a corporation organized under the laws of the Territory of Utah, was subject to the laws of Congress like other corporations with a federal charter.[441] Congress had determined that polygamy was an "essential doctrine of the Mormon Church," so the corporation was "inimical to the public welfare." As a result, it repealed the church's charter and re-appropriated its property worth millions of dollars under the "cy-press doctrine." The doctrine dictated that charitable funds that prove to be unnecessary or illegal could be re-appropriated for "purposes that are "most in accord with the original purpose." In the case of the Mormon Church, Congress appropriated the church's funds for the public school system of the Territory of Utah.[442] After this lengthy explanation, Murphy noted, Rockefeller "is perfectly content to leave this great foundation in the hands of Congress." It would ensure that the funds were used for the "public welfare." Congress would also have the power in the future "to exert its authority" and apply the fund to its intended uses.[443] In Murphy's words, the philanthropy was "intended to be national in its scope." Under the government's "protection," it could always intervene and "administer it for public uses." Their direction would be critical, because Congress represented "not the people of a single State, but the people of this whole nation."[444] After Murphy's testimony, the terms of the debate about the Rockefeller Foundation shifted, as journalists and public officials started to ask: would the Rockefeller Foundation be a "menace to the state"?[445]

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[441] *Late Corporation of the Church of Jesus Christ of Latter-Day Saints et al. v. United States*, 136 U.S. 1 (1890).

[442] *Incorporation of Rockefeller Foundation*, Statement of Starr J. Murphy, 10.

[443] Ibid., 12.

[444] Ibid., 13.

[445] "Mr. Wickersham and the Rockefeller Foundation," *Chicago Record-Herald*, May 9, 1911, Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

The idea of the Rockefeller Foundation operating "through the state" was controversial.[446] One writer for *The Independent* argued that Starr Murphy's repeated assurances that Congress would exercise ultimate authority over the foundation were inadequate. Comparing the Rockefeller Foundation to existing nonprofit institutions, such as Harvard, was simply not analogous. Educational institutions focused on one objective—the Rockefeller Foundation was attempting something more as it sought the freedom to fund any benevolent cause it saw fit. "True, the charter calls for an annual report," the author remarked, "but it is certain that this report would be accepted," because it was after all a "non-commercial corporation."[447] Further, the writer believed, it was of no comfort that Congress could repeal the foundation's charter, because corporate wealth frequently exercised "corrupt influence upon legislative bodies."[448]

In the face of these criticisms, the Rockefellers would have been encouraged by *The New York Times'* response to the Devine amendments. The paper repeatedly took Devine to task for challenging the bill to incorporate the Rockefeller Foundation. In the *Survey* Devine shot back that he had not advocated for the failure of the bill—simply its amendment. Devine emphasized: "There is a wide margin between positively beneficent activities and such obnoxious and unlawful actions as would justify intervention by Congress and the courts." By this Devine meant that while Starr Murphy assured the public that Congress would have the ability to amend the foundation's charter, there would most likely be a high threshold for that type of intervention.

From Devine's perspective, why not create better regulatory policy that would make the foundation as useful as possible. His amendments, he suggested, would work to that end: [449]

> [T]here is a better alternative—to create an institution which shall be vigorous and useful from the start, strong in its alliance with public sentiment, containing within itself the sources of constant rejuvenation, justifying its policies before enlightened public opinion,

[446] "Mr. Wickersham and the Rockefeller Foundation," *Chicago Record-Herald*, May 9, 1911, Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[447] A. J. Portenar, "Looking a Gift Horse in the Mouth," *The Independent* 68 (23 June 1910), 1386-1389, Folder 255, Box 25, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[448] Ibid., 1386-1389.

[449] "Rockefeller Foundation," *The New York Times*, March 27, 1910.

making it clear to all men that service and not special privilege or power is its end, and relying upon its purpose to accomplish within measurable time such benefits to mankind that future generations will be able from their own resources to make other and even greater gifts.

The public reactions to the bill highlight that it was indeed the corporate privileges in the foundation's charter and its potential relationship to the federal government that interested both its proponents and opponents. The difficulty was that no one could be certain how the foundation's unprecedented charter would operate in practice.

In the end, the Senate committee recommended the bill for passage, but less than two weeks later the Rockefellers withdrew the bill. It was becoming clear that the bill would most likely not pass in the larger Senate. Senator Gallinger wrote Murphy that he believed the bill would be defeated due to the objections of several Senators.[450] Republican Senator from Idaho Weldon Brinton Heyburn who served from 1903 to 1912 and was known for promoting western industries and contributing to the passage of the Pure Food and Drug Bill,[451] as well as Wisconsin Republican Robert La Follette, who served 1906 to 1925 and famously supported progressivism and opposed the trusts,[452] particularly objected to the bill. Heyburn's objections centered on the foundation's potential exemption from taxation, while La Follette allegedly believed that the object of the foundation—to benefit humanity—was far too vague. An article quoted Heyburn as saying, "The Rockefeller Foundation would perpetuate the Standard Oil Company because…it would leave the investments in the hands of the company and give it additional advantages over other corporations." This financial relationship between the Rockefeller Foundation and Standard Oil, while abstract, promised to inspire popular protest.

In fact, Senator Heyburn promised to "make the speech of his life" against the charter if the bill came up in the Senate. Heyburn believed that any "great fortune ought to be placed, so

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[450] Jacob Gallinger to Starr Murphy, March 22, 1910, Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[451] "Weldon Brinton Heyburn, 1852-1912," University of Idaho Library Special Collections: www.lib.uidaho.edu/special-collections/Manuscripts/mg006.htm, accessed 3.3.17.

[452] Nancy Unger. *Fighting Bob La Follette: The Righteous Reformer* (Wisconsin Historical Society: 2000).

far as the State is concerned, that it can be taxed after the death of the owner as well as during the life." Heyburn continued: [453]

> I think the charity of each age and generation belongs to that age and generation. States are supported by the wealth within them. An attempt to take his whole fortune out of taxation by the Sate by Mr. Rockefeller ought to be combated. It is the fundamental law that when a man dies some part of his property belongs to the state. Under the proposition Mr. Rockefeller is trying to put through the Senate a vast sum would be taken forever from the running of government. There is no suggestion in the proposed charter as to the character of the charities Mr. Rockefeller proposes to establish. It has never been the policy of the government to exempt estates from taxation. If the estates of rich men, under this proposed precedent, could be exempted from taxation, there would be nothing left to the government but the estates of the poor to tax.

These objections made the timely passage of the bill impossible under the constraints of the Senate calendar, so the Rockefellers and Senator Gallinger decided to remove the bill from the calendar for the time being. They also pointed to larger questions about how philanthropic foundations might alter the nation's political economy. If the state was to play a role in funding social welfare programs, then it would need tax revenue to do so. If the wealthy arranged to shield their wealth from taxes by undertaking charitable initiatives, then it would shift social welfare programming to privately funded institutions.

Drafting a More Democratic Charter: Remaking the Public Trust

Throughout the summer of 1910, the Rockefeller Foundation's creators considered the opposition to their bill. John D. Rockefeller Jr. read literature on endowments. He sent his readings to Frederick Gates who responded by expressing his surprise that "[o]ur principle that each generation should take care of its own charities seems to be getting unexpected judication."

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[453] "Heyburn to Fight Rockefeller Bill," Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

He suggested limiting the amount of funds held by the Rockefeller Foundation.[454] In response, Rockefeller Jr. indicated that providing for the dissipation of principle might be an even more effective means of satisfying objectors. In this period of reflection, the Rockefellers and their team of advisers exhibited a willingness to invite public oversight of their public works that has surprised many historians.

As Rockefeller considered the amendments, Charles Eliot, President of Harvard, sent Starr Murphy a letter expressing his interest in the opinions put forth by "thoughtful patriots" who would like to see more public officials overseeing the Rockefeller Foundation.[455] Most especially, Eliot indicated his interest in the issue of oversight. He asked: what sort of "Board of Overseers" should the foundation have? Eliot thought it would be best to populate the board with "national officials," such as the Secretary of Agriculture or the President of the American Philosophical Society. This, he explained, was how the Board of Overseers worked at Harvard, and it protected the university from objections to a perpetual, self-selecting board of trustees, and it inspired "public confidence." If he had any questions, Elliot pointed Murphy to the book he had written on "University Administration."[456]

As they prepared to resubmit the bill in Congress, Murphy corresponded with Senators Aldrich and Gallinger to see what potential the bill might have to pass going forward.[457] They

[454] Frederick Gates to John D. Rockefeller Jr., August 6, 1910, Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[455] Not all of the feedback the Rockefellers received was negative. On March 29, 1910 Robert de Forest of *The Survey* wrote John D. Rockefeller Jr. expressing his support for the bill to incorporate the foundation. He noted Devine's objections, but said he wanted to make it clear that he didn't share them. Robert de Forest to John D. Rockefeller Jr., March 29, 1910, Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[456] Charles Elliot to Starr Murphy, March 22, 1910, Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[457] Congress was unsure of its own authority to grant the Rockefeller Foundation a federal charter. On June 20, 1911 the Board of Commissioners of the District of Columbia (signed by the President, Cuno Hugo Rudolph) sent Jacob Gallinger a letter about the bill to incorporate the Rockefeller Foundation. In the letter Rudolph indicates that Gallinger referred the bill to the commissioners "for examination and report touching the merits of the bill and the propriety of its passage." Rudolph says: "In the opinion of the Commissioners the proposed legislation is for the sole consideration of Congress." They further suggested: "that some proper section giving the United States more power of visitation over the acts of the corporation, with authority to correct any abuses of charter power, might not be inappropriate; and the Board feels that in justice to the District of Columbia the Commissioners should be given discretionary powers to say to what extent the exemption (Section II) should prevail. Cuno Hugo Rudolph to Senator

decided to insert all of Edward Devine's amendments in the new bill. Now the revised version provided for the inclusion of government officials to have some role in the selection of trustees; for the annual income of the foundation to be expended and the indefinite increase of the foundation's endowment to be forbidden; and for the dissolution of the foundation after a period of one hundred years—both principal and interest.[458]

Edward Devine and new *Survey* President Robert de Forest took great pains to support the revised version of the bill. They praised the incorporation of the amendments, and they clarified that investing in philanthropy evidenced "confidence in the intelligence and in the capacity of the democracy." Further, foundations promoted "desirable public activity" amongst other large endowments.[459] *The Survey's* influence on the bill had been great, so when de Forest and Devine wrote an article in support of the amended charter, Starr Murphy sent half a dozen copies to Senator Gallinger so that he could emphasize the periodical's support of the bill when talking to Senator Heyburn and other detractors.[460] When Edward Devine sat next to John D. Rockefeller Jr. at the dinner of the American Academy of Political and Social Science, he affirmed his support of the foundation and offered his services. He would be in D.C. working on child labor legislation, and he would be willing to help. He went so far to discuss the bill with Congressmen and report his reception back to the Rockefellers.[461]

However, Heyburn still wished to object. Under those circumstances, Senator Gallinger explained to Murphy, the bill could not be passed.[462] By late spring 1911, there was a general consensus amongst the incorporators not to reintroduce the bill until the Standard Oil decision

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Jacob Gallinger, June 20, 1911. S. 2675 (SEN 62A-E1); 62nd Congress; Records of the U.S. Senate, Record Group 46; National Archives, Washington, DC.

[458] *The Rockefeller Foundation*, Report on H.R. 21532, Before Comm. on the Judiciary, 62nd Cong., 1912.

[459] "The Rockefeller Foundation, *The Survey* XXVII No. 21 February 24, 1912. Folder 255, Box 25, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[460] Starr Murphy to Jacob Gallinger, January 14, 1911, Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[461] John D. Rockefeller Jr. to Jerome Greene, April 22, 1912, Folder 250, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[462] Jacob Gallinger to John D. Rockefeller Jr., February 24, 1911, Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

had been handed down.[463] However, after the Supreme Court announced its Standard Oil ruling in May, John D. Rockefeller Jr. urged his father to permit the reintroduction of the bill to incorporate the Foundation in Congress. Rockefeller Jr. suggested that if they didn't reintroduce the bill, it might look as if they had only introduced it before the Standard Oil ruling to affect the Supreme Court's decision.[464]

After the ruling, at Rockefeller Jr.'s request, Frederick T. Gates contacted Rockefeller Sr. for permission to reintroduce the bill. From their correspondence, it seems likely that Rockefeller Sr.'s interest in the federal charter had weakened throughout the debates. Gates took pains to assure Rockefeller Sr. that even if Congress granted them a federal charter, they had not committed to any "definite gift." However, the public was expecting such a gift, and Gates urged Rockefeller to see the ideal nature of an elastic charter and large foundation. Further, he noted, he had just seen President Taft at a dinner at Bryn Mawr and when a third party brought up the subject of the foundation, Taft seemed "entirely favorable."[465]

The bill to incorporate the Rockefeller Foundation was subsequently reintroduced in the Senate with the amendments in June 1911. However, the bill faced another dramatic setback when it became public knowledge that Attorney General Wickersham condemned the Rockefeller Foundation's federal charter as unwise.[466] Allegedly, Wickersham and his colleagues believed that the trustees of the Rockefeller Foundation might choose to devote their funds to a "politico-economic movement" that was against "larges masses of the people." Such a circumstance could conceivably intensify class conflict rather than promote human progress.

[463] John D. Rockefeller Jr. to Nelson Aldrich, May 4, 1911, Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[464] John D. Rockefeller Jr. Memorandum, May 18, 1911, Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[465] Frederick Gates to John D. Rockefeller Sr., May 19, 1911, Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[466] C.R. Miller to Starr J. Murphy, May 10, 1911, Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center. "Rockefeller Foundation," Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center. An article from the *Chicago Tribune* on May 8, 1911 contained a dispatch from John Callan O'Laughlin quoting Wickersham and The Tribune of New York covered the same on May 10, 1911.

In response, Devine and de Forest tried to remind the public of their support of the bill. A like-minded article in the *Chicago Record* implored readers, particularly sociologists and social workers, to see past these critiques and promote the Rockefeller Foundation's interest in advancing "humanity, research and progress." There were real problems in the world: "misery, ignorance, disease lack of opportunity, wasted faculty," the authors noted, and "organized, systematized benevolence" was not one of them.[467] Despite these efforts, the bill still did not pass the Senate.

The Rockefellers did not give up yet though. In 1912 Jerome Greene took over Starr Murphy's lobbying efforts. From 1910 to 1914 Greene worked as the General Manager of the Rockefeller Institute for Medical Research and later as a philanthropic adviser to John D. Rockefeller. Greene brought new life to the cause. He used his personal and professional connections to meet with Congressman, public officials, and journalists. He tried to control press coverage of the bill upon its reintroduction. In his words, he did not "pressure" the press, but he did "secure assurances from *Collier's Weekly*, *Harper's Weekly*, *Outlook*, and the Hearst Newspapers, that they will, on receiving notice from me that the bill is to be taken up, either refrain from any agitation against it, or print a paragraph of commendation." He did not want to "dictate the story," rather he wanted to ensure that the press would only engage in "casual reference" to the bill. If Greene could assure Congressmen that periodicals did not intend "to make a fuss about the bill," he thought it would help their cause.[468]

The Rockefellers introduced the bill in the House in March 1912. Greene worked with "a good friend" on the subcommittee of the Judiciary to get the bill passed.[469] He was successful and it passed both the full Committee and the House on January 20, 1913, albeit with some delays. Greene reported that at the last minute, a group of Congressmen tried to remove the exemption from taxation from the bill, but the amendment did not have unanimous support, and so it did not go through. A roll call resulted in a 155 to 60 vote in favor of the bill.

[467] "Mr. Wickersham and the Rockefeller Foundation," *Chicago Record-Herald*, May 9, 1911, Folder 244, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[468] Jerome Greene to John D. Rockefeller Jr., January 22, 1912, Folder 250, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[469] Jerome Greene to Starr Murphy, February 14, 1912, Folder 250, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

The Rockefellers were finally close to obtaining their federal charter. As the Senate prepared to take up the bill, Greene intensified his lobbying efforts. However, to his great dismay, he realized the chances were against the passage of the bill. Without complete consensus the bill would need to be brought up on the general calendar, which was unlikely to happen in a timely manner. Still, he met with Senators and the President to encourage the passage of the bill. John D. Rockefeller had previously expressed his desire to "put Congress squarely on the record in this matter," and Greene intended to make that happen.[470]

As expected, a number of Senators objected.[471] On February 17, the bill made it out of committee—ten to four. As a result Greene stayed in D.C. for the rest of the month agonizing over whether the bill would make it onto the calendar. He was hopeful, so he spoke to President Taft to see if he would support the bill once it passed Congress. President Taft told him: "Well, I think I can arrange to let you do what you want with your own money."[472]

To help their cause, Greene highlighted that passage of the bill would "make Washington an important center for many movements which aim at bettering conditions of life for the race." And the foundation would be "subject to control by Congress at every point." Greene said that Rockefeller wanted "his biggest gift to the people to take on a national character," and "he also believes that control by the people of the whole country is safer and better than control in the interests of any one section." And, finally, Greene emphasized: "He does not have to obtain a federal charter for his Foundation. Under the laws of almost any State, a foundation could be incorporated…which would be much less restricted than is that established by the proposed

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[470] Jerome Greene to Starr Murphy, February 10, 1913, Folder 250, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[471] As he prepared to fight, Greene found Senator Dillingham not sufficiently "combative," so he enlisted the support of Senator Root in hopes that he would guide the bill through the Senate. To do so, he would have to take on a number of noisy detractors of the bill. Senator Culberson had made his thoughts clear, and some Senators seemed to favor the bill, but they needed pushing. Jerome Greene to Starr Murphy, February 11, 1913, Folder 250, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[472] Jerome Greene to Starr Murphy, February 27, 1913, Folder 250, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

bill."[473] By 1913 the Rockefellers and their philanthropic advisers realized the importance of emphasizing the federal government's role in managing the Rockefeller's proposed foundation.

This marks a radical shift from their initial emphasis on the flexibility and autonomy they wished for the foundation. Greene said that while Rockefeller did not wish to hamper his gift with restrictions, "the purposes he has first in view are in line with those expenditures which have been proved to be the most productive…" He explained that in investing in medical research, the eradication of public health concerns, farm demonstration work, and rural education, it had always been the Rockefellers' "policy hitherto to work only in co-operation with State and local authorities and to stimulate the spirit of local responsibility and self-help."[474] This strategy of emphasizing philanthropy related to less controversial endeavors such as public health and agricultural development became important to establishing the credibility and necessity of the Rockefellers' charitable activities.

Expanding the Elastic Charter to include the "Common Interest"

Their early emphasis on elasticity helped the Rockefeller Foundation trustees argue for the necessity of a federal charter, but in the end, it proved to be a significant reason their bid for a federal charter failed. Even when the Rockefellers adopted every last one of Devine's amendments in their bill to incorporate their foundation, Congress failed to pass the bill to incorporate the Rockefeller Foundation.

This did not make sense to the Rockefellers. As Greene explained in a veiled warning to Congress:[475]

> Either a state charter or a deed of trust would enable us to accomplish all the present purposes of the Rockefeller Foundation without any of the restrictions by which the public interests of the country as a whole are safeguarded by the present bill. To defeat

[473] Jerome Greene, "Release for Sunday Papers, Jan. 19, Folder 245, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[474] Jerome Greene to Hon. Clarence D. Clark., Feb. 13, 1913. S. 2675 (SEN 62A-E1); 62nd Congress; Records of the U.S. Senate, Record Group 46; National Archives, Washington, DC.

[475] Jerome Greene to Hon. Clarence D. Clark., Feb. 13, 1913. S. 2675 (SEN 62A-E1); 62nd Congress; Records of the U.S. Senate, Record Group 46; National Archives, Washington, DC.

this bill is consequently to deprive Congress permanently of a control which could be exercised against conceivable abuses.

Indeed, the Rockefellers made good on this quasi-threat. Shortly thereafter, they applied for a special charter in New York, and they removed every single one of Devine's amendments that gave the government more oversight over the foundation. The endowment would not be limited or expended in a certain period, government officials would not play a role in appointing trustees, and the annual income of the foundation would not have to be spent each year.

About a month later, Jerome Greene wrote a memo announcing the unanimous passing of the Act to incorporate the Rockefeller Foundation in both houses of the New York legislature and by the Governor. With the Rockefellers' New York connections the bill had passed smoothly.[476] Greene explained that the amendments added to the federal charter were removed because while they were "willingly agreed to…they were not regarded as necessary."[477] The trustees thought it desirable to wait and see how they should alter the charter to serve "the public interest" after some years of operation.

With their New York charter, the Rockefeller Foundation would enjoy "all the powers and all the privileges that a federal charter would have conveyed," Green sneered. The only practical difference being that "Congress has relinquished the opportunity of controlling the Foundation in the interest of the whole country." However, Greene tempered his message a bit by adding that a lack of a federal charter would not prevent the intended operation of the foundation—nationally and internationally.[478]

Privately, though, as the Rockefeller Foundation dropped the amendments from the charter, a lingering question plagued Jerome Greene. He wondered: how might the Rockefeller

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[476] On March 18, 1913 Murphy wrote Dr. Hermann M. Biggs explaining that they had abandoned the Congressional charter and wished to approach New York's Senate and Assembly simultaneously with a bill to incorporate the foundation. Murphy hoped that Biggs might know what their prospects would be like and what objections might arise. Starr Murphy to Hermann Biggs, March 18, 1913, Jerome Greene, "Release for Sunday Papers, Jan. 19, Folder 250, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[477] Jerome Greene, "Memorandum," April 26, 1913, Folder 250, Box 24, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[478] Ibid.

Foundation work out “a satisfactory scheme for the future control of the Foundation in the public interest”? In other words, how could the current board take appropriate steps to ensure that future trustees—in fifty to five hundred years—would maintain a foundation that was “responsive to the will and intelligence of the people through future generations?”[479] In letters to fellow foundation executives, Greene explained that addressing this question satisfactorily would stave off federal or state legislation that would limit or dictate the foundation’s activities and might prevent the “compulsory distribution of our endowment.” Greene anticipated increased government regulation of foundations, and he wished to initiate reform measures before they were externally imposed.

However, proving the foundation’s commitment to the “common interest,” would not be merely an issue of amending the foundation’s charter. As Frederick Gates had told Greene in previous conversations, the foundation could not “permanently endure as a paternalistic institution far ahead of the people in wisdom and foresight.”[480] The foundation would need to be perceived as valuable by the public if it hoped to operate in perpetuity. To achieve this, Greene believed that the foundation should demonstrate its “democratic” policies through the creation of a “Public Council.”[481]

The Public Council might include “leaders of thought and action” from all fifty states and foreign countries. Members of the council would attend an annual meeting where directors from the foundation would provide reports on the foundation’s main branches of work, and the Public Council would then debate the foundation’s work and provide feedback. The meeting would be an opportunity for publicity and public scrutiny as much as an opportunity to direct the program

[479] Jerome Greene to Wickliffe Rose, July 7, 1913, Folder 159, Box 21, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

[480] Ibid.

[481] Greene started laying out this vision and soliciting feedback from Wickliffe Rose, a veteran social reformer from the South who served on the Southern Education Board and later served as President of both the General Education Board and the International Education Board, in early July 1913. He also submitted a memo to the trustees, “The Principles and Politics of Giving,” which drew out the idea of the Public Council for the members of the foundation prior to their October 1913 board meeting. Jerome Greene to Wickliffe Rose, July 7, 1913, Folder 159, Box 21, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center. Jerome Greene, “Principles and Policies of Giving, October 22, 1913, Folder 163, Box 21, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

and policy of the foundation.[482] In these designs, Greene was outdoing even Edward Devine's vision for a more democratic foundation. It was a radical departure from the Rockefellers' earlier commitment to elasticity.

However when Greene wrote John D. Rockefeller Jr. about creating the "Public Council," he did not share Greene's enthusiasm. Rockefeller Jr. thought the policy proposal "interesting and admirable" and it might one day be desirable; however, he wrote, "I should rather keep the foundation as free and as flexible as possible during the early years of its existence while its founder and his representatives are on hand to guide and mold it."[483] Here, one starts to see how John D. Rockefeller Jr. and other trustees understood the meaning of an elastic charter. The importance had a larger significance beyond efficiency and responsiveness; it afforded the Rockefellers and the foundation's trustees' absolute control over the direction of the foundation.

When Jerome Greene argued that the foundation's desire for a federal charter reflected confidence in the "stability of our national life," he revealed a larger vision for private wealth to play a pivotal role in the nation's development and progress.[484] The accumulation and the redistribution of wealth were central to this vision, and the foundation would take on a hybrid public-private role with a federal charter. For Edward Devine creating a more democratic foundation meant promoting increased oversight of foundations in order to ensure that they operated with "service" in mind rather than "special privilege."[485] Foundations could be kept in line with "public sentiment" [486] through the oversight of selection of trustees, the monitoring of annual expenditures, and by limiting the length of the foundation's existence.[487] Jerome Greene,

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[482] Jerome Greene, "Principles and Policies of Giving, October 22, 1913, Folder 163, Box 21, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

[483] John D. Rockefeller Jr. to Jerome Greene, July 21, 1913, Folder 159, Box 21, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

[484] Ibid.

[485] "Rockefeller Foundation," The New York Times, March 27, 1910. Folder 255, Box 25, Series O, Rockefeller Boards, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center. See also "The Rockefeller Foundation," *The New York Times* March 27, 1910.

[486] Ibid.

[487] Edward T. Devine, "Social Forces: The Rockefeller Foundation," *The Survey* 23 (Oct-Mar 1909-1910): 902.

on the other hand, took these suggestions even further by advocating for the creation of a Public Council that would ensure that the foundation worked in the "public interest."[488] Admittedly, the purpose of the Public Council was to ensure that state and federal governments would not dictate how the Rockefeller Foundation managed its endowment. To achieve that aim, Greene expanded the public and private categories in relation to the foundation beyond the Rockefellers and government entities. His "public" included grassroots, representative feedback from national and international interests. In his words, he was interested in developing a more "responsive" philanthropy.

There was a real possibility that the Rockefeller Foundation might have developed as an updated, twentieth-century version of the public trust (with federal oversight). Devine's vision for a "useful" foundation that would operate with government input on the selection of trustees; the mandatory annual expenditure of the foundation's income; and the spending down of its principal within one-hundred years, indeed, would have made the RF accountable to the American public in unprecedented ways. However, both Congress and the Rockefellers went another direction entirely. As was the case with the Carnegie Institute of Washington, Congress did not want to make the Rockefeller's philanthropy a creature of the government. And despite real efforts to fight that perspective, the Rockefellers eventually embraced the creation of their foundation as a private foundation rather than a public trust. As John D. Rockefeller Jr. pointed out, they would have more control over the foundation that way.

[488] Jerome Greene to Wickliffe Rose, July 7, 1913, Folder 159, Box 21, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

CHAPTER FIVE

The Rise of the Private Foundation:
New Corporate Responsibilities for the Twentieth Century

Just over a year after the Rockefellers overcame the controversy surrounding their failed federal charter, their foundation ignited another national brawl. This time, the fight was over the Rockefellers' use of their new foundation to patch up their botched handling of the Colorado Coal Strike that resulted in the Ludlow Massacre in April 1914. Rather than investigating what went wrong at their mining operation or instituting reforms, the Rockefellers funded industrial relations research through their foundation. To many, it seemed like the Rockefellers were using their foundation to cover-up their industrial despotism. As government officials, labor leaders, social workers, and philanthropists debated the legitimacy of the Rockefeller Foundation's industrial relations investigation, they were working out the limits and role of the private foundation in twentieth-century America.

The Stakes were high, because the Colorado Coal Strike was the deadliest in the nation's history, and the Rockefellers had staunchly refused to meet with laborers and union representatives at their Colorado Fuel and Iron Company, the mining operation at the center of the Ludlow Massacre.[489] Tensions began in September 1913 when 9,000 CFI workers initiated a

[489] The Colorado Fuel and Iron Company (CFI) was the seventeenth-largest industrial firm in America, and since Rockefeller Sr. bought company stock in 1902, it was Colorado's largest employer, operating twenty-four mines in the state. Rockefeller Sr. owned a forty-percent minority interest in CFI. His interest in the company allowed him to maintain control though; he exercised that control through John D. Rockefeller Jr., Frederick Gates, and Jerome Greene who served as board members and directors. For more see, Allan Nevins, *Study in Power: John D. Rockefeller Industrialist and Philanthropist*, vol. II (New York: Charles Scribner's Sons, 1953), 219; Chernow,

strike demanding union recognition in. After a brutal winter of deprivations and rising hostility, on April 20, 1914, militiamen—many of who were newly sworn-in CFI employees—descended on the Ludlow tent colony where strikers were living with their families after being evicted from CFI company towns. While no one knows who fired the first shot, the chaos in the tent colony as residents dodged bullets infamously resulted in the death of thirteen women and children who died trapped under a burning tent. And the fighting did not end there; after the Ludlow Massacre, outraged miners waged a "Ten Days War" as they took up arms and attempted to take over other Colorado company towns. The strike continued until December 1914, and its death toll mounted to seventy-five to one hundred people, making it the deadliest strike in U.S. history.[490]

After Ludlow, to many, it seemed the nation's richest family had blood on its hands. In addition to Frank Hayes, the Vice President of the United Mine Workers of America, President Woodrow Wilson, Secretary of Labor William Wilson, as well as multiple state and federal committees' had made efforts to alleviate or end the strike before the massacre. The Rockefellers, however, had maintained a hardline in opposition to organized labor. Rockefeller Jr. and CFI management had refused to visit Ludlow or meet with miners to discuss unionization or to address their grievances.[491] As CFI's vice president wrote Rockefeller Jr. as the strike unfolded, he promised to resist unionization until his "bones were bleached as white as chalk in these Rocky Mountains."[492] Hayes and the UMW asserted that it was precisely the Colorado coal companies' failure to meet with miners that caused the strike in the first place.[493]

In the aftermath, multiple state and federal commissions formed to manage and investigate the Colorado Coal strike. As Rockefeller Jr. testified at these hearings and investigations, he insisted that, as a director and board member of CFI, he was aware of the

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Titan, 571-573; *Industrial Relations: Final Report and Testimony*, vol. 8, 7771-7772 (Washington D.C.: Government Print Office, 1916).

[490] Thomas Andrews, *Killing for Coal: America's Deadliest Labor War* (Cambridge: Harvard University Press, 2008), 1-19.

[491] For a full account see Chernow, *Titan*.

[492] Chernow, *Titan*, 575.

[493] Frank Hayes to John D. Rockefeller Jr., April 11, 1914, Folder 177, Box 20, Series Business Interests, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

situation in Colorado, but he did not know anything about workers' grievances—that was the purview of company officers. Rockefeller Jr. argued that his ignorance was justified, as he relied on company officers and managers to make on-the-ground decisions.[494] However, for a man who had publicly committed himself to promote "human progress" as President of the Rockefeller Foundation, such an answer was not sufficient. In the midst of the Ludlow Massacre, this approach made the Rockefellers seem, frankly, disinterested in the welfare of CFI workers. Exactly what Rockefeller Jr. knew about workers' grievances and CFI management practices and what responsibility he had to intervene in the interest of his employees and industrial peace became key questions in hearings and in the national press.

Under pressure to show some demonstrable interest in improving labor relations, in June 1914 just two months after the Ludlow Massacre, the Rockefellers started to draft plans for a comprehensive study "of the relations of capital and labor with a view to the promotion of industrial peace." By October 1914 they publicly announced their intention to create an "industrial relations investigation."[495] The Rockefellers hired W. L. Mackenzie King, Canada's former Minister of Labor and future Prime Minister to undertake the study. Before he was even officially hired, though, King started to consult with the Rockefellers regarding how to handle CFI labor relations.[496] Notably, all of these efforts were funded through the Rockefeller Foundation and not by CFI. This funding decision helped the Rockefellers shift the burden of drafting better CFI corporate welfare policies to their foundation. The family could invest in reform while avoiding admitting any past wrong doing at their coal company. They could claim an interest in promoting better industrial relations—even clean up the chaos at CFI—while maintaining ignorance of what happened during the strike.

[494] Rockefeller Jr. testified before the USIRC twice, and both times he asserted that his responsibility as a CFI stockholder was limited to electing appropriate officers to manage the company. As a large stockholder he asserted his "considerable moral influence over the directors and officers" of the company, but he denied any first-hand knowledge or influence in CFI's labor policies. *Industrial Relations: Final Report and Testimony,* vol. 8 (Washington D.C.: Government Print Office, 1916), see for example, 7763-7764.

[495] Investigation of industrial relations press release, October 2, 1914, Folder 148, Box 20, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

[496] *Industrial Relations: Final Report and Testimony,* vol. 8, 7766 (Washington D.C.: Government Print Office, 1916).

This management decision made the foundation a major focal point of the United States Industrial Relations Commission. Congress approved the USIRC in August 1912 to research "the general condition of labor in the principal industries of the United States" and to report on "the underlying causes of dissatisfaction in the industrial situation."[497] The USIRC had spent its first year holding public hearings across the country and conducting research on topics such as collective bargaining, unemployment, and scientific management.[498] These hearings and investigations directly addressed the increase in industrial violence in the first decade of the twentieth century that had made class, the relations between capital and labor, and the distribution of wealth critical topics in American public discourse. However, after the Ludlow Massacre, as the USIRC held hearings in Denver, Colorado about the Colorado Coal Strike, USIRC Chairman Frank Walsh decided to expand the commission's interest in industrial welfare to include "The Centralization of Industrial Control and Operation of Philanthropic Foundations."[499]

Much has been written about the USIRC in terms of labor policy and the coming of industrial democracy,[500] but its investigation of philanthropy raised broader questions about what one witness called before the USIRC called "corporate responsibility" that deserve further analysis by historians.[501] With unprecedented power, these hearings demonstrate, many Americans believed that aggregated capital required new regulatory structures to make it accountable to society. And those regulatory structures made the old public trust model

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[497] *First Annual Report of the Commission on Industrial Relations* (Washington D.C.: Barnard and Miller, 1914).

[498] Ibid.

[499] *Industrial Relations: Final Report and Testimony* Vol. 8-9 (Washington D.C.: Government Print Office, 1916).

[500] See, for example, Shelton Stromquist, *Reinventing the People: The Progressive Movement, the Class Problem, and the Origins of Modern Liberalism* (Urbana: University of Illinois Press, 2006); Andrews, *Killing for Coal;* Graham Adams, *Age of Industrial Violence 1910-1915: The Activities and Findings of the United States Commission on Industrial Relations*; Joseph A. McCartin, *Labor's Great War: The Struggle for Industrial Democracy and the Origins of Modern American Labor Relations, 1912-1921* (Chapel Hill: The University of North Carolina Press, 1997).

[501] Testimony of Samuel Untermyer, 18 January 1915, *Industrial Relations: Final Report and* Testimony, vol. 8, 7430.

untenable—no longer would the federal government give a national imprimatur to a trust funded by securities from the nation's most notoriously profit-mongering corporations. Instead, accountability was discussed as obtainable through analyses of industrial trade unionism and the wage contract, through scientific management, and through debates about whether government or private entities should distribute the "excess profits" of capitalism at all.[502]

With their hard-won "elastic" charter and a board stacked with Rockefeller friends and family members,[503] the foundation's charter only magnified the fact that Rockefeller Jr. and his foundation had fought for the responsibility of naming the greatest social welfare issues of the day and a responsibility to alleviate them in the interest of what they saw as the public good. To make their social and economic policy research more palatable, foundation leadership reframed their efforts as part of the foundation's interest in public welfare. Foundation trustees emphasized the nature of the foundation as what they called a "public trust," and industrial relations as a public welfare issue. The foundation was a "public trust, not a private possession," they argued, because the people had a right to supervise the foundation through legislative representatives. Further they noted, the creation of the USIRC itself demonstrated that investigating industrial relations was in fact a "field of public service," and it was a field that the foundation wished to enter.[504] However, that language, which had fostered the development of other public trusts in the nineteenth century, would not work for the Rockefellers in the early twentieth century. Even as the Rockefellers tried to reframe their private foundation as a public trust, it just heightened the power that they had over American economy and society. This chapter analyzes the

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[502] Louis Bandies used the term "excess profit" while discussing the best method for distributing the earnings and profits of industry in front of the USIRC. For Brandeis distribution could not be undertaken scientifically, but required "judgement and discretion." In his estimation, though, much of the increased profit of industry was "excess profit" that should have gone to labor. See, Louis Brandeis Testimony, 7675-7676.

[503] Rockefeller Foundation trustees included John D. Rockefeller who served as President, John D. Rockefeller Sr., Rockefeller staff members, including Frederick Gates, Starr Murphy, Jerome Greene, and Charles O. Heydt, as well as Harry Pratt Judson, Simon Flexner, Wickliffe Rose all of whom led other Rockefeller philanthropies. Charles Eliot and A. Barton Hepburn were also elected shortly after the creation of the Foundation. See Rockefeller Foundation 1913-1914 *Annual Report*.

[504] "The Genesis of the Investigation," 1915, Folder 150, Box 20, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

Rockefeller Foundation and the USIRC's creation of industrial relations research initiatives to understand the terms of debates about corporate responsibility in the early twentieth century that reshaped the contours of the tenuous balance between the public trust and the private foundation. These debates would fuel the further separation of government and private investment in public works, I will argue, and that resulted in the rise of a private-foundation model of American philanthropy rather than the growth of the public trust.

Competing (Public and Private) Calls to Balance Industrial Relations

In the early twentieth century fervor to "balance" industrial relations swept through the nation. As workers lost their lives or loved ones and industry was forced to reduce operations in the face of protest, elements of labor and capital interested in reform embraced the refrain of establishing a more balanced relationship between their respective interests. Of course the concept meant vastly different things to distinct groups, but whether one was crushing union-organizing efforts or fighting for an eight-hour workday, the concept of balance could be useful.[505]

Both the government and the Rockefeller Foundation's industrial relations investigations framed labor and capital as fixed interest groups fighting universal social cleavages created by modern industry. They both identified a responsibility to address industrial imbalances as the most pressing problem of the era. As Rockefeller Foundation leadership announced in a carefully prepared press release, their research sought to address "anomalies" of "modern industrial conditions" that produced "destructive capacities of opposing and contending forces."[506] Such framing allowed both bodies to suggest that while labor and capital were fixed interest groups, their relations could be managed through better labor practices or policies. One key question to be addressed was how government, business, and labor would play a role in shaping those changes.

[505] While not affiliated with any political party or specific ideology, the idea and practice of balancing industrial relations worked chaotically across what Daniel Rodgers has called the "languages of discontent" that shaped reform efforts in this period that included antimonopolism, and searches for new social bonds and increased social efficiency with the changes wrought by industrial capitalism. See, Daniel T. Rodgers, "In Search of Progressivism," *Reviews in American History* 10.4 (1982), 122-123.

[506] Investigation of industrial relations press release, October 2, 1914, Folder 148, Box 20, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

In fact, both investigative bodies framed their research on these contending forces as national and global in scope, and they publicly announced a desire to influence the creation of government regulation of industrial relations. The USIRC aimed to inspire "wise and broad legislation" in Congress,[507] and the Rockefeller Foundation asserted a desire to work with governments the world over.[508] Both groups planned to gain popular support of their "findings" through what they called "publicity" and later through published reports. Despite their similarities, however, these investigations unfolded in markedly different fashions and they terminated in a battle over the relative efficacies of industrial justice and industrial welfare, as well as an ideological battle over the desired role of private wealth in public life.

Two labor crises shaped the course of the USIRC. First, the bombing of the *Los Angeles Times* Building in 1910 and the subsequent prosecution of the McNamara brothers inspired its creation. Secondly, the Ludlow Massacre in 1914 shaped the final stages of the commission. Both of these tragedies made wages, working conditions, and the relationship between ownership and management national problems. Questions about fair wages and whether workers were adequately benefiting from the profits of industrial capitalism, expanded from private questions between employers and employees to questions of national security and social welfare.

These questions of balance and welfare came into relief when on October 1, 1910 an explosion in the *Los Angeles Times* building, which housed Harrison Gray Otis' staunchly anti-union paper, killed twenty people and injured far more. This bombing followed a series of strikes and explosions as the International Association of Bridge and Structural Iron Workers tried to organize California ironworkers. When the union treasurer John McNamara and his brother controversially pled guilty, it led to harried debates about the use of violence in strikes and whether or not it was even possible to establish better relations between capital and labor at all.[509]

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[507] *Industrial Commission, Hearing on H.R 21094, Before Comm. on Labor*, 62nd Cong., (1912), 6.

[508] Investigation of industrial relations press release, October 2, 1914, Folder 148, Box 20, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

[509] To catch the perpetrators the city hired private detectives who spied on and illegally arrested union treasurer John J. McNamara. Eventually McNamara's brother was arrested as well, and while labor rallied around them declaring their innocence, on December 1, 1911 the brothers pled guilty to the charges against them. For histories of

The *Survey* magazine sought to shape public conversations after the bombing. Its pages facilitated discussion about how balanced relations between capital and labor might be researched and achieved. Historian Allen Davis has suggested that "the outcome of the McNamara case…came almost as a personal tragedy" to social workers like those at the *Survey,* whose social justice work involved "re-establish[ing] communications between the workingmen and the employers and to bring at least a minimum of health, safety and decency into the mushrooming urban center of America."[510] In the case of the *Survey*, many of its editors had contributed to work on industrial relations; they included Edward Devine the "dean of social welfare" so influential in debates about the chartering of the Rockefeller Foundation, John Fitch who worked in New York's Department of Labor and was a professor at the New York School of Social Work, and Paul Kellogg who worked on the Pittsburgh survey and edited its final report.[511]

In an effort to convince policy makers and the public that finding a balance in the labor and capital relationship was possible and to turn the public's attention away from the sensational elements of the McNamara case, the *Survey* formed a Committee to promote the formation of an Industrial Relations Commission. They held a symposium with twenty-nine constituents and published their conclusions in the *Survey*. While they published the varying beliefs of symposium attendees, Paul Kellogg's remarks captured the general spirit of their conversations. The McNamara case demonstrated that national officials of organized labor "had resorted to dynamiting as a deliberate policy," but there could be two responses to this policy, he argued. Some Americans were at a loss for what to do when "good-tempered boys like these McNamara boys" believed their only "recourse…for improving the conditions of the wage-earner [was] to

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the *LA Times* building bombing, see: Adams, *Age of Industrial Violence;* Stromquist, *Reinventing the People;* McCartin, *Labor's Great War;* Allen Davis, "The Campaign for the Industrial Relations Commission, 1911-1913" *Mid-America: A Historical Review* 45.4 (1963).

[510] Davis, "The Campaign for the Industrial Relations Commission, 212.

[511] In 1909 Edward Devine corresponded with Robert W. de Forest about the possibility of the Sage Foundation creating an investigation of industrial relations in New York that would coordinate its efforts with the employment bureau. Edward Devine to Robert W. de Forest, February 15, 1909, Folder 143, Box 17, Series 3-Early Office Files, SG1, Russell Sage Foundation records, Rockefeller Archive Center.

use dynamite against property and life," while others argued for purging organized labor of "lawless methods and individuals."[512]

As an answer to these opposing beliefs, Kellogg argued for "industrial adjustment" or "a release from an unnatural tension and alignment in American life," that would establish "fresh and more hopeful industrial relationships…"[513] In the logic of the *Survey* writers like Kellogg, the unbalanced relationship existed because, as they wrote to President Taft, "Our statutes in the main were originally enacted for the different conditions existing before these industrial changes." Those conditions had changed, Kellogg argued, in the favor of capital."[514] Framing his call for labor policy reform around the changing conditions of American capitalism gave Kellogg an opportunity to articulate a need for governmental intervention. Further it powerfully echoed calls for reform in response to a shift from personally owned and managed businesses to corporate entities that amassed profit and power previously unknown. Those corporate bodies divided ownership, management, and labor in new ways.

However, in the early twentieth century, questions about ownership and management lacked clear answers. As corporate power grew, so did management structures. The increasing division between ownership and management created a vacuum in which labor violations could languish between the responsibility of shareholders and company officers.[515] While corporate executives insisted on the efficiencies of creating organizational hierarchy, union advocates

[512] "The Larger Bearings of the McNamara Case," *The Survey* v 27(Dec 30, 1911), 1412.

[513] "The Larger Bearings of the McNamara Case," *The Survey* v 27(Dec 30, 1911): 1412. Historian Shelton Stromquist has argued that the concept of class and whether or not class difference existed in the United States in a meaningful way dominated divisions amongst Progressives. And After the McNamara brothers' confession and conviction in 1911, these divisions grew deeper. While a smaller number of reformers advocated for what Stromquist calls "class-conscious support of labor's interest," as evidenced in the *Survey's* call for the USIRC, a majority of progressives wanted to pursue reconciliation between labor and capital through "social amelioration" that would move beyond class difference. Stromquist, *Reinventing the People*, 166.

[514] "Petition to the President for a Federal Commission on Industrial Relations," The *Survey* v 27 (December 30, 1911): 1010. Historians have written extensively about the changes in the American economy referenced by Paul Kellogg, which included the consolidation of small businesses into large corporate bodies--what Naomi Lamoreaux has called the "great merger movement" and Alfred Chandler described in *The Visible Hand*. The shifting labor conditions also included vertical integration and an increasing division between ownership and control. All of these changes raised new public policy issues around corporations and their relationship to labor.

[515] See Adolf Berle and Gardiner Means, *The Modern Corporation and Private Property* (New Brunswick: Transaction Publishers, 1991).

contended that the creation of large corporations demonstrated the necessity of similarly-sized labor organizations. The Ludlow Massacre cracked this debate wide open. Even if corporate executives didn't argue for industrial unionism, they found new ways to advocate "industrial democracy," profit-sharing, or for the benefits of scientific management. While many of those solutions came with accompanying problems, they did offer new ways to talk about the relationship between employers and employees that helped other executives avoid the problems facing the Rockefellers. [516] It also demonstrated that beyond business and philanthropy, other nonprofit, membership, and voluntary associations had the potential to grow powerful in the United States.

The *Survey* editors' efforts were convincing; on the morning of March 22, 1912, at President Taft's urging, the Committee on Labor of the House of Representatives held a hearing on a Bill to create a commission on industrial relations. The time had come, Edward Devine who was leading the hearings argued, for the federal government to define its ideal role in industrial disputes and to facilitate better relations between employer and employees. The role of the USIRC was not to only address labor relations amongst employees and employers in major U.S. industries; instead, the *Survey* editors wanted to persuade Congress that the federal government should be involved in shaping U.S. industrial relations. As Devine put it, he and his associates did "not believe that, when the militia is called, that exhausts what the government can do."[517]

Congress officially created the USIRC on August 23, 1912. It was to be composed of nine people who would be appointed by the President. No less than three of the representatives were to be employers of labor and no fewer than three representatives were to be representatives of organized labor. The Commission was authorized to hold public hearings and to compel the attendance of witnesses and their testimony, and then it was tasked with reporting its findings to Congress periodically. For its first year of operation, the USIRC was granted $100,000—far less than other commissions of its kind had received from Congress.[518]

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[516] See, for example, Guggenheim Testimony on "just profit sharing" 7570; Perkins Testimony on profit sharing 7600; Ford Testimony on the insufficiency of wages 7629; See Lewis Testimony on industrial feudalism 7509.

[517] *Industrial Commission*, *Hearing on H.R 21094*, *Before Comm. on Labor*, 62nd Cong., (1912), 6.

[518] *First Annual Report of the Commission on Industrial Relations* (Washington D.C.: Barnard and Miller Print, 1914). At the hearing members of the Committee on Labor asked Devine how much money would need to be allocated to the USIRC. Devine avoided directly answer the question, but he told Congressmen that the Immigration

President Wilson appointed commissioners in January 1913. John B. Lennon and James O'Connell of the AFL, along with Austin B. Garretson of the Railroad Brotherhoods were to represent labor. Merchant and department store owner Harris Weinstock, Kentucky mill owner S. Thruston Ballard, and railroad executive Frederick A. Delano would represent business.[519] And Wilson tapped social work leaders to populate the remaining seats of the Commission to appease the *Survey* leadership who were responsible for its creation. He offered a place to Edward Devine, but he declined, and instead, he appointed John R. Commons, the well-known Wisconsin economist and professor. Wilson further responded to social workers' demands to place a woman on the commission and appointed Florence J. Harriman, a member of the New York elite who founded the Colony Club, worked for the National Civic Federation, and had campaigned for Wilson's election.[520]

While calls for the USIRC represented a belief in government intervention as central to balancing industrial relations, business had its own strategies and agendas. Even before the foundation was officially chartered, Jerome Greene had been meeting with "representatives of some of the largest financial interests" to discuss labor relations. They strategized about what could be done about "the general unrest" plaguing the nation at the conferences. At first, they attempted to plan a "well-organized agency of investigation and publicity" related to industrial relations; however, the group's efforts came to nothing. They could not reach consensus about what the public needed to know about industrial disputes and when and how to share information.

One group of business leaders advocated for the creation of a publicity bureau that would conduct "disinterested investigations" after instances of labor unrest and provide "the facts" to

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Commission and the Bureau of Labor of the work of women and children had cost $750,000 to $800,000. Devine did suggestion that perhaps $500,000 would be sufficient for the USIRC. *Industrial Commission*, *Hearing on H.R 21094*, *Before Comm. on Labor*, 62nd Cong., (1912).

[519] Delano resigned to take a position as the vice-chairman of the Federal Reserve Bank a few months before the end of his term. Richard H. Aishton, president of the Chicago and Northwestern and the American Railway Association, replace him. Adams, *Age of Industrial Violence 1910-1915*.

[520] Adams, *Age of Industrial Violence*. Before he exited office, President Taft attempted to pass a commission through Congress, but he failed to gain consensus from business, labor and social work interests.

the "middle and lower classes."[521] This group believed that unrest existed due to "misinformation and misrepresentation" that was "ill-conceived, though possibly honest." A dissenting group, however, which included members of the Rockefeller Foundation, advocated for the creation of a larger bureau of investigation to conduct much broader, "scientific investigations of the causes of existing evils." This would include the investigation of topics like railroad rates, tariffs and the high cost of living. This group believed that they needed new convincing data about the legitimacy of their interests in labor disputes. Framing their interests in the language of social welfare could help their cause, they believed. These conferences were not an isolated occurrence; instead, they demonstrate a recurring overlap between corporate interests and corporate welfare efforts to prevent governmental control or regulation.[522] Although consensus was not reached and no action was taken, with their new foundation, the Rockefellers could develop their vision of a broad investigation of industrial relations, and they did just that in their first years of operation.

The Rockefeller Foundation's Industrial Relations Investigation

The Rockefeller Foundation was, in fact, not the first foundation to undertake economic and social investigations of industrial relations. The Carnegie Institution of Washington organized their Department of Economics and Sociology in 1904,[523] and it contributed to the writing of a history of American industrial society, for example. And the Russell Sage Foundation was well known for its attention to research on working-class poverty and industrial relations, as well as its undertaking of related programming.[524] However, the Rockefellers were walking into

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[521] Jerome Greene, "Principles and Policies of giving," October 22, 1913, Folder 163, Box 21, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

[522] For more information on business' interest in corporate welfare or "corporate liberalism," see: Sklar, *The Corporate Reconstruction of American Capitalism*; James Weinstein, *The Corporate Ideal in the Liberal State: 1900-1918* (Boston: Beacon Press, 1968); Ronald Radosh and Murray N. Rothbard, eds., *A New History of Leviathan: Essays on the Rise of the American Corporate State* (New York: E.P. Dutton & Co., 1972); Samuel P. Hays, *American Political History as Social Analysis* (Knoxville: The University of Tennessee Press, 1980).

[523] See the John R. Commons and Carroll D. Wright records at the Carnegie Institution of Washington for more on the CIW's Economic and Sociology Department.

[524] See Mary Van Kleeck, *Industrial Investigations of the Russell Sage Foundation* (New York: Committee on Women's Work, 1916).

uncertain philanthropic terrain by attaching their industrial relations investigation to the Ludlow Massacre at their mining operation. By doing so, they seemed to be confirming their detractors' fears that the foundation would promote the Rockefellers' business interests.[525] Trustees realized how sensitive the public would be to the Rockefellers managing and funding research that aimed to shape labor relations, but they proceeded with the belief, they claimed, that the subject of economics called for "careful, dispassionate, scientific investigation."[526] That was not enough to stave off government and popular interest in their activities though.

Things were personal for Rockefeller Jr. The weight of CFI decisions made by its ownership fell squarely on his shoulders. His father had mostly retired, so Rockefeller Jr. worked to manage the family investment. And CFI had not been a profitable investment. According to Rockefeller biographer Ron Chernow, despite Rockefeller Jr.'s own retirement from business affairs, he felt it his "duty" to prove to his father that he could turn CFI around.[527] That was no easy task for him though. Everyone knew that Rockefeller Jr. was devoting his life to philanthropy, so his ownership of CFI made a mockery of his espoused intentions. In letters to Rockefeller Jr., UMA Vice President Frank Hayes and Upton Sinclair expressed disbelief that he could realize the true nature of the worsening Colorado coal strike. They refused to "believe that any young, modern American" who had been "taught in a civilized school" and worshiped "in a civilized church," could actually be aware of what was taking place at CFI.[528] Sinclair urged Rockefeller Jr. to clear himself of the stains of the Ludlow Massacre by acknowledging that business advisers had misled him and charting a new path for "humanity and justice for the future."

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[525] Jerome Greene to Barton Hepburn, April 15, 1914, Folder 159, Box 21, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

[526] Jerome Greene, "Principles and Policies of giving," October 22, 1913, Folder 163, Box 21, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

[527] Chernow, *Titan,* 571-573.

[528] Upton Sinclair to John D. Rockefeller Jr., May 26, 1914, Folder 183, Box 20, Series Business Interests, III 2 C, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

When Rockefeller Jr. failed to respond to Sinclair's letters, he continued sending them.[529] He also made his advice public, and he organized protests in front of the Rockefeller's offices at 26 Broadway in New York City. As he walked silently in front of the building with a band of mourning-crepe around his arm, Sinclair was jailed. Upon his release he staged protests in the Rockefellers' peaceful properties at Tarrytown. Poised above the old aqueducts leading south to the City, Sinclair railed against the Rockefellers for hiding out behind barbed wire and armed guards at home while chaos descended on their property in Colorado.

When all of this—including allusions to Rockefeller Jr.'s compromised personal safety—failed to sway Rockefeller Jr., Sinclair started writing *King Coal*. He made a rich man's son the hero of the story. However, unlike Rockefeller Jr., his hero Hal Warren risked his life to get to know the "situation" at Colorado. As he "toiled in the bowels of the mine," the miners who at first seemed like "stunted creatures of the dark" that civilization had left behind transformed into pitiable creatures who Warren eventually came to see as individuals capable of political action in the face of the deprivations of mine life and the tyranny of company authority.[530] In *King Coal* Hal Warren's first-hand knowledge of the situation in Southern Colorado was critical to his political transformation. After an explosion in the mine where Warren worked, company management sealed the mine to squelch burning fires and save coal deposits rather than saving miners trapped after the blast. As Warren attempted to convince his friend—the son of the owner of the mine—to intervene and save the lives of miners, he urged him to visit the mine and see what was happening for himself. However, repeatedly, his friend insisted that management must know best and Warren undoubtedly was mistaken. It's only the fact that Warren had seen management mistreat workers first-hand that enabled him to believe what was true in Sinclair's

[529] Sinclair seems to have been extremely sincere in his disbelief in Rockefeller Jr.'s actions in the face of the Ludlow Massacre. In 1959 he wrote Rockefeller Jr. another letter expressing his regard for Rockefeller Jr.'s "Christian Action" demonstrated in the rest of his "public career." He noted that "many times I have wondered what it meant to you," when they encountered one another in 1914. Upton Sinclair to John D. Rockefeller Jr., August 22, 1959, Folder 183, Box 20, Series Business Interests, III 2 C, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[530] "A Proposition for the First Serial Rights of a New Novel: 'King Coal' by Upton Sinclair," Folder 183, Box 20, Series Business Interests, III 2 C, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center. Upton Sinclair, *King Coal* (New York: Bantam Books, 1994).

story: that company management chose to preserve coal deposits rather than save hundreds of workers' lives.

As the Colorado Coal Strike unfolded, Rockefeller Jr. was not behaving like Hal Warren though. He was not unmoved by the labor crises around him. He had hired W. L. Mackenzie King to undertake "a critical survey of the entire field of industrial relations" in order to figure out how to respond to the crisis; however, he failed to visit Ludlow or to affirm his own responsibility for what happened at Ludlow. King was there to do what Rockefeller Jr. could not—figure out how the Rockefellers could clean up the chaos at CFI, along with their image. He was practiced in "scientific investigation," according to the Rockefellers, and he combined the "sympathy of a social worker and the practical experience of a man of affairs."[531] At Rockefeller Jr.'s request, King visited him and Rockefeller Foundation trustees in New York in early June 1914. In their early talks, Ludlow and the Colorado coal strike were first and foremost in their discussions. Before King even agreed to take part in a larger research initiative, he suggested the creation of "conciliatory boards for adjusting industrial differences" at CFI.[532] By mid-month after a conference in Tarrytown, King agreed to work on the larger study.[533]

King's appointment, Rockefeller Foundation trustees hoped, would allow them to both alleviate labor unrest in Colorado and stake a claim to the larger field of industrial relations research. They paid King an annual salary of $12,000 and mostly let him design the study himself.[534] Throughout the work, King and Rockefeller Jr. grew close. Both famously prudish and moralizing, they became confidants. This intimacy forged a necessary alliance for Rockefeller Jr. outside of his usual inner circle at 26 Broadway, according to Chernow.

[531] Announcement of Appointment of Mackenzie King, October 1, 1914, Folder 148, Box 20, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

[532] "The Genesis of the Investigation," 1915, Folder 150, Box 20, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

[533] John D. Rockefeller Jr. to Mackenzie King, June 23, 1914, Folder 149, Box 20, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center. While initially reluctant to take on the controversial study due to his position in Canadian politics, Charles Eliot encouraged his acceptance and with his party out of office in Canada, King probably needed the income and accepted. See, Chernow, *Titan*, 582-583.

[534] RF Minutes, August 13, 1914, Folder 148, Box 20, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

Rockefeller Jr. was smart enough to see that he badly "needed guidance," and King became his source.[535] As King and Rockefeller Jr. grew closer, he suggested that the Rockefeller philanthropies could be ruined if Rockefeller Jr. did not address the crises surrounding Ludlow. King encouraged "greater public openness" in the Rockefellers' business interests, and when this proved fruitful, even Rockefeller Sr. came to appreciate his vision.[536]

King described his investigation of industrial relations as nothing less than "a study of the fundamentals of modern civilization itself" that would address "the Problem of human society"…[537] However, as evidenced by his early work, much of his research focused on industrial relations in Colorado and whether or not a conciliation board should be implemented."[538] Beyond an abstract desire to balance relations between labor and capital, the meaning of industrial relations to the Rockefeller Foundation was entirely opaque. King's first actions on behalf of the larger investigation included creating a bibliography of works published on industrial relations and a survey of industrial relations that would allow him to "visualize" the entire field as he outlined its contours.[539] The Rockefellers and King, this shows, were searching for a definition and scope of their industrial relations project, beyond its interest in CFI, even after it began.

By the end of 1915 the Rockefeller Foundation had spent almost $20,000 on its investigation of industrial relations. King felt that if his study was to be relevant, then he would have to begin with industry in Colorado. He knew that his research and policy recommendations might be misconstrued due to his affiliation with the Rockefeller Foundation, but he believed that "the duty was imperative" and the results would "justify the effort." Further, before visiting

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[535] Chernow, *Titan,* 583.

[536] Ibid., 582-583.

[537] W.L. Mackenzie King to Jerome Greene, October 21, 1914, Folder 159, Box 21, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

[538] "The Philanthropic Boards Established by John D. Rockefeller," 1916, Folder 143, Box 19, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center. Jerome Greene to Barton Hepburn, April 15, 1914, Folder 159, Box 21, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

[539] Mackenzie King to Jerome Greene, November 4, 1914, Folder 148, Box 20, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

Colorado, King took precautions. He first reached out to Seth Low who chaired a Commission put together by the U.S. President and to Secretary of Labor Wilson and the Governor of Colorado. He explained his association with the foundation and his planned investigations in Colorado and they supported his going to Colorado. [540] If the Rockefellers had been perceived as uncooperative before, part of King's work was to repair that perception—that work directly benefited CFI, too.

The USIRC Puts Foundations on Trial

From 1913 to 1915, while King was developing his study, the USIRC was hitting its stride. Under Frank P. Walsh's leadership, the USIRC undertook 154 days of public hearings calling 740 witnesses. During its first year of operation the USIRC divided its work into two parts: public hearings and research. They called over five hundred witnesses to the stand as they held hearings at industrial centers around the country to gauge "public opinion" and to learn about industrial conditions locally.[541] In their first *Annual Report*, the USIRC detailed its findings and plans for future research on unions; agriculture and land problems; and immigration.

The consequences of industrialization that the USIRC considered pernicious included: the changing distribution of wealth, a rise in the cost of living, urbanization, the introduction of labor-saving machinery and new industrial processes, the continual reoccurrence of prosperity and depression, the rise of industrial and financial corporations, and the increasing influence of the working class.[542] In the face of these realities of modern economic life, the USIRC would seek to understand whether the new relations between employer and employee were permanent and how the commission might suggest "the development of new agencies for maintaining peace and friendly relations between employers and employees, and justice and prosperity to all classes."[543] As they advocated for new social legislation, they explored national debates about

[540] Report by Mackenzie King, December 31, 1915, "The Genesis of the Investigation," 1915, Folder 151, Box 20, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

[541] *First Annual Report of the Commission on Industrial Relations* (Washington D.C.: Barnard and Miller Print, 1914), 10.

[542] Ibid., 64.

[543] Ibid., 64.

social insurance and workmen's compensation, but USIRC leadership also asserted a broader interest in welfare work. "It is not to be forgotten that while the care of the weak, the sick, the old, and the fatherless constitutes an appeal to all the finer qualities of mankind, there is also a phase of the question that is entirely selfish, and which can be translated into dollars and cents," the commission noted.[544] Corporate welfare work, as it had the potential to benefit companies, was suspect to Walsh.

As a result, Walsh planned to "go deep" into welfare work over the next two years, as he and the USIRC developed a vision for social legislation reforms. In their *First Annual Report,* the commission noted testimony taken at a hearing in New York by a representative of the IWW. The IWW representative indicated that the government was simply a "committee to look after and police the interests of the employing classes." If that was the case, as the IWW representative asserted, the commission noted, radicalized labor would consider violence their best option.[545] The USIRC planned to study this position in order to eradicate it "in the interest of society." Corporate welfare was a key element of their investigations. However, as the Commission conducted its research on the "domination of social institutions by capital,"[546] members realized that investigating philanthropic foundations would allow them to dramatically increase the scope of their questions about corporate welfare beyond company housing, company stores, and wages.

On December 3, 1914, Basil Manly, the Director of Research and Investigation of the United States Industrial Relations Commission, explained to his boss Frank Walsh that he was "having a great deal of difficulty" preparing for the upcoming set of hearings.[547] Basil Manly was struggling to pull together hearings on a new subject: philanthropic foundations. At its Chairman Frank Walsh's urging, the commission was expanding its interest in industrial welfare to include

[544] Ibid., 57-59.

[545] Ibid., 62.

[546] Ibid., 43.

[547] Basil Manly to Frank Walsh, December 3, 1914, Box 33, Folder 1914, Nov-Dec, Frank P. Walsh Papers, Humanities and Social Sciences Library Manuscripts and Archives Division, The New York Public Library.

"The Centralization of Industrial Control and Operation of Philanthropic Foundations."[548] While Basil Manly drew up a list of leaders in philanthropy, business, social work, and labor, including Samuel Gompers, J.P. Morgan, and the Rockefellers, to call to the stand at the Commission's hearings, he wrote to Walsh of his difficulty in preparing for the content of the hearings themselves. The subjects of philanthropy and corporate welfare "are new and people have done very little thinking about them," he explained.[549] His difficulty in preparing for the hearings suggests that Manly was uncertain about how to narrate the connections between philanthropic foundations and industrial relations to the public. To address this problem, Walsh and Manly strategized about how to draw a connection between foundations and issues of industrial control.

Frank Walsh hoped that their hearings on foundations could help the commission to "trace the responsibility" for industrial unrest "absolutely to its source."[550] For Walsh that source was the wealthy men who created the nation's largest for-profit corporations, many of whom also created philanthropic foundations.[551] He believed that foundations, created by the same wealthy individuals who profited from existing industrial conditions, could have no real interest in industrial reform, or at least their interest was highly suspect. In Walsh's words, foundations' interest in industrial relations was simply one of "benevolent control."[552] As Walsh announced the upcoming hearings on foundations, he suggested to the press that the withdrawal of huge sums of money from industry into large charities might be injurious to society, and secondly, he suggested that foundations might represent an effort to increase the powers of "predatory wealth" through private foundations that could "corrupt sources of public information."[553]

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[548] *Industrial Relations: Final Report and Testimony* Vol. 8-9 (Washington D.C.: Government Print Office, 1916).

[549] Basil Manly to Frank Walsh, December 3, 1914, Box 33, Folder 1914, Nov-Dec, Frank P. Walsh Papers, Humanities and Social Sciences Library Manuscripts and Archives Division, The New York Public Library.

[550] McCartin, *Labor's Great War,* 24.

[551] Frank Walsh Speech, "Grant Opera House, May 2, 1915," Folder 207, Box 23, Series Economic Interests, II 2 F, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[552] "Committee on Industrial Relations Statement," Folder 208, Box 23, Series Economic Interests, II 2 F, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[553] "Scanning Big Benevolence," *News*, December 18, 1914, Folder 209, Box 23, Series Economic Interests II 2 F, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

Throughout the course of the hearings, which took place in New York and Washington D.C. in the winter and spring of 1915, Manly and Walsh publicly asserted a position staunchly against foundations, and they ignited a new series of debates about the meaning of social welfare and the roles that the government, business, and private foundations should play in defining and promoting it.[554] Some observers were skeptical of a nefarious connection between the Rockefeller Foundation and the Rockefellers' business interests. In truth, the boundaries between the Rockefeller Foundation and the family's business interests were thin to nonexistent. In Rockefeller Jr.'s words, he and his father did not draw "sharp lines" between their "business and philanthropic interests."[555] They managed both sets of interests from one office, and multiple foundation trustees were also stockholders and directors in CFI. Those trustees had a "dual interest" in resolving labor issues at the company.[556]

Despite these blurred lines, when trustees created their investigation of industrial relations, they maintained that they did not believe that it was the foundation's role to interfere in the Colorado situation. However, they did think that it would be a social good to ascertain the "root causes" of the disturbance for the good of Colorado and the world. Even foundation trustees admitted that it was more complicated than that though. As Rockefeller Foundation trustees were large owners of corporate securities, they believed that the foundation should be "directly concerned in maintaining harmonious relations between the companies in which it is interested and their employees."[557] The foundation did not just have an abstract interest in promoting business interests. The foundation's endowment contained CFI securities, so it had a financial interest in promoting the success of CFI.[558]

Rockefeller Foundation trustees' rationalization of their interest in social and economic policy demonstrates the shifting boundaries of the public and the private in the early twentieth

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[554] *Industrial Relations: Final Report and Testimony,* vol. 8-9 (Washington DC: Government Print Office, 1916).

[555] *Industrial Relations: Final Report and Testimony Vol. 8* (Washington DC: Govt. Print Office, 1916), 7776.

[556] "The Genesis of the Investigation," 1915, Folder 150, Box 20, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

[557] Ibid.

[558] See Rockefeller Foundation securities information in its first *Annual Report* 1913-1914.

century. The Rockefeller Foundation was a private foundation that strategically cast itself as a corporate body governed by the New York state legislature. Trustees engaged in "public service," but they determined the terms of that service by managing and distributing funds from a private endowment. This kind of private action for the public good was quickly becoming outdated in the early twentieth century. The USIRC hearings demonstrate that executives such as Henry Ford, Daniel Guggenheim, and George Walbridge Perkins were newly distinguishing "just profit sharing" and "pauperizing charity." Each of these executives distanced themselves from the "industrial despotism" of the Rockefellers while articulating their own commitment to assuming new controlling roles in their employees' lives in the name of "profit-sharing" and the "welfare" of their employees. [559]

Of course, even profit-sharing at large corporations could be articulated as a "semi-public" endeavor. That's how George Walbridge Perkins described it: "I have long believed and often publicly said that the larger an enterprise becomes the more semipublic it becomes, and the more important are its responsibilities to the public generally."[560] However, in contrast, many executives who testified deviated from Perkins' vision of the "semipublic" nature of large corporations. Instead, they proposed that the nation was ready for the federal government to undertake basic social welfare initiatives that it would fund through the federal income tax and inheritance taxes. In this vein, Daniel Guggenheim and Louis Brandeis laid out a new, clear vision for separate social welfare responsibilities for business corporations, for private philanthropy, and for the government.[561]

Despite these new visions of corporate responsibility and fears about pauperizing charity, the Rockefeller Foundation's philanthropy was hard to eliminate because of its successes that did offer real public benefits. As the Rockefeller philanthropies grew and improved at their public relations strategy, their good deeds in public health were well known and harder to criticize. As

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[559] *Final Report,* Testimony of Henry Ford, 7629; Testimony of Daniel Guggenheim, 7570; Testimony of George Walbridge Perkins 7604.

[560] *Final Report*, 7601. This was also Perkins' way of arguing for increased federal regulation of corporations that worked outside of the states where they were incorporated. However, in the same breath, Perkins argued that the government should not manage philanthropy because it would introduce inefficiencies. Private philanthropy, if it offered public reports, would be sufficiently accountable to the public, he thought. See 7599.

[561] Daniel Guggenheim Testimony, 7570 and Louis Brandeis Testimony, 7664.

an article in the Boston Transcript framed the USIRC's investigation into foundations: "why not carry the attack directly against the individual and not against the good that they may have done?" The idea that "these malefactors of great wealth" were a "menace" to the nation's industrial interests and its "republican institutions" did not seem compelling. [562] As another Boston paper put it, anyone who has studied the foundations could see "that a tremendous amount of good has been done."[563] Further others were uncertain why other philanthropies were being included in the investigation. It seemed to authors at the Philadelphia *Record* that their inclusion was to mask a personal attack aimed at the Rockefellers during the strike.[564]

At the Commission's hearings on foundations, they first sought to demonstrate foundations' interest in influencing labor policy. In New York in January 1915, they called John D. Rockefeller Jr. and Jerome Greene of the Rockefeller Foundation to the stand in an attempt to show how philanthropy was born of self-interest or even of malicious intent to influence public opinion and public policy in favor of the interests of capital. To further link foundations to a theme of benevolent control, the Commission questioned J.P. Morgan, Andrew Carnegie, and John D. Rockefeller Sr. "on their industrial connections, their knowledge of the industries which they control, their labor policies and how they were formed, and how the industries were actually run by 'hired men,'"[565] In addition to the Rockefeller Foundation, they identified the National Civic Federation, the Russell Sage Foundation, the Cleveland Foundation, the Industrial Department of the YMCA, the Charity Organization Society, the Association for Improving the Conditions of the Poor, and the Hebrew Charities as philanthropic institutions investing in the investigation of industrial relations.[566]

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[562] "A Quixotic Commission," *Transcript*, December 17, 1914, Folder 209, Box 23, Series Economic Interests II 2 F, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[563] "A New 'Investigation,'" *Advertiser*, December 18, 1914, Folder 209, Box 23, Series Economic Interests II 2 F, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[564] "Investigating Endowments," *Record*, December 23, 1914, Folder 209, Box 23, Series Economic Interests II 2 F, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[565] Basil Manly to Frank Walsh, December 3, 1914, Box 33, Folder 1914, Nov-Dec, Frank P. Walsh Papers, Humanities and Social Sciences Library Manuscripts and Archives Division, The New York Public Library.

[566] Basil Manly to Frank Walsh, December 3, 1914, Box 33, Folder 1914, Nov-Dec, Frank P. Walsh Papers, Humanities and Social Sciences Library Manuscripts and Archives Division, The New York Public Library.

While calling industrial leaders to the stand instantly gained the commission national press and attention, its leaders still struggled with how to directly link philanthropy and industrial violence. Walsh and the commission's questioners attempted to use John D. Rockefeller Jr.'s management position in both the Rockefeller Foundation and Colorado Fuel & Iron to directly link the Rockefellers' business interests to their philanthropy. Walsh passionately questioned Rockefeller Jr. about what he had known about the Ludlow Massacre and what the intent of the Rockefeller Foundation's Industrial Relations Investigation really entailed.

In Rockefeller's remarks he claimed sympathy for labor and described his efforts to investigate labor relations through his philanthropy. However, he also strictly maintained that it was CFI's officers' responsibility to manage labor relations on the ground. As he described how the Rockefeller Foundation funded Ivy Lee and King's salaries as they promoted both universal understanding of what happened in Ludlow and concrete publicity and reforms for CFI, this distinction was crucial.[567] Rockefeller said that it was by witnessing the strike that he became convinced that the Rockefeller Foundation should study "the fundamental problems arising out of industrial relations."[568] And with even more affect, "I frankly confess that I felt there was something fundamentally wrong in a condition of affairs which rendered possible the loss of human lives…and brought suffering and privation upon hundreds of human beings, in struggling for industrial rights as they conceived them."

As Walsh tried to develop a sinister connection between the Rockefellers' business and philanthropic interests, Rockefeller Jr. repeatedly drew his own connection between corporate welfare in business and corporate welfare in philanthropy. Rockefeller Sr. had written that the best philanthropy involved paying employees appropriate wages and in developing the nation's resources at hand through business in his recently published autobiography.[569] Rockefeller Jr. drew upon this philosophy to describe how CFI officers had not paid shareholders dividends more than once in over a decade in order to develop company property and increase wages.[570]

[567] See *Industrial Relations: Final Report and Testimony*, vol. 8, 7763-7895.

[568] John D. Rockefeller Jr. to John D. Rockefeller Sr., January 22, 1915, Folder 210, Box 23, Series Economic Interests II 2 F, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[569] John D. Rockefeller Sr., *Random Reminiscences* (New York: Doubleday, 1909).

[570] See *Industrial Relations: Final Report and Testimony*, vol. 8.

When Rockefeller expressed his belief that "the prosperity of this country is being best conserved by large combinations in industries,"[571] Walsh pushed him to explain whether or not that involved developing national labor organizations. Rockefeller had previously described labor as key part of the corporate form.[572] However, Rockefeller demurred; it was a "technical question," which was beyond his expertise, he repeatedly explained. In the end, what had seemed like a straightforward connection between business and philanthropy proved nearly impossible for Walsh to make persuasively to a popular audience.

Things were not so easy the next time around for Rockefeller though. In the second set of hearings on philanthropy in Washington D.C. in May and June of 1915, when John D. Rockefeller Jr. took the stand he had to be sure of what he did and did not know. He was in a bind. A few days prior to his testimony, Frank Walsh announced that he had unearthed correspondence between Rockefeller Jr. and CFI managers that would prove that Rockefeller Jr. was "in fact the directing mind through the struggle." This coverage made Jerome Greene nervous, and he wrote to Ivy Lee to see what should be done.[573] This advance notice gave Rockefeller Jr. time to prepare.

It also gave the press time to drum up interest in the upcoming hearings. *The New Republic* had been granted early access to the letters by Walsh, and its authors concluded that Junior had been kept well informed of the strike; however, what the correspondence really pointed to, they argued, was the fact that Bowers was "from a former economic age," and believed he could balance "industrial despotism" with the right amount of paternalistic "welfare work." He honestly believed, the authors scoffed, that "[t]he only agency for bettering the wage-earning relation is the instinctive benevolence of the employer." Further, while the correspondence showed that Rockefeller Jr. "deplored bloodshed," it revealed that Bowers wrote of losses, victories, and enemies like a "war correspondent." Bowers was only interested in crushing unions politically and economically. In fact, these revelations about Bowers callousness towards labor and his interest in "crushing unions" setup John D. Rockefeller Jr. nicely for his

[571] Ibid., 7800.

[572] Ibid., 7767.

[573] Jerome Greene to Ivy Lee, May 3, 1915, Folder 207, Box 23, Series Economic Interests II 2 F, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

time on the stand. During his testimony, Rockefeller Jr. maintained his own ignorance of on-the-ground labor conditions. In the end, it was the expanding division between ownership and management that let Rockefeller Jr. escape the USIRC largely unscathed—and Bowers villainy.

Throughout the spring of 1915, Walsh and Rockefeller Jr. exchanged blows in the press. Walsh accused the Rockefellers and their associates of trying to manipulate public officials after the Ludlow Massacre, and the Rockefellers accused Walsh of distorting their testimony to capitalize on the controversial nature of strikebreaking.[574] Rockefeller staff meticulously catalogued the press' response to the USIRC hearings in the winter of 1915. They calculated that out of almost four hundred articles, about two thirds of them were favorable to the Rockefellers interests. The farther west one went from New York, they noted, the less sympathetic coverage grew to their interests. But, overall, journalists favorably commented on Rockefeller Jr.'s talks with Mother Jones; and while J.P. Morgan's testimony made some capitalists seem ignorant of labor questions, it also highlighted Rockefeller Jr.'s "disposition to become acquainted" with labor issues. Similarly, while Rockefeller Jr.'s statements about the responsibilities of directors were generally not well received, his "new attitude toward labor and his promise to go to Colorado and personally investigate the conditions there" were met favorably.[575] Overall, Rockefeller's time in the hot seat had done him a considerable amount of good.

After the hearings the New York Times quoted Florence Harriman as asserting that the USIRC's hearings most valuably gave labor the opportunity to see that their interests were "not in the hands of a ruthless and soulless corporation at 26 Broadway." In fact, Harriman went even further, suggesting that the public had discovered "the true John D. Rockefeller, Jr.," who proved to be a "thoughtful" and "very agreeable human."[576] Further, after the hearings, Ivy Lee recommended publishing questionnaires sent to the USIRC and the Rockefellers' testimony

[574] John D. Rockefeller Jr. Statement, February 17, 1915, Folder 210; John D. Rockefeller Jr. Statement, April 24, 1915; John D. Rockefeller Jr. Statement April 25, 1915, Folder 206, Box 23, Series Economic Interests II 2 F, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[575] W.T. Pollock, "Editorial Comment on the New York Hearings," March 5, 1915, Folder 206, Box 23, Series Economic Interests II 2 F, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[576] Mackenzie King to John D. Rockefeller Jr., February 8, 1915, Folder 210, Box 23, Series Economic Interests II 2 F, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

relating to their foundation. While he planned to remove content relating to Colorado, Lee believed that a "valuable statement concerning the Foundation" had emerged from the materials. They should place a volume in every library in the country, Lee thought.[577] Rockefeller Foundation executives clearly saw the outcome of the USIRC hearings as a victory.

The Rockefellers capitalized on this good press by creating their own publicity tour. Rockefeller Jr. finally went to Colorado. He and King visited together, and they announced a Plan of Industrial Representation and an Agreement respecting employment and living and working conditions at CFI that miners accepted by secret ballot by over 84 percent. In King's words all of this work would not have been possible without "the work of the Foundation and relationships made possible through it."[578]

In the case of the USIRC, the aftermath was grimmer. Internal disputes produced multiple final reports, firings, and ongoing dissension. Before the publishing of the *Final Report*, at an open forum at a New York City public school, Walsh attempted to publicly draw out the connection between American foundations and industrial unrest once more. Walsh asked, "Would I be too radical if I should say we can never expect a proper fiscal policy so long as the banks handle the wealth of the nation purely to make it pay the largest dividends?" He continued, "In all those great industries that make the basis of our life, the ideal must be to deliver to the people the largest possible service at the lowest possible cost."[579] As Walsh publicly denounced foundations prior to the release of the USIRC's *Final Report*, some questioned the judiciousness of him giving speeches and espousing personal opinions when his words would inevitably be associated with the commission's work. Papers across the country accused Walsh of planning to run for office and of being quite rich himself while he believed himself to be a "crusader leading a war on poverty."[580]

[577] Ivy Lee to John D. Rockefeller Jr., March 20, 1915, Folder 206, Box 23, Series Economic Interests II 2 F, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[578] Report by Mackenzie King, December 31, 1915, "The Genesis of the Investigation," 1915, Folder 151, Box 20, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

[579] "Great Foundations and the Industrial Unrest," The *Survey* v. 33 (Jan 23, 1915), 437-438.

[580] "Seeing Things!" *Atlanta Constitution* Feb 17, 1915; "Indiscretions of Chairman Walsh" *Chicago Daily News* March 10, 1915; "To Arms!" *The New York Times*, Dec. 1914; "The Rockefeller Foundation" *Courier-*

Walsh did not back down though. He said that what the commission had found in Colorado demonstrated that our "Republican form of government had absolutely broken down."[581] Walsh contended that industrial control of towns, as in Ludlow, was a "threat of control over the government of the United States." In the case of Ludlow, the men who sat on Colorado Fuel and Iron's board were exercising "foreign ownership" and practicing "benevolent despotism" in their provision of company stores, their limiting laborer's political speech, and their monitoring of social norms in the town. In a speech in May 1915, Walsh continued to insist that CFI was really governed by 26 Broadway.

From Walsh's perspective, the Rockefeller Foundation, created for alleged philanthropic purposes, did nothing to address imbalances in industrial relations. True reform could only be achieved by addressing corporations' relationship to profit. In Walsh's formulation, corporations should be invested in service and industrial democracy to move towards justice.[582] In another article, Walsh went so far as to describe foundations as a "menace to the welfare of society." He believed the power to do good should be the prerogative of the state, lest the wealthy who gained their capital through exploitation be granted undue privilege. In his words, "even in the power to do good, no one man, or group of men, should hold the monopoly."[583]

Making the Private Foundation through Federal Regulation

While Walsh may not have proven Rockefeller Jr.'s own villainy in the hearings, the Commission did make major policy recommendations to Congress regarding the regulation of philanthropic foundations. In the portion of the USIRC's *Final Report* written by Basil Manly and supported by Walsh, he and his supporters argued that foundations had a "benumbing effect" on private citizens and public bodies and that if it were possible to differentiate foundations from "other forms of voluntary altruistic effort, it would be desirable to recommend their abolition."

Journal, February 17, 1915. Folder 3588, Box 347, Series 1.2, General Education Board, Rockefeller Archive Center.

[581] "Mr. Walsh at People's Power League," May 2, 1915, Folder 206, Box 23, Series Economic Interests II 2 F, Office of the Messrs. Rockefeller records (OMR), Rockefeller Archive Center.

[582] "Great Foundations and the Industrial Unrest," *Survey* 33 (Jan 23, 1915), 437-438.

[583] Frank P. Walsh, "Perilous Philanthropy," *The Independen* 83 (Jul-Sep 1915), 262-264.

As identifying and abolishing foundations was not possible according to the authors, they suggested a series of reforms.[584] Ironically they called for the federal chartering and regulation of all "incorporated non-profit-making bodies *whose present charters empower them to perform more than a single specific function* and whose funds exceed one million dollars." Just a couple years earlier federal officials had been afraid of granting foundations too much national power, but by 1915 federal regulation seemed the best hope for reigning in the corporate power foundations had already amassed. The authors also noted that Carnegie's and Rockefeller's philanthropic efforts amounted to something like $250 million with annual revenue of at least $13.5 million, which was at least twice as great as the appropriations of the Federal Government for similar purposes. So they recommended that the government spend more on education and social services to counteract the power of foundations.

In opposition to the Manly report, about half of the commission members issued a separate report.[585] They cautioned against creating policy relating to foundations until further investigation of "endowed charities, endowments of religious organizations and universities and colleges" could be completed. They indicated that many of the new foundations "have a beneficial effect on the work of the State and Governmental institutions." For example, they said, "Some of the investigations and reforms started by recent large foundations have already induced Congress and administrative departments to enter the same field and to extend it. In fact, almost everything that Government now does was done at first through private initiatives…" With this model in mind, they recommended the creation of a "Federal Fund for Social Welfare" so that "the Nation may compete with or displace private foundations in this vital matter." They called for a "federal fund for social welfare" that would be funded by a supertax on estates above $25,000.[586]

Both of these reports called for a more dynamic investment in social welfare from private organizations and the federal government. So, although commissioners did not believe that the

[584] *Final Report of the Commission on Industrial Relations*, 125.

[585] Commons and Harriman issued their own report. Commissioners Weinstock, Ballard and Aishton indicated that they agreed with Commons and Harriman on everything except added that they issued two dissenting views on how labor disputes should be handled. See *Final Report of the Commission on Industrial Relations*.

[586] Ibid., 389.

state and private organizations should cooperate or subsidize one another's projects, they argued, "the State should use its money to displace [foundations' effects] by better and more universal charity. Instead of calling upon private foundations for help the Government should treat them as competitors." This language suggests the development of an ideology that made room for private investment in public welfare, but one that advocated for the government to out-spend and morally guide private foundations.

As the USIRC encouraged the government to separate its welfare work from foundations, the Rockefeller Foundation worked to separate its business and philanthropic activities. King's employment by the Rockefeller Foundation officially ended February 1918. By that time, the foundation had no interest in directly associating itself with King's findings on industrial relations. Instead, they arranged for King to publish his results personally with Houghton Mifflin Company.[587] In the new foundation President's words, King had planned to visit the leading countries of the world to make his investigation; however, the war prevented such efforts. Beyond that, the war "so completely changed the industrial situation in all countries" that King further modified his plan.[588]

In 1917 Rockefeller Foundation trustees created a new position of Chairman of the Board for Rockefeller Jr., and they elected former University of Minnesota President, George Vincent, as the second Rockefeller Foundation President. Shortly thereafter, Vincent announced the end of the foundation's industrial relations investigation, and he described the foundation's investment in medical education, public health demonstration and war-cooperation programs as most urgent. He explained, the foundation was not:[589]

> [U]nmindful of the extremely sensitive attitude of the public mind toward any such inquiry conducted by institutions, especially those of a private nature, which are equipped

[587] Minutes of the Rockefeller Foundation, May 22, 1918, Folder 149, Box 20, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

[588] "Interview Given out by George Vincent," Folder 149, Box 20, Series 900, Program and Policy, Rockefeller Foundation records, Rockefeller Archive Center.

[589] Ibid.

with unusually large financial resources. However sincere and single-minded any such effort may be, it is always liable to misconstruction.

That misconstruction should be avoided, Vincent argued. To prevent misunderstanding of foundation activity, trustees would mainly devote resources to medical education and health activities. The foundation would continue to support "important war work, particularly those larger agencies which are operating under the direct authority of the Government." However, Vincent concluded, the foundation's trustees wished to devote their funds "to activities which can by no chance be conceived as having a political purpose." The Foundation supported "neither a theory nor a state of social order..."[590] In other words, the Rockefeller foundation was a private foundation that no longer sought to offer an alternative mode of governance for the nation. In the end, while the Rockefellers first imagined combining their commercial ambition with their vision for social trusteeship, they eventually drew distinctions between their commercial and philanthropic efforts. That distinction facilitated the development of a new, modern "corporate responsibility." That corporate responsibility signaled the rise of private foundations over the public trust though, because it called for the separation of nonprofit, for-profit, and government activity.

Over time, the public-trust model of American philanthropy succumbed to forces even greater than private surplus wealth. As the USIRC's *Final Report* indicated, the government was under increasing pressure to fund welfare work. And with the federal income tax established in 1913 and the charitable tax deduction in 1917, it had a new engine to accumulate and apportion public and private provisions of social services across the nation. Further, with the rise of a distinguishable "nonprofit corporation," it became easier—even advantageous—for businesses to argue for a new, narrower bottom line—the maximization of returns to shareholders. Businesses would continue to engage in corporate welfare—even expand it, but they had to articulate it as promoting a far narrower bottom line than national development. And finally, suspicions about the increasing public power of private wealth in society had grown to a level that resulted in the end of many public-private partnerships altogether. The public trust did not disappear; however, rather it became one tool in a wide array of foundations devoted to managing private

[590] Ibid.

philanthropy. Private foundations, however, would outpace the public trust's development in the twentieth century, as business, benevolence and governance became increasingly separate pursuits.

CONCLUSION

Corporate Power and the Public Trust

This history of the public trust is essential to understanding the transformation of American philanthropy, because the superrich, contrary to the stories told in many histories of American philanthropy, did not begin by imagining their philanthropy as private and separate from public works funded by the government. And nor was it solely the prerogative of the rich to decide how to distribute their surplus wealth in society. As we have seen, state and federal legislatures repeatedly crafted special legislation to aid the nation's richest citizens in distributing their surplus wealth without the restrictions that applied to more ordinary bequests and charities. Further, the entire endeavor of early philanthropic enterprise was anything but private. Indeed, it relied on public law and was largely imagined as a public enterprise, for and by the public—through the public trust.

This dissertation shows that for over a century before the federal income tax (1913) and the first charitable tax deductions (1917) concretely incentivized charitable giving, the state carved out a special role for private wealth in American society. However, the nation's wealthiest citizens still needed the cooperation of Congress (or a state legislature) to launch a foundation. In order to create corporate vehicles to manage their trusts, they needed a special charter of incorporation, which could ensure that they would not pay taxes on the capital going to their trust. Corporate charters also ensured that public trusts would out-last the lives of their founders and trustees. To incorporate a public trust, trustees needed to apply for a charter from Congress or a state legislature. Assigning different kinds of charters—as well as the corporate privileges they contained and their regulatory provisions—constituted a primary method through which the state regulated the distribution of private wealth.

In this milieu, the transformation of American philanthropy, from public trust to private foundation, was hardly inevitable. It is tempting to see the Rockefeller Foundation's federal charter as the ultimate failure of the public trust. In many respects, however, the extraordinary charter could be seen as the height of the public trust. Social workers—and even eventually the Rockefellers themselves—proposed creating the Rockefeller Foundation with a federal charter that would have allowed for increased government oversight. As Edward Devine had envisioned, the Rockefeller Foundation might have operated with the federal government having some role in the selection of its trustees, with the mandatory spending of the foundation's annual interest income, and with the eventual spending down of the foundation's endowment.[591] For Devine, these proposed amendments would make the institutional structures of the foundation more democratic. This more democratic version of the public trust came closer to existence than many historians have acknowledged. The bill to incorporate the Rockefeller Foundation passed the House in 1913, after all.

The public-private-partnership model that such a foundation could have propelled into the new century had deeper roots than we've previously acknowledged, too. It was not so strange that the Rockefellers sought a federal charter—many foundations had previously done so, and public officials had long served as trustees of the nation's largest public trusts. Further, although the special charters granted to the nation's largest public trusts frequently allowed them to exist in perpetuity and to accumulate their interest earnings, that was not the case for the majority of the nation's nonprofit corporations that were created under more restrictive state general-incorporation laws. In other words, the idea that the Rockefeller Foundation would have received a federal charter, even with all of Devine's amendments—was not so extraordinary.

What was extraordinary, however, was the fact that the private foundation model of American philanthropy took off with such rapidity in the early twentieth century. This transformation of American philanthropy is hardly a declension narrative in which the country lost out because private wealth triumphed over the welfare state. Indeed, in the early twentieth

[591] Devine, "Social Forces: The Rockefeller Foundation," 902.

century, with the undertakings of the USIRC and the federal income tax, for example, Progressives were scoring major victories in the development of the welfare state. So, why did Congress decide not to federally regulate the nation's largest foundations? It had the tools to do so at its fingertips—the federal charter was elastic enough to have facilitated such a practice.

Frederick Gates offered a possible answer to this question when he described the new social, economic and legal realities of twentieth-century corporate capitalism. By the early-twentieth century, in Gates' estimation, "great corporations [were] to be feared."[592] Corporations did not "grow old and die" like human people, he explained. They existed at "colossal proportions," and could acquire more power through the centuries.[593] He continued: "Just so our corporation unites in itself the natural rights of men and certain supernatural rights or privileges brought about by government, which may be likened to the sons of God."[594] These supernatural corporate bodies that combined "the union of many men before the law into one legal body or person," were immortal threats to millions of Americans as Gates described them. As such, they could not be creatures of the government anymore—such proximity would have threatened the integrity of government autonomy and ethics. Investing in government-funded social welfare seemed a far safer option—and one that could insight competition between foundations and government entities.

Beyond their potential threat, though, Gates argued that with their superpowers, corporations were "capable of carrying civilization to heights utterly undreamed by the imagination of man." In this way, despite the immortal threat they posed, corporations were to be the vehicles that drove American economic and social development. However, he also noted:[595]

> Is it not clear that these corporations, if they continue to grow and to flourish, will ultimately control entirely the commerce and manufactory of the whole world…and

[592] Gates laid out his thoughts on corporations and corporate privileges in a series of memos probably written in the early twentieth century. It is unclear if he intended to publish them, but he editorializes about his own evolving thoughts about the desired role of corporations in American capitalism, as well as their appropriate regulation. See, Frederick T. Gates, "Corporations," Folder 17, Box 1, Frederick T. Gates Papers, Rockefeller Archive Center.

[593] Frederick T. Gates, "Corporation Privileges," Folder 17, Box 1, Frederick T. Gates Papers, Rockefeller Archive Center.

[594] Ibid.

[595] Ibid.

> ultimately control the whole social system of the is planet? I am not saying this is desirable; I am saying that it will certainly bring about complete social revolution of one kind or another. It seems to me to inevitably grow out of the power of immortality.

As Gates described the immortality of corporations, he explained what perhaps had grown so troubling about the public trust. While the Smithsonian was created from a bequest, and the Peabody Education Fund was created from a “living trust” with a limited lifespan written into its charter, later public trusts (and certainly private corporations generally) had gained the legal privilege to exist in perpetuity. With this privilege, the public trust had eternal life. Such a superpower, indeed, made the public trust and private corporation modes of governance that could compete with public officials and government institutions. They had the capacity to frame and execute national development strategies that would span generations and shape the lives of Americans beyond the immediate future.

In this dissertation, I have used the term public trust to refer to both the distinct legal form that philanthropic institutions have taken, as well as the social purpose they created for private wealth in the nation’s development. For the foundation-model of philanthropy to develop in the United States, I argued, Americans had to be able to legally and socially create a role for private wealth in the undertaking of the nation’s public works. Part of that process involved imagining the limitless growth of private capital in national and global markets. In the end, it was that quality of limitless growth that upset the balance between private wealth and its public management.

BIBLIOGRAPHY

Archival Collections

Berkeley Bancroft Library
    John D. Works Papers

Carnegie Institution of Washington Archives
    Administrative Records

Columbia Social Work Library
    The Agency Collection

Columbia University Rare Book and Manuscript Library
    Carnegie Corporation of New York Records

Harvard Baker Library
    Slater Family Papers

Library of Congress
    George Foster Peabody Papers

National Archives
    U.S. Senate Records
    U.S. Industrial Relations Commission Records

New York Public Library Archives
    Frank P. Walsh Papers

Peabody Essex Museum
    George Peabody Personal Papers and Business Correspondence

Robert Woodruff Library Archives Research Center
    Southern Education Fund Collection
    John F. Slater Fund Records
    Anna T. Jeanes Foundation Records

Rockefeller Archive Center
    Rockefeller Foundation Records

Ford Foundation Records
Sage Foundation Records
General Education Board Records
Frederick Gates Papers
Rockefeller Family Papers

Smithsonian Institution Archives
Columbian Institute Records
James Smithson Collection
Joseph Henry Collection
National Institute Records
Smithsonian Institution Office of the Secretary Records

Vanderbilt Special Collections
Peabody Education Fund Collection

Periodicals

American
Boston Globe
Chicago Daily Tribune
Mc Clures Magazine
Merchants Magazine and Commercial Review
New York Times
New York Tribune
North American Review
Outlook Magazine
Puck Magazine
Sun
Survey Magazine
Washington Post
The Watchman

Published Primary Sources

Andrews, F. Emerson, John M. Glenn, and Lilian Brandt. *Russell Sage Foundation, 1907-1946*. New York: Russell Sage Foundation, 1947.

Astor Library Trustees. *Annual Report of the Trustees of the Astor Library of the City of New-York*. Albany: The Trustees, 1850.

Ayres, Leonard. “The Seven Great Foundations.” *The Journal of Education* 72, no. 8 (1910): 1-79.

Carnegie, Andrew. “Wealth.” *North American Review* (June 1889): 653-664.

Chalmers, Thomas. *Use and Abuse of Literary and Ecclesiastical Endowments*. Glasgow: W. Collins & Co., 1827.

Fennell, Margaret. "Corporations Chartered by Special Act of Congress." Washington: The Library of Congress Legislative Reference Service, 1945, revised 1948.

Gates, Frederick T., *Chapters in My Life*. New York: The Free Press, Macmillan Publishing Company, 1977.

Gilman, Daniel, "Five Great Gifts." *The Outlook* 86, no. 13 (1907): 648-656.

Goode, George Brown, ed. *The Smithsonian Institution, 1846-1896: The History of its First Half Century*. Washington: Smithsonian Institution, 1897.

Hobhouse, Sir Arthur. *The Dead Hand: Addresses on the Subject of Endowments and Settlements of Property.* London: Chatto and Windus, 1880.

Jenkins, Frederick Warren and Elizabeth Lowell Black. "American Foundations for Social Welfare: A Selected Bibliography." *Bulletin of the Russell Sage Foundation Library*, no. 11 (June 1915).

Johnson, A.B. "'The Almighty Dollar:' Or Money as a Motive of Action." *Merchants' Magazine and Commercial Review* 36 (1857).

Peabody Institute of the City of Baltimore, *The Founder's Letters and the Papers relating to its Dedication and its History up to the 1st of January, 1868*. Baltimore: George Peabody, 1868.

Price, Richard. *Observations on the Importance of the American Revolution, and the Means of Making it a Benefit to the World*. Dublin: L. White, 1785.

Proceedings of the Trustees of the Peabody Education Fund, 1867-1914. 6 vols. Boston: Press of John Wilson and Son, 1875.

Rathburn, Richard. "The Columbian Institute for the Promotion of Arts and Sciences." *Smithsonian Institution United States National Museum Bulletin* 101. Washington Government Printing Office, 1917.

Rhees, William, ed. *The Smithsonian Institution: Documents Relative to its Origin and History*. Washington: Smithsonian Institution, 1879.

Rockefeller, John D. *Random Reminiscences of Men and Events*. New York: Doubleday, 1908.

Rothenberg, Marc and Kathleen W. Dorman, eds. *The Papers of Joseph Henry*. Washington DC: Smithsonian Institution, 2007.

United States Industrial Relations Commission, *Industrial Relations: Final Report and Testimony vols. 1-9*. Washington DC: Govt. Print Office, 1916.

Van Kleeck, Mary. *Industrial Investigations of the Russell Sage Foundation*. New York: Committee on Women's Work, 1916.

Secondary Sources

Adams, Graham. *Age of Industrial Violence 1910-1915: The Activities and Findings of the United States Commission on Industrial Relations*. New York: Columbia University Press, 1966.

Agnew, Jean-Christophe. *Worlds Apart: The Market and the Theater in Anglo-American Thought 1550-1750*. Cambridge: Cambridge University Press, 1986.

Anderson, Eric and Alfred A. Moss Jr. *Dangerous Donations: Northern Philanthropy and Southern Black Education, 1902-1930*. Columbia: University of Missouri Press, 1999.

Anderson, James D. *The Education of Blacks in the South, 1860-1935*. Chapel Hill: University of North Carolina Press, 1988.

Andrews, Thomas. *Killing for Coal: America's Deadliest Labor War*. Cambridge: Harvard University Press, 2008.

Anheier, Helmut K. and David C. Hammack, eds. *American Foundations: Roles and Contribution.* Washington: The Brookings Institution, 2010.

Asma, Stephen T., *Stuffed Animals and Pickled Heads: The Culture and Evolution of Natural History Museums.* New York: Oxford University Press, 2001.

Auerbach, Jeffrey A. *The Great Exhibition of 1851: A Nation on Display*. New Haven: Yale University Press, 1999.

Baldwin, Simon Eden. "History of the Law of Private Corporations in the Colonies and States." In *Select Essays in Anglo-American Legal History*, edited by Committee of Association of American Law Schools. Boston: Little Brown, 1909.

Balogh, Brian. *The Associational State: American Governance in the Twentieth Century*. Philadelphia: University of Pennsylvania Press, 2015.

———. *A Government Out of Sight: The Mystery of National Authority in Nineteenth Century America*. New York: Cambridge University Press, 2009.

Beal, Graham. "Art for Sale? Public Trust, Public Debt: The Detroit Institute of Arts and the City of Detroit Bankruptcy." Lecture presented at the University of Michigan, Ann Arbor, MI, March 21, 2017.

Beckert, Sven. *Empire of Cotton: A Global History*. New York: Random House, 2015.

———. *The Monied Metropolis: New York City and the Consolidation of the American Bourgeoisie, 1850-1896*. Cambridge: Cambridge University Press, 2001.

Bederman, Gail. *Manliness and Civilization: A Cultural History of Gender and Race in the United States, 1880-1917*. Chicago: University of Chicago Press, 1995.

Bellamy, Edward. *Looking Backward: 2000-1887*. New York: Dover Publications, Inc., 1996.

Berk, Gerald. *Alternative Tracks: The Constitution of American Industrial Order, 1865-1917* Baltimore: Johns Hopkins University Press, 1994.

Berle, Adolf and Gardiner Means. *The Modern Corporation and Private Property*. New Brunswick: Transaction Publishers, 1991.

Bishop, Matthew and Michael Green. *Philanthrocapitalism: How the Rich can Save the World* New York: Bloomsbury Press, 2008.

Blackwell, Thomas E. "The Charitable Corporation and the Charitable Trust." *Washington University Law Review* 24, no. 1 (1938): 1-45.

Bloch, Ruth H. and Naomi R. Lamoreaux. "Voluntary Associations, Corporate Rights, and the State: Legal Constraints on the Development of American Civil Society, 1750-1900," NBER Working Paper 21153 (2015).

Brest, Paul, "Investing for Impact with Program-Related Investments." *Stanford Social Innovation Review* (Summer 2016).

Bremner, Robert H. *American Philanthropy*. 2nd ed. Chicago: University of Chicago Press, 1988.

Brigham, David R. *Public Culture in the Early Republic: Peale's Museum and its Audience*. Washington: Smithsonian Institution Press, 1995.

Brooke, John L. *Columbia Rising: Civil Life on the Upper Hudson from the Revolution to the Age of Jackson*. Chapel Hill: University of North Carolina Press, 2010.

Brown, Leslie. *Upbuilding Black Durham: Gender, Class, and Black Community Development in the Jim Crow South.* Chapel Hill: University of North Carolina Press, 2008.

Burleigh, Nina. *The Stranger and the Statesman: James Smithson, John Quincy Adams, and the Making of the Greatest Museum: The Smithsonian.* New York: Harper Perennial, 2004.

Butterfield, Kevin. *The Making of Tocqueville's America: Law and Association in the Early United States.* Chicago: University of Chicago Press, 2015.

Chambers, Merrit M. *Charters of Philanthropies: A Study of Selected Trust Instruments, Charters, By-Laws, and Court Decisions*. New York: Carnegie Foundation for the Advancement of Teaching, 1948.

Chandler, Alfred D. *The Visible Hand: The Managerial Revolution in American Business.* Cambridge: Belknap Press, 1977.

Chapple, William Dismore. *George Peabody*. Salem: Peabody Museum of Salem, Massachusetts, 1948.

Chernow, Ron. *The House of Morgan: An American Banking Dynasty and the Rise of Modern Finance*. New York: Grove Press, 1990.

———. *Titan: The Life of John D. Rockefeller Senior*. New York: Random House, 1998.

Clemens, Elisabeth S. "The Rube Goldberg State: Building and Blurring Public Programs, 1900-1940." In *Rethinking Political Institutions The Art of the State*, eds., Ian Shapiro, Stephen Skowronek, and Daniel Galvin, 187-215. New York: New York University Press, 2006.

Cook, James W. *The Arts of Deception: Playing with Fraud in the Age of Barnum*. Cambridge: Harvard University Press, 2001.

———. *The Colossal P.T. Barnum Reader*. Urbana: University of Illinois Press, 2005.

Cogan, Neil Howard. "Juvenile Law, Before and After the Entrance of 'Parens Patriae,'" *South Carolina Law Review* 22 (1970): 147-181.

Currarino, Roseanne. *The Labor Question in America: Economic Democracy in the Gilded Age.* Champaign: University of Illinois Press, 2011.

Curti, Merle. *American Philanthropy Abroad*. New Brunswick: Rutgers University Press, 1963.

Curti, Merle, Judith Green, and Roderick Nash. "Anatomy of Giving: Millionaires in the Late 19^{th} Century." *American Quarterly* 15 no. 3 (1963): 416-435.

Davis, Allen. "The Campaign for the Industrial Relations Commission, 1911-1913." *Mid-America: A Historical Review* 45.4 (1963): 211-228.

Davis, Jackson. *The Jeanes Visiting Teachers*. New York: Carnegie Corporation of New York, 1935.

Davis, Janet. *The Circus Age: Culture and Society under the American Big Top.* Chapel Hill: University of North Carolina Press, 2002.

Davis, Joseph Stancliffe. *Essays in the Earlier History of American Corporations,* 2 vols. Harvard University Press, 1917.

Dillingham, George A. *The Foundation of the Peabody Tradition*. Lanham: University Press of America, 1989.

Du Bois, W. E. B. *Black Reconstruction in America, 1860-1880*. New York: The Free Press, 1998.

Ewing, Heather. *The Lost World of James Smithson: Science, Revolution, and the Birth of the Smithsonian*. New York: Bloomsbury, 2007.

Adam Ferguson. *An Essay on the History of Civil Society.* Cambridge: Cambridge University Press, 1995.

Fisher, John E. *The John F. Slater Fund: A Nineteenth Century Affirmative Action for Negro Education*. Lanham: University Press of America, 1986.

Foner, Eric. *Reconstruction: America's Unfinished Revolution, 1863-1877*. New York: Harper Collins, 2002.

Fosdick, Raymond B. *The Story of The Rockefeller Foundation.* New York: Harper & Brothers, 1952.

———. *Adventure in Giving: The Story of the General Education Board.* New York: Harper and Row, 1962.

Foss, Michael. *The Age of Patronage: The Arts in England 1660-1750*. Ithaca: Cornell University Press, 1971.

Fraser, Steve and Gary Gerstle. *Ruling America: A History of Wealth and Power in Democracy.* Cambridge: Harvard University Press, 2005.

Freud, Sigmund, *Civilization and Its Discontents.* New York: W.W. Norton & Co., 1930.

Friedman, Lawrence M. *Dead Hands: A Social History of Wills, Trusts, and Inheritance Law* Redwood City: Stanford University Press, 2009.

Galambos, Louis. *The Public Image of Big Business in America*, 1880-1940. Baltimore: Johns Hopkins University Press, 1975.

Gamm, Gerald and Robert D. Putnam. "The Growth of Voluntary Associations in America, 1840-1940." *The Journal of Interdisciplinary History* 29 no. 4 (1999): 511-557.

George, Henry. *Progress and Poverty: An Inquiry into the Cause of Industrial Depressions and the Increase of Want with Increase of Wealth*. 25th Anniversary ed. Garden City: Doubleday, Page & Co., 1923.

Gundersheimer, Werner L. "Patronage in the Renaissance: An Exploratory Approach." In *Patronage in the Renaissance,* edited by Guy Fitch Lytle and Stephen Orgel, 3-23. Princeton: Princeton University Press, 1981.

Hall, Peter Dobkin. "A Historical Overview of Philanthropy, Voluntary Associations, and Nonprofit Organizations in the United States, 1600-2000." In *The Nonprofit Sector: A Research Handbook,* edited by Walter W. Powell and Richard Steinberg, vol. 2. New Haven: Yale University Press, 2006.

———. *Inventing the Nonprofit Sector*. Baltimore: Johns Hopkins University Press, 1992.

———. *Documentary History of Philanthropy and Voluntarism in the United States, 1600-1900,* Hauser Center on Nonprofit Organizations at the John F. Kennedy School of Government, Harvard University website, https://www.hks.harvard.edu/fs/phall/10.%20Franklin.pdf (accessed October 19, 2016).

Halttunen, Karen. *Confidence Men and Painted Women: A Study of Middle-Class Culture in America, 1830-1870*. New Haven: Yale University Press, 1982.

Hamill, Susan Pace, "From Special Privilege to General Utility: A Continuation of Willard Hurst's Study of Corporations," *American University Law Review* 49:81 (1999-2000): 81-180.

Hammack, David and Helmut K. Anheier. *A Versatile American Institution: The Changing Ideals and Realities of Philanthropic Foundations*. Washington: Brookings Institution Press, 2013.

Harr, John Ensnor and Peter J. Johnson. *The Rockefeller Century*. New York: Macmillan Publishing Company, 1988.

Haskell, Francis. *Patrons and Painters*: *A Study in the Relations between Italian Art and Society in the Age of the Baroque.* New York: Knopf, 1963.

Hass, Kristin Ann. *Sacrificing Soldiers on the National Mall*. Berkeley: University of California Press, 2013.

Hays, Samuel P. *American Political History as Social Analysis*. Knoxville: The University of Tennessee Press, 1980.

Hellman, Geoffrey. *The Smithsonian: Octopus on the Mall*. Westport, Connecticut: Greenwood Press, 1966.

Herrick, Cheesman Abiah. *Stephen Girard, Founder*. Philadelphia: Girard College, 1923.

Henson, Pamela. “Objects of Curious Research: The History of Science and Technology at the Smithsonian.” *Isis* 90 (1999): S249-S269.

Hofstadter, Richard. *Social Darwinism in American Thought*. Boston: Beacon Press, 1964.

———. *The Age of Reform: From Bryan to F.D.R.* New York: Knopf, 1955.

Hooper-Greenhill, Eilean. *Museums and the Shaping of Knowledge*. New York: Routledge, 1992.

Horowitz, Morton J. *The Transformation of American Law, 1870-1960*. New York: Oxford University Press, 1992.

Hyman, Louis. *Debtor Nation: The History of America in Red Ink*. Princeton: Princeton University Press, 2011.

John, Richard R. *Spreading the News: The American Postal System from Franklin to Morse*. Cambridge: Harvard University Press, 1995.

Jones, Gareth. *History of the Law of Charity, 1532-1827*. Cambridge, UK: Cambridge University Press, 1960.

Kaestle, Carl F. *Pillars of the Republic: Common Schools and American Society, 1780-1860.* New York: Hill and Wang, 1983.

Kammen, Michael. *The Mystic Chords of Memory: The Transformation of Tradition in American Culture.* New York: First Vintage Books Edition, 1993.

Kaplan, Edward S. *The Bank of the United States and the American Economy*. Westport, Connecticut: Greenwood Press, 1999.

Karl, Barry D. and Stanley N. Katz. “Foundations and Ruling Class Elites.” *Daedalus* 116, no. 1 (1987), 1-40.

———. “The American Private Philanthropic Foundation and the Public Sphere 1890-1930,” *MINERVA* 19, no. 2 (1981), 236-270.

Katz, Stanley N., Barry Sullivan, and C. Paul Beach. “Legal Change and Legal Autonomy: Charitable Trusts in NY, 1777-1893.” *Law and History Review* 3 (Spring 1985): 51-89.

Knodell, Jane. *The Second Bank of the United States: “Central” banker in an era of nation-building, 1816–1836*. New York: Routledge, 2017.

Koschnik, Albrecht. *"Let a Common Interest Bind Us Together:" Associations, Partisanship, and Culture in Philadelphia, 1775-1840*. Charlottesville: University of Virginia Press, 2007.

Lamoreaux, Naomi R. *The Great Merger Movement in American business, 1895-1904.* Cambridge: Cambridge University Press, 1985.

Lagemann, Ellen Condliffe. *Private Power for the Public Good: A History of the Carnegie Foundation for the Advancement of Teaching*. Middletown: Wesleyan University Press, 1983.

Lamoreaux, Naomi and William J. Novak, eds. *Corporations and American Democracy.* Cambridge: Harvard University Press, 2017.

Lankford, John. *Congress and the American Foundations in the Twentieth Century*. River Falls: Wisconsin State University, 1964.

Lemay, J. A. Leo. *The Life of Benjamin Franklin*, vol. 1-3. Philadelphia: University of Pennsylvania Press, 2006-2009.

Levy, Jonathan. "On Altruism and the Origins of Nonprofit Philanthropy." In *Philanthropy in Democratic Societies: History, Institutions, Values*, edited by Rob Reich, Chiara Chordelli and Lucy Bernholz, 19-43 Chicago: University of Chicago, 2016.

———. "Accounting for Profit and the History of Capital." *Critical Historical Studies* 1 no.2 (Fall 2014): 171-214.

———. *Freaks of Fortune*: *The Emerging World of Capitalism and Risk in America*. Cambridge: Harvard University Press, 2012.

Lipartito, Kenneth. "The Utopian Corporation." In *Constructing Corporate America: History, Politics, Culture,* edited by Kenneth Lipartito and David B. Sicilia, 94-119. Oxford: Oxford University Press, 2004.

Lloyd, Henry Demarest. *Wealth against Commonwealth*. New York: Harper & Brothers, 1894.

Lund, Paul E. "Federally Chartered Corporations and Federal Jurisdiction." *Florida State University Law Review* 36 (2009): 317-372.

Malczewski, Joan. "Weak State, Stronger Schools: Northern Philanthropy and Organizational Change in the Jim Crow South." *The Journal of Southern History* 75 no. 4 (November 2009): 963-1000.

Maltby, Josephine and Janette Rutterford. "Investing in Charities in the Nineteenth Century: The financialization of Philanthropy." *Accounting History* 21 no. 2-3 (2016): 263-280.

Marchand, Roland. *Creating the Corporate Soul: The Rise of Public Relations and Corporate Imagery in American Big Business*. Berkeley: University of California Press, 1998.

Marx, Karl. *Capital Volume 1*. Translated by Ben Fowkes. London: Penguin, 1976.

McCarthy, Kathleen D. *Noblesse Oblige: Charity and Cultural Philanthropy in Chicago, 1849-1929*. Chicago: University of Chicago Press, 1982.

———. *American Creed: Philanthropy and the Rise of Civil Society, 1700-1865.* Chicago: University of Chicago Press, 2011.

McCartin, Joseph A. *Labor's Great War: The Struggle for Industrial Democracy and the Origins of Modern American Labor Relations, 1912-1921*. Chapel Hill: The University of North Carolina Press, 1997.

Mehrotra, Ajay K. *Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation.* Cambridge: Cambridge University Press, 2013.

Mihm, Stephen. *A Nation of Counterfeiters: Capitalists, Con Men, and the Making of the United States*. Cambridge: Harvard Univesity Press, 2007.

Miller, Allen S. "'The Lighthouse Top I See': Lighthouses as Instruments and Manifestations of State Building in the Early Republic." *Buildings and Landscapes: Journal of the Vernacular Architecture Forum*. 17 No. 1 (Spring 2010): 13-34.

Miller, Howard S. *The Legal Foundations of American Philanthropy, 1776-1844*. Madison, Wisc.: State Historical Society of Wisconsin, 1961.

———. *Dollars for Research: Sciences and Its Patrons in Nineteenth-century America*. Seattle, 1970.

Miller, Lilian B., ed. *The Peal Family: Creation of a Legacy, 1770-1870*. New York: Abbeville Press, 1996.

Moreton, Bethany. *To Serve God and Walmart: The Making of Christian Free Enterprise*. Cambridge: Harvard University Press, 2009.

Morgan, Edmund S. *Benjamin Franklin*. New Haven: Yale University Press, 2002.

Murphy, Sharon Ann. *Other People's Money: How Banking Worked in the Early American Republic*. Baltimore: Johns Hopkins University Press, Forthcoming.

Nasaw, David. *Andrew Carnegie*. New York: Penguin Books, 2006.

Neem, Johann. *Creating a Nation of Joiners: Democracy and Civil Society in Early National Massachusetts*. Cambridge: Harvard University Press, 2009.

Nevins, Allan. *Study in Power: John D. Rockefeller, Industrialist and Philanthropist*. New York: Charles Scribner's Sons, 1953.

Novak, William J. *The People's Welfare: Law & Regulation in Nineteenth-Century America*. Chapel Hill: University of North Carolina Press, 1996.

———."The Myth of the 'Weak' American State." *American Historical Review* 113, no. 3 (2008): 752-772.

———."The American Law of Association: The Legal-Political Construction of Civil Society." *Studies in American Political Development* 15 (Fall 2001): 163-188.

O'Connor, Alice. *Social Science for What: Philanthropy and the Social Question in a World Turned Rightside Up.* New York: Russell Sage Foundation, 2007.

———. *Poverty Knowledge: Social Science, Social Policy and the Poor in Twentieth-Century U.S. History*. Princeton, Princeton University Press, 2001.

Ott, Julia. *When Wall Street Met Main Street: The Quest for an Investors' Democracy*. Cambridge: Harvard University Press, 2011.

Parker, Franklin. "Robert E. Lee, George Peabody, and Sectional Reunion." *Peabody Journal of Education* 78 no. 1 (2003): 91-97.

Pearce, Roy Harvey. *Savagism and Civilization: A Study of the Indian and the American Mind*. Berkeley: University of California Press, 1988.

Piketty, Thomas. *Capital in the Twenty-First Century*. Translated by Arthur Goldhammer. Cambridge: Harvard University Press, 2014.

Polanyi, Karl. *The Great Transformation: The Political and Economic Origins of Our Time* Boston: Beacon Press, 2001.

Postel, Charles. *The Populist Vision*. New York: Oxford University Press, 2007.

Prewitt, Kenneth and Mattei Dogan, Steven Heydemann, Stefan Toepler, eds. *The Legitimacy of Philanthropic Foundations: U.S. and European Perspectives*. New York: Russell Sage Foundation, 2006.

Pressnell, L.S., "Public Monies and the Development of English Banking." *The Economic History Review* 5 no. 3 (1953): 378-397.

Purbrick, Louise. *The Great Exhibition of 1851: New Interdisciplinary Essays*. Manchester: Manchester University Press, 2001.

Radosh, Ronald and Murray N. Rothbard, eds. *A New History of Leviathan: Essays on the Rise of the American Corporate State.* New York: E.P. Dutton & Co., 1972.

Ratner, Sidney. *New Light on the History of Great American Fortunes: American Millionaires of 1892 and 1902.* New York: August M. Kelley Inc., 1953.

Reich, Rob, Chiara Chordelli, and Lucy Bernholz, eds. *Philanthropy in Democratic Societies: History, Institutions, Values*. Chicago: University of Chicago, 2016.

Rendleman, Douglas R. "Parens Patriae: From Chancery to the Juvenile Court." *South Carolina Law Review* 23 (1971): 205-259.

Rockman, Seth. *Scraping By: Wage Labor, Slavery, and Survival in Early Baltimore*. Baltimore: Johns Hopkins University Press, 2009.

Rodgers, Daniel. *Atlantic Crossings: Social Politics in a Progressive Age*. Cambridge: Belknap Press, 1998.

———. "In Search of Progressivism." *Reviews in American History* 10.4 (1982).

Rubinstein, W.D., ed. *Wealth and the Wealthy in the Modern World*. New York: St. Martin's Press, 1980.

Rydell, Robert W. *All the World's a Fair*. Chicago: University of Chicago, 1984.

Schlesinger, Arthur M. "Biography of a Nation of Joiners." *American Historical Review* 50 no. 1 (1944): 1-25.

Seavoy, Ronald E. "The Public Service Origins of the American Business Corporation." *Business History Review* vol. 52, No. 1 (Spring 1978): 30-60.

———. "Laws to Encourage Manufacturing: New York Policy and the 1811 General Incorporation Statute." *The Business History Review* 46 no. 1 (Spring, 1972): 85-95.

Sellers, Charles Coleman. *Mr. Peale's Museum: Charles Wilson Peale and the First Popular Museum of Natural Science and Art.* New York: W.W. Norton & Co., 1990.

Schlup, Leonard. "Consistent Conservative Jacob Harold Gallinger and Presidential Campaign of 1912 in New Hampshire." *International Review of History and Political Science* 21, no. 3 (1984): 49-57.

Silber, Norman I. *A Corporate Form of Freedom*. Boulder: Westview Press, 2001.

Sinclair, Upton, *King Coal*. New York: Bantam Books, 1994.

Sklar, Martin J. *The Corporate Reconstruction of American Capitalism, 1890-1916*. Cambridge: Cambridge University Press, 1988.

Skocpol, Theda. *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United State*s. Cambridge: Harvard University Press, 1992.

Smith, Adam. *The Wealth of Nations*, Book 5. New York: Collier, 1902.

Smith, Adam. *The Wealth of Nations,* Book 3. New York: Penguin, 1999.

Sokoloff, Kenneth L. and Stanley L. Engerman. "History Lessons: Institutions, Factor Endowments, and Paths of Development in the New World." *Journal of Economic Perspectives* 14, no. 3 (2000): 217-232.

Soskis, Benjamin. "The Problem of Charity in Industrial America, 1873-1915." PhD diss., Columbia University, 2010.

Spencer, Herbert. *The Principles of Ethics*, vols. 1-2. New York: D. Appleton and Co., 1912.

Stromquist, Shelton. *Reinventing the People: The Progressive Movement, the Class Problem, and the Origins of Modern Liberalism.* Urbana: University of Illinois Press, 2006.

Tarbell, Ida. *The History of the Standard Oil Company Vol 1-2.* New York: Peter Smith, 1950.

Tocqueville, Alexis. *Democracy in America*. Translated by Elizabeth Trapnell Rawlings and edited by Michael Kammen. Boston: Bedford/St. Martin's, 2009.

Tone, Andrea. *The Business of Benevolence: Industrial Paternalism in the Progressive Era*. Ithaca: Cornell University Press, 1997.

Trachtenberg, Alan. *The Incorporation of America: Culture and Society in the Gilded Age*. New York: Hill and Wang, 1982.

Tyack, David B. *The One Best System: A History of American Urban Education*. Cambridge: Harvard University Press, 1974.

Vaughn, William P. "Partners in Segregation: Barnas Sears and the Peabody Fund." *Civil War History* 10 no. 3 (1964): 260-274.

Walker, William S. *A Living Exhibition: The Smithsonian and the Transformation of the Universal Museum*. Amherst: University of Massachusetts Press, 2013.

Wallis, John Joseph. "American Government Finance in the Long Run: 1790 to 1990." *Journal of Economic Perspectives* 14 No. 1 (Winter 2000): 61-82.

Ward, David C. “Democratic Culture: The Peal Museums, 1784-1850.” In *The Peal Family: Creation of a Legacy, 1770-1870.* Edited by Lilian B. Miller. New York: Abbeville Press, 1996.

Walters, Ronald G. *American Reformers 1815-1860.* Revised edition. New York: Hill and Wang, 1997.

Watkins, William H. *The White Architects of Black Education: Ideology and Power in America, 1865-1954*. New York: Teachers College Press, 2001.

Weber, Max. *The Protestant Ethic and the Spirit of Capitalism.* Translated by Stephen Kalberg. Oxford: Oxford University Press, 2011.

Weinstein, James. *The Corporate Ideal in the Liberal State: 1900-1918*. Boston: Beacon Press, 1968.

Weisbrod, Burton A. “Toward a Theory of the Voluntary Non-Profit Sector in a Three-Sector Economy.” *The Economics of Nonprofit Institutions*. Edited by Susan Rose-Ackerman, 21-44. New York: Oxford University Press, 1986.

West, Earl H. “The Peabody Education Fund and Negro Education, 1867-1880.” *History of Education Quarterly*, 6 no. 2 (Summer, 1966): 3-21.

White, Richard. *Railroaded: The Transcontinentals and the Making of Modern America*. New York: W.W. Norton & Co., 2011.

———. “Before Greed: Americans Didn’t Always Yearn for Riches.” *Boston Review,* Nov. 1, 2012.

Wiebe, Robert H. *The Search for Order, 1877-1920*. New York: Hill and Wang, 1967.

Woeste, Victoria Saker. *The Farmer’s Benevolent Trust: Law and Agricultural Cooperation in Industrial America, 1865-1945*. Chapel Hill: University of North Carolina Press, 1998.

Wood, Gordon S. *Empire of Liberty: A History of the Early Republic*. New York: Oxford University Press, 2009.

Wright, Arthur D. *The Negro Rural School Fund, Inc., 1907-1933*. Washington, D.C.: The Negro Rural School Fund, Inc., 1933.

Wright, Conrad Edick and Kathryn P. Viens, eds. *Entrepreneurs: The Boston Business Community, 1700-1850,* 365-421. Boston: Mass Historical Society, 1997.

Wyllie, Irwin G. "The Search for an American Law of Charity, 1776-1844," *The Mississippi Valley Historical Review* 46 (Sept 1959): 203-221.

Yenawine, Bruce H. "Benjamin Franklin's Legacy of Virtue: The Franklin Trusts of Boston and Philadelphia." PhD diss., Syracuse University, 1995.

Yochelson, Ellis L. "Andrew Carnegie and Charles Doolittle Walcott: The Origin and Early Years of the Carnegie Institution of Washington." *History of Geophysics* vol. 5 (1994): 1-19.

Zunz, Olivier. *Philanthropy in American: A History*. Princeton: Princeton University Press, 2012.

———. *Making America Corporate 1870-1920*. Chicago: University of Chicago Press, 1990.