

# FOUNDATIONS AND GOVERNMENT: SOCIAL INNOVATION, POLICY ADVOCACY AND COLLABORATION TO IMPROVE GOVERNMENT EFFECTIVENESS

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## I. Introduction

Foundations, along with the organizations that they support, are the great secret of the dynamism of America's civic sector. The civic sector is not at all just about social change in the narrow sense of social justice and equitable social policy but rather about all kind of organizations that are created, supported, and staffed by Americans acting independently of government. Just as private investors and venture capitalists spark the creation of new products and services in the for-profit sector, foundations provide the capital that powers innovation and diverse experimentation in the civic sector. Foundations enable the creation of countless civic-sector organizations—groups advancing the arts as well as human rights, discovering basic and applied knowledge as well as protecting civil liberties, thinking about and experimenting with better ways to choose and implement social policy as well as supporting poetry and philosophy, advocating more equitable policies for allocating society's goods and services as well as more effective and efficient ways of educating our children, discovering and documenting the human harm to our natural environment and raising public and governmental consciousness in order to reduce and eliminate the damage, building new human capital to meet the challenges of the future as well as helping provide jobs, homes, and food to those in need, among other goals - and assisting society by building national, regional, and local constituencies, many of them differing with one another, that emerge into the forefront of continuing social change. All of those organizations, together with the foundations that support them, play a critical role in the constant reinvention of American society.

However, the civic sector does not operate in a vacuum, isolated from the government and the for-profit sector. Rather, foundations, and the nonprofit organizations they support, are in a continuous dynamic

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relationship with the government—one that is both cooperative and contentious. In an era of welfare state austerity and devolution, such as America is encountering now, nonprofit organizations are increasingly called upon to deliver social services previously supplied by the government. Foundations, meanwhile, look to the government to scale up innovations that they and their nonprofit grantees have developed and tested. They also fund research on public policies and mobilize campaigns in support of particular public initiatives. Foundations support, and often help create, organizations whose purpose is to advocate for social justice for those who are marginalized and discriminated against, as well as membership organizations dedicated to protecting the natural environment and protecting consumers. Both of these latter efforts require changes in law or public policy and cooperation by government enforcement agencies. Both can invite opposition from for-profit companies and state or local government. Crucially, the government all the while encourages the growth of the civic sector by offering tax benefits for donations to, and the operation of, 501(c)(3) organizations and private foundations.

Despite the critical role that foundations play in fostering the functioning of America's civic sector and changing public policy, the government places tight restrictions on the extent to which foundations may engage in public policy advocacy and lobbying. While foundations are free, and indeed encouraged, to help form and implement government policies, they are largely barred from attempting to influence specific legislative decisions. Under federal law going back to 1934, all U.S. nonprofits eligible for tax exemption under Internal Revenue Code Section 501(c)(3) have been restricted in the amount of lobbying they can legally do. The statute grants tax exemption only if 1) "no substantial part" of an organization's activities consists of carrying on propaganda or otherwise attempting to influence legislation,<sup>2</sup> and if 2) it does not participate or intervene in "any political campaign on behalf of (or in opposition to) any candidate for public office." Foundations, however, are subject to much more stringent constraints. Starting with the 1969 Tax Reform Act, which imposed new restrictions on them, foundations were prohibited from funding or engaging in any lobbying of legislators or legislative staffs at all, with three very narrow exceptions: 1) even-handed presentation of pros and cons of an issue, 2) when invited by a legislator, committee or legislative staff to express its view on legislation or on a particular issue, or 3) when the legislation or issue is deemed a threat to the foundation's own existence.

There is no persuasive explanation for the schizophrenic U.S. attitude toward lobbying by nonprofits and foundations. On the one hand, the American socio-political ethos, exemplified by the First Amendment, includes a robust tradition of public participation and free speech. The Supreme Court, for example, has held that the U.S. Constitution guarantees tremendous latitude in public policy advocacy expenditures by individuals and groups. On the other hand, Congress has grown increasingly wary of legislative lobbying funded by tax-exempt resources. In 1994, for example, it changed the law to require all for-profit lobbying expenses to be paid for out of after-tax dollars.

Despite Congressional wariness and foundations' excessive caution heretofore, a growing number of foundations are now ratcheting up their level of involvement in advocacy. They are fully justified in doing so. First, foundations represent the interests and viewpoints of a wide, very diverse variety of organizations. Many of them give disadvantaged, marginalized citizens a critical voice in the policy-making process. Grassroots organizations in particular are at risk of being drowned out by the much larger, better-organized, and better-endowed lobbies that represent for-profit interests. Also, foundation resources are minuscule in comparison to the government's budget. It is largely by leveraging the spending of federal dollars that foundations can hope to create significant, lasting social change. And as the appetite of foundation donors, trustees and staff to grapple with even the largest, most complex and intractable problems has become keener, more ambitious and indeed more daring, they have increasingly

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<sup>2</sup> In 1976, that general provision governing lobbying was supplemented by a new provision, Section 501(h), which permits nonprofit organizations to opt for having the legality of their lobbying to be evaluated by specific quantitative expenditure amounts rather than the vague "no substantial part" test of the 1934 legislation.

developed strategies whose success depends on actions of one kind or another by government, whether federal, state or local.

In the remainder of this paper, I first explore the evolution of foundation advocacy, beginning in the late 19th century and continuing to the present. Second, I outline the strategies that foundations may use in achieving their objectives, including those for engaging with government. Third, I also discuss the origination of foundation-government collaborations, which most often begin with foundations (though in some instances they are initiated by government actors). Fourth, and finally, I argue that, in addition to advocacy of more effective and more equitable policy changes, an exceedingly fruitful kind of foundation-government relationship is capacity building of government agencies, very much like the capacity building foundations have employed in strengthening the functioning of their grantees. That is, foundations can be of perhaps their greatest help to government when they aid public agencies in developing more efficient and effective delivery of the services and policy implementation which government is charged by law with administering. Moreover, I contend that for foundations to advocate policy changes without attending to the effective implementation of those policies when enacted is likely to be ultimately self-defeating. In addition, foundations can in fact engage in such government capacity-building without any serious risk of compromising their independence from government, as capacity-building is almost always delivered by expert third-party consultants and managers in exactly the same way as consultants help improve the strategies and functioning of for-profit and nonprofit organizations at present.

## II. Evolution of Philanthropy—From Charity to Scientific Philanthropy

The historians of philanthropy describe how charitable giving evolved over about two millennia, starting with charity for the support of the impoverished and unfortunate, as prescribed by The Torah and other religions' injunctions, then through patronage, as in the building of community-benefiting institutions such as museums, concert halls, athletic stadia, universities, the support of artists and poets, and, finally, to scientific philanthropy, the use of charitable dollars to solve, cure or ameliorate social problems at their roots. It goes without saying that all three kinds of charitable giving have continued to co-exist alongside one another, although particular times and major events in the lives of nations and the world occasion varying emphases on one kind or the other from time to time. Today, at least for the largest foundations, the emphasis is clearly on scientific philanthropy, with "charity" taking a back seat. That is why most foundations regard spending on social service delivery as less important than seeking to rectify why there is a need for "charity" in the first place.

The practitioners of philanthropy regard what the charity-focused do as applying band-aids to the symptoms of existing problems, and what they themselves, the practitioners of scientific philanthropy, do as either preventing problems from arising in the first place or attacking problems at their root causes. It is famously said that the charity-minded give a hungry human being a fish, which might satisfy his hunger for a day, while the philanthropist teaches a hungry human being HOW to fish, and thereby acquire the ability to feed himself and his family for a lifetime.<sup>3</sup> Bill Drayton, the founder and chief executive of ASHOKA, carries that analogy a step further when he describes the mission of social entrepreneurs as being "revolutionizing the fishing industry" itself!

When the well-known founders of philanthropy in the United States, such as the steel mogul Andrew Carnegie and the kerosene king John D. Rockefeller, began to create their eponymous foundations, they set out to be scientific philanthropists in the narrow sense of the phrase. Andrew Carnegie wrote the Bible

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<sup>3</sup> See Mordecai Feingold, "Philanthropy, Pomp and Patronage: historical reflections upon the endowment of culture," *Daedalus*, October 1987, pp. 155-178

of philanthropy, in his 1889 essay for *The North American Review* which later became widely-known as “The Gospel of Wealth,” in which he described his views on “the proper administration of wealth.” It became instantly influential among the wealthy, and even John D. Rockefeller, Sr., later wrote Carnegie that “everything I knew about philanthropy I learned from you.”

The concept of foundations as institutions for the scientific administration of pools of philanthropic wealth has become the conventional wisdom of virtually all of the large American foundations, and most of the middle-sized ones, too. One can easily discern their root-problem-eradication and –mitigation missions by looking at their Web sites. For example, the Bill and Melinda Gates Foundation has a mission that involves eradicating major developing world diseases such as malaria, as well as another mission dedicated to doubling the percentage of disadvantaged young men and women who complete college. These are big, bold ambitions, and they are typical of the kinds, if not necessarily the size, of missions to which most large American foundations have committed themselves.

The over-riding goal of today’s scientific philanthropists, whether they are called social entrepreneurs or venture philanthropists, is the same as that of their predecessors—the achievement of significant, measurable impact on society as a result of their philanthropy. And the means whereby impact is best achieved, in their view, is the careful selection of a strategy or strategies precisely targeted, designed and implemented with the goal not only of achieving impact but of being able to measure it as well. For today’s foundations and large donors, therefore, impact has become the Holy Grail; focus and strategy have become the path to tread if it is to be grasped; and performance benchmarks, evaluation and assessment have become indispensable to recognizing the extent to which impact is being achieved.

### III. Strategies of Foundation-Government Interaction

Foundation relations with government take two broad forms: 1) advocacy aimed at changing public policy and public attitudes, and 2) discrete cooperative ventures with government. It is important to note that, depending on the administration in power and the ideological leanings of particular foundations, foundations can be either critical or supportive of government. Furthermore, government in the United States is rarely monolithic. Foundations may work with different levels of government (e.g. local, state, or federal) or with various branches of government to advance change. For example, the executive branch of the federal government may seek partnerships with foundations in advocacy efforts aimed at persuading the public and Congress to support particular initiatives, such as could be the case in the current health policy reform legislative battles.

#### Advocacy Aimed at Changing Public Policy and Public Attitudes

Historically, foundations have employed six strategies as they have sought to change public policy and public attitudes: 1) Creating and disseminating policy-relevant research, 2) Designing and implementing pilot programs or new organizations, sometimes in cooperation with government and sometimes not, which the government can, if they are thought to be successful, then take to scale, 3) Supporting advocacy to change public policy, 4) Supporting advocacy to change public attitudes, 5) Supporting specific efforts to change federal or state law, and 6) providing capacity-building services to government to improve the effectiveness and efficiency of policy implementation and service delivery.

**Creating and Disseminating Policy-Relevant Research.** From seeking causes and cures for disease to plumbing the oceans to tracing the sources of social ills and devising remedies for them, policy-relevant knowledge generation has been a staple of foundation grantmaking initiatives. In some cases, foundations

support knowledge creation for its own sake; but in many other cases, the research is part of a program to enlighten the public and lawmakers about policy matters.

In pursuit of this strategy, foundations have developed a number of specific tactics that have proven effective. Some have founded institutions to promote public policy awareness. The Brookings Institution, the Urban Institute, the Center on Budget and Policy Priorities, Resources for the Future, the American Enterprise Institute for Public Policy Research, the Heritage Foundation, the Cato Institute, Public/Private Ventures, the Manpower Demonstration Research Corporation, Public/Private Ventures, the National Bureau of Economic Research, and the National Research Council of the National Academy of Sciences were all started by foundations with the goal of shaping public policy knowledge and attitudes, and many of them continue to be supported by foundations. Each covers a varying range of policy issues, generating a stream of high quality data and relevant options for problem solutions. Because they bring to bear on those problems accepted analytic and methodological skills of high quality, the products of their researchers have gained widespread credibility among other researchers, policy makers, the press, and the public, making them the authoritative providers of reliable, evidence-based policy solutions in their areas of focus.

Other foundations have formed institutions to promote specific reforms. The Police Foundation, originally created by the Ford Foundation, is widely credited with transforming the practices of local police departments. A similar example is the Ford Foundation's support of the VERA Institute, founded by the creative "social entrepreneur" Herbert Sturz. The Institute's Bail Project, which developed the Release on Recognizance method of assessing accused persons, has significantly reduced the need to rely on posting bail to ensure attendance at trial.

In recent years, many foundations have targeted particular research problems for solution, usually with the goal of priming more extensive efforts by government and/or profit-sector organizations. Recent examples include the Aaron Diamond AIDS Research Center in New York City, which has attracted significant government support, and the Rockefeller and Sloan foundations' International AIDS Vaccine Initiative, supported by two \$250 million grants in 2004 and 2005 from the Bill and Melinda Gates Foundation, which appears to have stimulated the \$300-million commitment by the National Institutes of Health to a "Manhattan Project" aimed at finding an AIDS vaccine.

**Designing and Implementing Pilot Programs.** One of the most common tactics used by foundations to bring about strategic change is to create a pilot or demonstration program in the hope that others (often the government) will replicate it widely. An example is the Commonwealth Fund's Picker health-care program, the first foundation effort to focus on measuring the quality of medical care from the patient's perspective. It led directly to the establishment of the National Center for Quality Assurance, which now rates managed-care performance for the Department of Health and Human Services, as well as Medicare's Consumer Assessment of Health Plans Program. Both programs replicate the model pioneered by Picker. Similar model building characterizes Fordham's and Walton's charter school program, Bradley's school voucher program, Surdna's Smart Growth program, MDRC's welfare-to-work demonstration programs, the Robert Wood Johnson Foundation's creation of the 911 National Emergency Response telephone number and many more.

The main problem with model building is that most foundations usually do not stick with the task long enough to reap its full benefits. Most simply build the model, sustain it for a few years, and leave it to others to learn or not learn from their work. Unfortunately, this isn't enough time to drive meaningful social change. Model building works only when a foundation nurtures the model into self-sustainability and replicates it with enough copies to launch the network on a course of sustainable growth. This is where the government, with its vast resources, can play a key role.

**Public Policy Advocacy.** Foundations that support public policy advocacy generally adopt two different tactics: either they support existing advocacy organizations or they launch new organizations to engage in advocacy initiatives.

The advocacy organizations supported by foundations use a combination of approaches, including comprehensive research, membership building, and publication and dissemination of information. Some also lobby for changes in law or regulatory practice, although I will reserve my discussion of such efforts for a separate part of this section.

To take one prominent example, foundations have often supported organizations or initiatives aimed at curing disease. Virtually every common illness (and many that are not so common) has its advocacy group, and most are buoyed by foundation support. A now-legendary example is the Albert and Mary Lasker Foundation, which is justly credited with the heroically successful efforts to increase very substantially federal funding for cancer research and to establish the National Cancer Institute in the National Institutes for Health. Many foundations, including Atlantic Philanthropies, support what is now called the Christopher Reeve Paralysis Foundation, which performs advocacy as well as supporting researchers seeking methods whereby spinal nerves damaged in accidents can be regenerated.

In addition, many nonmedical advocacy organizations are supported by foundations, including such well-known and influential groups as the Council on Foreign Relations, the American Civil Liberties Union, Human Rights Watch, Human Rights First, Amnesty International, and the United Nations Association.

Some foundations choose to finance their own advocacy initiatives. A recent—and dramatically successful—example is the MacArthur Foundation’s nuclear threat reduction program, which helped facilitate an agreement between the United States and Russia on the destruction of nuclear materials following the collapse of the Soviet Union. The Population Council was established with foundation support by Rockefeller philanthropies to advocate policy change and practical programs for family planning and birth control. Human Rights Watch was established with significant early grants from the Ford Foundation and the MacArthur Foundations, and has received steady support from the Open Society Institute. On the international front, Michael Posner, founder and long-time chief executive of Human Rights First (formerly the Lawyers Committee for Human Rights), credits the Ford Foundation for providing start-up money to indigenous human rights organizations in many countries around the world. That same Michael Posner has just been sworn in as Assistant Secretary of State for Democracy, Human Rights and Labor.

The Beldon Fund, which recently closed its doors after a 10-year spend-down, devoted its entire spend-down period to public policy advocacy. According to the Fund, “The accelerated timetable for accomplishing the foundation’s mission shaped decisions about grant making strategies. The goal was to build public and policy support for environmental protection, and the needs in the field were many – environmental advocates were struggling on multiple fronts to bring change, or prevent further degradation, in a policy environment increasingly unfriendly to their goals.”<sup>4</sup> With such a short period of time in which to help environmental advocates win significant victories, Beldon developed a focused set of three main strategies: building capacity and clout within the field, supporting civic engagement by helping advocates to educate the general public, and broadening the base of support by disseminating reliable scientific data.

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<sup>4</sup> <http://www.beldon.org/content/about-beldon>

**Changing Public Attitudes.** Subtly different from policy advocacy is the strategy of shifting public opinion on a particular issue. Here the focus is less on informing influential decision-makers and more on educating the general public. Of course, policy makers are attuned to public attitudes, so foundation initiatives to educate the public do have an indirect effect on public policy outcomes.

Ted Turner's U.N. Foundation successfully undertook one of the most dramatic efforts at changing public attitudes when it launched an initiative aimed at reversing the United States' chronic failure to pay its U.N. dues. The foundation orchestrated an effective campaign to crystallize public support for paying the back dues as well as discreet efforts to lobby Congress and the administration to the same end.

Another initiative that succeeded in changing minds and laws was the Robert Wood Johnson Foundation's youth antismoking campaign, which is credited with reducing smoking by teenagers through public information programs and efforts to encourage tax increases on cigarettes. Other examples include the Pew Charitable Trusts' Sustainable Environment Program, which steadily played a significant role in changing attitudes about global warming; the MacArthur Foundation's Biodiversity Protection Program; the Surdna Foundation's Smart Growth Initiative; the Open Society Institute's program to legalize some forms of drug use; the Bradley Foundation's school choice program; and the Commonwealth Fund's hospice care program.

**Changing the Law.** In the first half of the twentieth century, foundations were reluctant to engage in actively bringing about changes in the law. This reluctance began to weaken around mid-century, beginning with grants to civil rights organizations that lobbied for fair housing laws and brought lawsuits attacking segregation in education. Foundations soon embraced strategies that focused on legislation and litigation in many other fields, including fair employment practices, voter registration for blacks and other minorities, women's rights, consumer protection, and environmentalism.

The Ford Foundation was particularly active in these areas, providing start-up and continuing grants for the Mexican-American Legal Defense Fund, La Raza, and the Puerto Rican Legal Defense Fund; the Natural Resources Defense Council and the Environmental Defense Fund; and numerous general public-interest law centers.

#### Discrete Cooperative Ventures with Government

While much of philanthropy's relationship with government takes place at the advocacy level, at times foundations also enter into discrete cooperative ventures with the government. Such cooperative relationships fit roughly into four categories.

First, foundations may develop pilot projects that the government may later bring to scale. In planning such pilots, foundations may or may not seek government consultation and participation in advance. The Robert Wood Johnson's creation of the national 911 Emergency Response Telephone Number is a good example of how a foundation can create permanent change if it willing to stick with a problem for a period of years and devote the time and effort to replicating the model in many locations before turning it over to the federal government. The Ford Foundation's creation of the Local Initiatives Support Corporation, now some 30 years old, is another example. Organized with advance cooperation from the U.S. Department of Housing and Urban Development, LISC identifies credit-worthy community-based organizations that financial institutions and government can confidently fund in efforts to build housing and start businesses.

Second, government may seek support from foundations to launch a new society-benefiting entity, which the government agrees to support after the initial costs are provided by foundations. For example, the

North Carolina School of the Arts was proposed to the Ford Foundation by Governor Terry Sanford. The School was first financed by Ford and a few large North Carolina foundations, and then picked up entirely by the government. Sanford used the same pattern in starting The Governor's School, a state-wide, residential school for gifted students, the North Carolina Fund, which was the nation's first state-wide antipoverty program, and the North Carolina Advancement School, for disadvantaged, underachieving students. Recently, Governor James B. Hunt used that same formula to launch the N.C. School of Science and Math, a statewide, two-year residential high school for scientifically or mathematically gifted high school students.

A number of other examples of government-initiated partnerships are found in the Casebook for my book. The Carnegie Corporation, in its initial support for the creation of the National Research Council (an initiative of the Congressionally-chartered National Academy of Sciences), provided an ideal source of funds for promoting coordinated scientific expertise to the government to help analyze and solve particular problems of public policy or implementation. In New York, the Commonwealth Fund was convinced in the early 1920s by Dr. Hermann Biggs, the New York Commissioner of Health, to fund hospitals for rural and minority communities. In its twenty-seven years of operation (1925-1952), the Fund's Division of Rural Hospitals gave out a total of \$6.84 million and built fifteen hospitals that provided medical care to millions of people. Based on that demonstration, Congress then enacted the Hill-Burton Act which has built thousands of such hospitals all over the U.S. It was then-Vice President Henry Wallace who in 1943 urged the Rockefeller Foundation to help Mexico improve its agricultural productivity, a project that later grew into the now-famous Green Revolution. And New York's U.S. Senator Robert Kennedy was one of the principal movers behind the Ford Foundation's 1966 support for the Bedford-Stuyvesant Restoration Corporation. Ford later helped to set up and support the expansion of the community development strategy pioneered at Bedford-Stuyvesant, and today community development corporations blanket the American landscape. In 1999, the Packard Foundation supported Chicago Mayor Richard Daley's Plan for Transformation of Public Housing, both by providing a neutral problem-solving venue and by offering financial support. Finally, the Smart Growth initiative was first conceived by Maryland Governor Parris N. Glendening, but promoted more widely in 1999 by the Surdna Foundation. Out of Surdna's pilot projects, and with support from six other foundations - the Turner, Irvine, Ford, MacArthur, Packard, and Energy Foundations - has grown the Funders' Network for Smart Growth and Livable Communities, a consortium of grantmakers committed to building more economically viable and livable communities.

Third, the government may seek support from foundations to provide social service delivery money to needy populations. For example, the U.S. government, the State of Louisiana, and the City of New Orleans all called upon foundations to channel funds to the clean-up effort after Hurricane Katrina. Foundations all across the country gave a combined sum in the hundreds of millions to help the city recover and to aid displaced residents in rebuilding their lives.

Fourth and finally, foundations may provide capacity-building support to help the government administer social services. Over the past twenty years, foundations have made a point of developing the capacity of their grantees, many of which work on the same social problems as many government agencies. Today, for example, more than 350 foundations are members of the field's largest affinity group, Grantmakers for Effective Organization (GEO), which works with funders to help them build stronger and more effective nonprofit organizations.<sup>5</sup> Foundations, because of their extensive experience and success in helping nonprofits build capacity, should be in a prime position to help the government agencies more efficiently and effectively manage their operations. For example, almost six months after Katrina hit New Orleans, an urban renewal plan had still not been drawn and the process was mired in politics, competing and conflicting objectives among affected constituencies and poor leadership. Crucial federal funds,

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<sup>5</sup> See [www.geofunders.org](http://www.geofunders.org)

already appropriated, would not be released without an approved plan. At the request of the Louisiana Recovery Authority, the Rockefeller Foundation restarted the planning process by providing funding to a variety of organizations that could provide leadership, collaborative energy, community expertise and political will. The Rockefeller Foundation's investment of three and a half million dollars on the planning process itself, plus investing a great deal of political capital and convening authority, led to the following financial leverage: the successful completion of the "Unified New Orleans Plan" triggered release of \$417 million in federal funds that required a completed comprehensive plan.”

I have been told that some foundations, including the Rockefeller Foundation, are in discussions with the federal government about engaging in this type of capacity-building initiative with particular government departments. Furthermore, foundations already indirectly fund government management and leadership training through their support for the Partnership for Public Service. The Partnership seeks both to inspire new generations to serve and to transform the ways that government works.<sup>6</sup> Foundation support for the Partnership's efforts is an important initial step in demonstrating philanthropy's willingness to help the government build its capacity.

In the summer of 2009, the Council on Foundations (COF) established the Public-Philanthropic Partnership Initiative to help its members and others in the field to collaborate with local, state, and federal government. The Obama Administration has welcomed this public-private approach. The initiative grew out of conversations between the Administration and COF dating back to the presidential transition. These conversations have increased over the past year, especially during the implementation of the American Recovery and Reinvestment Act. The joint effort reflects both the Administration's goal for high impact at the local level, as well as philanthropy's goal to encourage government to build on foundations' innovations.<sup>7</sup>

#### A Word of Caution

Philanthropy, however, should be wary of providing unequivocal support for government initiatives. While many of the Obama Administration's goals align well with the goals of philanthropy, a relationship with the government that is too close compromises historic foundation independence and threatens foundations' freedom to criticize government, as well as to take initiatives that are at odds with government. Moreover, foundations have spendable dollars at this time in the amount of \$40-45 billion, which is dwarfed by government's resources for domestic spending—about \$900 billion. Every dollar foundations spend on supporting an initiative that government itself should be spending is a dollar that cannot be spent on foundations' primary mission of providing social venture capital to the nation. While I think foundations DO have a genuine and valid concern about the possible compromise of their independence when they cooperate with government, I am sure that any such risk to such independence can be avoided by carefully planned collaborations and other such safeguards that would not entail any sacrifice of foundation independence. Any such minimal risk would be far outweighed by benefits that would accrue to the public interest by engaging in collaborative efforts.

For the rest of this paper, I will explore in more detail two of the strategies discussed above: advocacy and capacity-building. Both strategies can take many forms, and both, if executed well, offer the possibility of substantial impact.

#### IV. Why Advocacy as a Philanthropic Strategy?

##### Leveraging Their Dollars—Early Adopters

<sup>6</sup> See [www.ourpublicservice.org/OPS](http://www.ourpublicservice.org/OPS)

<sup>7</sup> See [http://www.mcf.org/mcf/forum/2009/fall\\_commentary.htm](http://www.mcf.org/mcf/forum/2009/fall_commentary.htm)

Many early foundation founders understood that, however rich foundations may be, their resources are but a tiny drop compared to what governments spend on remedying or ameliorating the very same problems. They therefore structured many of their initiatives to exert leverage on governmental and other sources of support by requiring government participation in the initiatives they launched. Andrew Carnegie invented the challenge grant in his celebrated public library-building program. Between 1886 and 1917, that program built 2,509 libraries for communities in the United States and abroad. The deal he offered was to provide funds for building the libraries, but the local communities receiving the funds had to donate the land and commit themselves to match at least 10% of the amount of his gift to provide support for their annual operation. Julius Rosenwald did almost the same thing, from 1917 to 1932, in catalyzing the construction of some 4977 schools for African-American children all across the Southern United States. He required state and local governments to pay half of the construction costs and to incorporate the new schools into their public school system, providing continuing operating costs. He also required that some support for the schools be forthcoming from members of the white community.

Other foundation founders and trustees created entirely different forms of leverage on the public. The Russell Sage Foundation, founded in 1907, was and still is keenly interested in social welfare, and conducted a variety of surveys and reports on social problems affecting the poor, with a particular focus on the working poor. It also cooperated extensively with state and federal agencies engaged in trying to ease the plight of the poor. In doing so, it was attempting to influence government officials, and the public in general, by documenting the extent and seriousness of those problems. For the same purposes, the Cleveland Foundation, founded in 1914 as the first community foundation in the U.S., orchestrated a wide range of empirical evidence-based studies on the many problems plaguing the Cleveland metropolitan area. From the very beginning, therefore, American foundation leaders understood that, if they were to succeed in achieving impact, at least part of their effort needed to be focused on influencing government—whether by challenge grants that governments had to match, by partnerships involving government, by generating evidence that would influence both the public and government officials, or, ultimately, by facilitating the creation of civil society organizations whose members could exert their influence in shaping the views and votes of public officials.

### A Quantum Leap Forward

By the 1960s, the context in which foundations were working changed decisively, with the awakening of America to its sins arising from institutionalized racial and ethnic discrimination, and its inattentiveness to the damage being done to the world's ecosystems by human activities, habitations, and patterns of consumption. The Ford Foundation led the way, largely because of Paul Ylvisaker's leadership there beginning in 1955. He was Program Officer in Charge of the Social Development Program, and he and his associates crafted major new initiatives to attack urban decay and rural neglect, involving foundation partnerships with state and local governments. Ford's "Gray Areas Program," which was built on partnerships between local governments and local community development corporations, became the prototype for President Lyndon Johnson's War on Poverty, declared in January 1964, and especially its Community Action Programs. After McGeorge Bundy recruited Mitchell Sviridoff to become Ford's Vice President for National Affairs in 1967 and Harold Howe II as Vice President for Education, Ford led the way in creating or sustaining organizations that entered partnerships with government for a variety of demonstration and advocacy efforts.

### Expansion of Advocacy: From Cooperation with Government to Criticism and Reshaping of Public Policy

Five years after Rachel Carson's *Silent Spring* first jolted America's consciousness about our environmental vulnerabilities, four graduates of Yale Law School, in 1967, approached the Ford

Foundation for support in creating a new organization dedicated to writing America's environmental laws and bringing lawsuits to enforce them. Thus was born the Natural Resources Defense Council. Think of the Environmental Defense Fund, too. Each of these organizations now has about 700,000 members. Both have played critical roles in changing America's environmental and conservation landscape for the better. But neither of them, nor any other major environmental public interest law or policy organization, could have become self-sustaining without the early, generous and consistent support of the Ford Foundation and many other foundations, large and small. Both of these organizations have played major roles in the writing, enactment and implementation of such critical national laws as the Clean Air Act, the Clean Water Act, and the Environmental Protection Act, among other legislation. And both of them have brought and argued major lawsuits to enforce environmental legislation against government and businesses.

In fact, it was the Ford Foundation which, in the early 1970s, persuaded the Internal Revenue Service to reverse its policy that the bringing of lawsuits in the public interest was NOT a legitimate charitable purpose. Once Ford got the IRS approval for the conduct of such litigation by charities, the door was opened wide for a significant expansion of nonprofit advocacy through both legislation and litigation. Together with other foundations, Ford began creating lawyer-staffed public interest law and advocacy centers around the country, to lead the way in analyzing various social problems, particularly those which affected minorities, consumers, and others discriminated against in America, as well as the national environmental advocacy organizations mentioned above. It also began supporting, and often founding, many civil society organizations dedicated to advancing the social, economic and political rights of various ethnic and racial organizations, such as the Mexican-American Legal Defense Fund, the Puerto Rican Legal Defense Fund, and the Native American Legal Defense Fund.

Foundations did not pioneer U.S. civil rights organizations in the same way. With the exception of a few smaller family foundations, including the Stern Family Fund, the Taconic Foundation, the New World Foundation and the Field Foundation, they were wary of supporting civil rights organizations when they were first getting started. Foundations began engaging with these organizations in the 1960s, first on voter registration in the South and then in other fields. In fact, it was the support of Ford and other foundations for African-American voter registration in the South<sup>8</sup> that aroused the ire of Southern politicians and contributed significantly to the anti-foundation sentiment that produced the 1969 Tax Reform Act, which included the first federal tax on foundations and other provisions regulating foundations which are discussed below.

Undeterred, by the 1970s many of the largest private foundations, including Ford, were supporting the NAACP Legal Defense Fund in its policy advocacy and litigation efforts towards enforcement of the federal and state civil rights legislation. Without the energetic but peaceful advocacy channels that those and other organizations supported by foundations provided, America might well have seen much slower, and perhaps more violent, progress towards civil rights and the integration of American society.

While the women's legal rights movement had many sources going back to the Suffragettes and beyond, its progress accelerated greatly after organizations dedicated to its agenda were founded. Among the first was the Women's Legal Rights Program, established in the early 1960s by the American Civil Liberties Union under the direction of Ruth Bader Ginsburg, who, emblematic of the movement's success, is today an Associate Justice of the U.S. Supreme Court.

The story of the major international human rights organizations (which exist primarily to criticize domestic and foreign governments on civil and human rights issues) is almost identical. Human Rights

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<sup>8</sup> Another important factor in Congress's motivation was Ford travel/study grants to a number of Robert F. Kennedy's aides following his assassination.

Watch received important early and ongoing support from a group of foundations, including Ford, MacArthur and the Open Society Institute, in the late 1970s, as did Human Rights First, formerly the Lawyers' Committee for Human Rights. Since their founding, these institutions have catalyzed and nurtured into adolescence indigenous human rights organizations in virtually every region of the world, rallying support for them in developed countries and in the international press.<sup>9</sup>

### Conservative Foundations Emulate the Liberal Foundation Advocacy Initiatives

In the 1970s, America's conservative foundations launched a counter-attack against the then-prevailing currents of political liberalism. According to the late William E. Simon, Secretary of the Treasury under Presidents Nixon and Ford and Board Chairman of the large and influential John M. Olin Foundation, those foundations intended simply to emulate what Ford's McGeorge Bundy had done on the left. The Olin Foundation, the Bradley Foundation, the Scaife Foundation and other conservative foundations created a network of free-standing think tanks, including the American Enterprise Institute for Public Policy Research. They also began supporting a large number of university-based public policy scholars, especially in law schools, as well as in economics and political science departments. Likewise, they supported the creation and growth of professional associations of conservative scholars and judges such as The Federalist Society, and a network of conservative public interest law centers around the country.

The conservative foundations thereby created a very influential infrastructure and network of conservative opinion leaders in politics and law, who had, and are still having, significant impact on public policy, especially during the Reagan, first Bush, and second Bush Administrations. Their thinking and policy positions have shaped both legislative and administrative decision-making, as well as judicial decisions. Those and other conservative foundations, such as the Thomas B. Fordham Foundation and the Walton Foundation, have been critical supporters of charter school and voucher demonstrations across the United States, which have led to increasing pressure, especially at the local levels, for expansion of such education reform initiatives.

### Foundation Advocacy Takes to the Airwaves

In the 1992 Presidential election, the Markle Foundation contracted with CNN to generate extensive television programming aimed at beefing up coverage of the major substantive policy issues at stake in the presidential campaigns. In 1994, the Robert Wood Johnson Foundation became the first foundation to purchase prime time television program slots to televise advocacy programs, in this case programs in support of the Clinton Health Reform proposals. It did so in an ultimately unsuccessful attempt to counter the anti-Clinton health reform advertising campaign created and paid for by the health insurance industry which flooded the airwaves.<sup>10</sup> In the 2008 Presidential election, the Hewlett and Gates Foundations joined together in an effort to persuade Presidential candidates Obama and McCain to focus campaign attention on education.

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<sup>9</sup> See William Korey, *Taking on the World's Repressive Regimes: The Ford Foundation's International Human Rights Policies and Practices* (New York: Palgrave Macmillan, 2007) for an extensive history of the Ford Foundation's efforts to strengthen human rights abroad, especially in Europe and South Africa.

<sup>10</sup> These and many other foundation initiatives are excellent examples of foundations' ability to serve as countervailing influences to other self-perpetuating pools of wealth and initiative, especially corporate interests. RWJF's advocacy for the Clinton Health Reform proposals and its Tobacco Use Program are well-known examples. Especially in the environmental, consumer protection, worker protection, and regulatory process in general, foundations often work, with tax-benefited resources, at cross-purposes to corporations and that is a very important function they serve in balancing the competing interests in society. Their role in doing so isn't entirely uncontroversial, but it is a very important component of foundations' advocacy role in general.

## V. Legal Limits on Lobbying and Advocacy by Nonprofits and Foundations in the U.S.

While these explicit public policy advocacy initiatives suggest some willingness on the part of foundations to engage in overt policy change, in fact such advocacy efforts are few and far between. The primary reason for this is that thirty years ago Congress drew a line forbidding lobbying by foundations, a line which foundation officers and trustees have been loath to approach too closely. A few words of background would be useful here.

Under federal law going back to 1934, all U.S. nonprofits eligible for tax exemption under Internal Revenue Code Section 501(c)(3) have been restricted in the amount of lobbying they can legally do. From 1934 down to the present, the statute granting federal tax exemption to nonprofits permits such tax exemption only if 1) “no substantial part” of its activities consists of carrying on propaganda or otherwise attempting to influence legislation, and 2) it does not participate or intervene in “any political campaign on behalf of (or in opposition to) any candidate for public office.” In 1976, Congress amended the law to give nonprofits the option of using a more specific test of the amount of lobbying activities permitted under the statute rather than the vague “no substantial part” test. The test available under the 1976 option is a quantitative one which permits nonprofits to spend a specified percentage of their over-all expenditures up to a specified ceiling, and, if they exceed that ceiling, they are subject to an excise tax on the excess spending. That is the general provision for all 501(c)(3)s except for foundations.

Foundations are subject to much more stringent constraints. Starting with the 1969 Tax Reform Act, which imposed several other restrictions on them, foundations were prohibited from funding or engaging in any lobbying at all, with three very narrow exceptions: 1) even-handed presentation of pros and cons of an issue, 2) when invited by a legislator, committee or legislative staff to express its view, or 3) when the issue is deemed a threat to the existence of the foundation. Moreover, the legislative history provides absolutely no explanation for why Congress so severely prohibited lobbying by foundations.

In a recent book chapter,<sup>11</sup> Thomas A. Troyer and Douglas Varley concisely explain the restrictions as follows: “A direct lobbying communication is a statement to a legislator or legislative staff member that: a) refers to specific legislation and b) reflects a view on that legislation....This definition immediately excludes from the set of prohibited activities all efforts to influence legislators’ views on matters other than specific legislation. Hence, the legal rules permit foundations to discuss policy issues with legislators or staff even if those issues are the subjects of pending legislation, provided the foundation does not refer to the legislation....A similarly important aspect of the lobbying definition is that attempts to influence actions by administrative agencies are not lobbying no matter how pointedly the foundation expresses its views on the specific action in question. Accordingly, while a foundation cannot send letters to members of Congress expressing support for a bill that would limit mining on public land, it can press officials at the Department of the Interior for regulations that would have the same effect. Since the impact of executive and agency decisions can be as far-reaching as legislative action, this rule offers foundations a very significant opportunity to participate in the formation of public policy....The legal rules provide additional protection for foundations working to affect administrative actions by stating that a communication with an executive branch official will not be lobbying unless the primary purpose of the communication is to influence legislation.”<sup>12</sup>

<sup>11</sup> James M. Ferris, *Foundations and Public Policy: Leveraging Philanthropic Dollars, Knowledge, and Networks for Greater Impact* (New York: Foundation Center, 2009),

<sup>12</sup> Thomas A. Troyer and Douglas Varley, “Private Foundations and Public Policymaking: Latitude Under Federal Tax Law,” in James M. Ferris, *Foundations and Public Policy: Leveraging Philanthropic Dollars, Knowledge, and Networks for Greater Impact* (New York: Foundation Center, 2009), pp. 82-83

In addition to the prohibition against direct lobbying by foundations, foundations are also subject to a prohibition against engaging in the support of “grassroots lobbying,” which means efforts to mobilize the public for or against particular legislation. Troyer and Varley have the following to say about this provision: “The law defines prohibited ‘grassroots lobbying’ as a communication with the public that a) refers to specific legislation; b) reflects a view on that legislation; and c) includes a ‘call to action’ that encourages the recipient to contact a government official about the legislation. Under this definition, public communications—including television and radio spots, Web pages, and mass mailings—that forcefully state a position for or against pending legislation will not violate the ban on foundation lobbying if they do not overtly encourage contact with legislators or other government officials who participate in the formation of legislation.”<sup>13</sup>

#### Why the Legislative Restrictions on Lobbying and Advocacy by Nonprofits and Foundations in the U.S.?

There is no persuasive explanation for the schizophrenic U.S. attitude toward lobbying by nonprofits and foundations. On the one hand is the American socio-political ethos, as exemplified in the First Amendment to the U.S. Constitution—which accords to individuals and groups alike the right to free speech, interpreted by the Supreme Court to include a broad right to support issue advocacy. On the other hand, Congress is obviously wary of permitting tax-exempt organizations to lobby legislators with the large amount of tax-benefited dollars at their disposal. Prior to 1994, federal law permitted FOR-Profit corporations to lobby and to take tax deductions on their federal income tax returns for the costs of such lobbying. Starting in 1994, however, all for-profit lobbying expenses must be paid for out of after-tax dollars. A large part of the reason for that change was Congress’ increasing concern over the use of tax-benefited dollars to influence legislation.

How do Congress and the courts rationalize the conflict between the uninhibited expression of free speech allegedly guaranteed by the First Amendment and the lobbying constraints imposed on nonprofits and foundations? They do so by asserting that tax exemption and tax deductibility of contributions are not rights but privileges, which can be conditioned by Congress upon policies Congress finds reasonable. Hence, because Congress believes that too much lobbying by nonprofits and foundations might be too much of a good thing, it has imposed the limitations described above.

Why has Congress done so? The conventional answer given in defense of the constraints is that tax-benefited dollars, that is dollars that are accumulated either because of the tax exemption of organizations or by contributions for which the donor has received a tax deduction, are dollars that are lost to the U.S. Treasury, and that every dollar lost means that U.S. taxpayers have to pay one more dollar in taxes to make up for such “tax expenditures.” Well, those taxpayers who are being required to pay more in taxes because of the use of tax-benefited nonprofit dollars may not agree with the policies being advocated by the organizations that are spending tax-benefited dollars on their lobbying. To permit uninhibited lobbying, therefore, would be to force taxpayers to subsidize policies with which they may not agree!

So Congress has decided, with respect to operating charities other than foundations, to take a middle course between banning and permitting all lobbying, and has established financial limits on the amount of nonprofit lobbying that can legally occur. With respect to foundations, however, Congress decided not to take a middle course at all, and I think the reasons it chose to do so are, first, the magnitude and unencumbrance of the assets foundations could deploy for lobbying, and, second, the perceived liberal bent of the large foundations, especially at the time the 1969 Tax Reform Act was enacted. The rise of the conservative foundations in the 1970s, however, has not so far generated any legislative energy around modifying that restriction on foundations, and I think the reason that no change in the law is likely in the foreseeable future is that, unlike operating charities, which usually DO have a large number of individuals

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<sup>13</sup> Ibid p. 84

behind them, either as members or supporters, foundations usually represent a single individual or a single family, and are therefore hard put to persuade policymakers and legislators that there is no one behind their dollars except themselves. While there has been comparatively little overt criticism of foundations in the U.S. as lacking “legitimacy,” still there is an underlying suspicion of giving foundations too much leeway in using the vast dollars at their disposal to change public policy. It is the same suspicion of and animus against the wealth that foundations embody that resulted in the enactment of the 1969 Tax Reform Act in the first place. In Europe, foundation legitimacy is frequently raised in discussions among scholars and public policy figures with regard to the areas of activity within which foundations can be permitted to take action. Not so, at least until now, in the United States.<sup>14</sup> It is fascinating to speculate on the roots of the difference. I think the reason for it is the influence of the First Amendment in legitimating the right of individuals in the United States, as well as the foundations they establish, to speak out in efforts to change public policy, even if, in balancing the pros and cons, Congress has chosen to constrain both nonprofits and foundations in the amount that they are permitted legally to do.

## VI. The Growing Number of Foundations Explicitly Engaging in Public Policy Advocacy

Despite restrictions on lobbying for and against particular legislation, foundations are finding innovative ways to engage overtly, rather than covertly or indirectly through third parties, in both direct lobbying of government officials and public policy advocacy directed to the public.

— The JEHT Foundation, no longer operating because of the donors’ asset losses in the Madoff scam, was a plain vanilla 501(c)(3) private foundation, but it created an affiliated 501(c)(4), a type of organization the Internal Revenue Code permits to engage in lobbying. The President of the JEHT Foundation, Robert Crane, received 75% of his salary from the foundation, and 25% from the affiliate, called “Rock-It.” In the 25% of the time which Crane devoted to Rock-It, he engaged in hiring and working with lobbyists in behalf of the foundation’s program goals, especially human rights and social justice.

— Julian Robertson adopted a different model for The Robertson Foundation. The president of that foundation is paid nothing from the foundation itself, but receives his entire salary from Julian Robertson personally in after-tax dollars, and he is therefore free to engage lobbyists to advance the cause of issues related to the foundation’s program objectives, especially environmental regulation.

— The Peter G. Peterson Foundation has adopted the same model as The Robertson Foundation. David Walker, who was formerly Comptroller General of the United States, serves not only as President of that foundation but is also President of Peterson Management, a for-profit organization also founded by Peter G. Peterson. Walker receives no salary from the Peterson Foundation; instead his salary is paid entirely by Peterson Management, which leaves him free to engage in lobbying and as much overt advocacy as he chooses. Among other initiatives, he travels around the country on what he calls his “fiscal wake-up tour.” The Peterson Foundation is primarily focused on making Americans aware of the severity of the American government’s fiscal crisis, especially the burgeoning national debt and the growing deficit. Its mission, in its own words, is “To increase public awareness of the nature and urgency of key economic challenges threatening America's future and accelerate action on them. To meet these challenges successfully, we work to bring Americans together to find sensible, sustainable solutions that transcend age, party lines and ideological divides in order to achieve real results.” Its goal is to create a national grassroots and elite movement around that issue so as to mobilize political energy and support for confronting and solving it. I know of no foundation as strategically focused in a laser-like way on a single

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<sup>14</sup> See Kenneth Prewitt, Mattei Dogan, Steven Heydeman, and Stefan Toepler, eds., *The Legitimacy of Philanthropic Foundations: United States and European Perspectives* (New York: Russell Sage Foundation, 2006)

policy objective as the Peterson Foundation, mobilizing activists through the Internet, through an advertisement campaign in newspapers, magazines, and on television and its Web site, [www.pgpf.org](http://www.pgpf.org), and even through commissioning documentary films. Its film, *IOUSA*, made the Oscar shortlist for best documentary film in the 2009 Academy Awards, and Reuters writes that it “may be to the U.S. economy what ‘An Inconvenient Truth’ was to the environment.”

— Atlantic Philanthropies uses yet a different model and strives to advance its objective in slightly different ways. Atlantic is both a Bermuda foundation and a Bermuda trust, and therefore is not subject to regulation by the U.S. Internal Revenue Service. Like the JEHT Foundation, Atlantic set up a 501(c)(4), and gave it \$250 million for a variety of lobbying, litigating, and advocacy initiatives in behalf of social justice, immigration reform, school financing equity, and human rights and civil liberties. Just as it has done in promoting “giving while living” to other foundations and wealthy individuals, it has gone dramatically further than other foundations in preaching the gospel of advocacy. In one of its issues of *Atlantic Reports: Investing in Change*, it has published and widely circulated “Why Supporting Advocacy Makes Sense for Foundations.” And Gara LaMarche, Atlantic’s CEO, has written widely and spoken frequently to a variety of audiences on the advocacy message: that “[f]unding advocacy and advocates is the most direct route to supporting enduring social change for the poor, the disenfranchised and the most vulnerable among us, including the youngest and oldest in our communities.”

— The Pew Charitable Trusts, which for most of its lifetime operated as a private foundation, was able, because of its original founding as a nest of seven individual trusts established by seven different members of the same family, to reinvent itself, effective January 1, 2004, as a public charity. It did so with the explicit intention of being able, because of its reclassification as a public charity, to ratchet up its public policy research and advocacy activities. Of the three primary focuses of the new public charity, one is “to advance policy solutions to important issues facing the American people.” The initiatives embraced within the policy arena include the National Environmental Trust; Pew Center on Global Climate Change; Heritage Forest Campaign; Pew Oceans Commission; Pew Initiative on Food and Biotechnology; Pew Commission on Children in Foster Care; Genetics and Public Policy Center; Center on Alcohol Marketing and Youth; National Institute for Early Education Research; and Trust for Early Education. The metamorphosis that Pew underwent is a model not available to others to follow, unless unrelated, independent foundations were to choose to give up their separate autonomy by joining together in one unified institution. Given how jealously most foundations guard their autonomy, emulation of the Pew outcome seems unlikely, to say the least.

— A notable instance of a foundation partnership in an advocacy initiative directly focusing on the electoral process was Strong American Schools, to which I have already referred. The Bill and Melinda Gates Foundation and the Eli and Edythe Broad Foundation joined forces to try to entice the presidential candidates in the 2008 election to focus on improving public education in the United States. They spent about \$24 million on advertising in multiple media to support particular reform objectives, such as strengthening national standards, raising teacher quality by using merit pay, and lengthening the school day and year. Despite the prestige of the backers and the amount of money spent, neither the McCain nor the Obama campaign put education first. Strong American Schools, which was supposed to deploy some \$60 million, closed its doors after spending less than half of that figure, and without attaining the influence on election campaigns that it had sought.

Public policy advocacy has been a growing tendency among foundations in the past three years. Why is that so? Because the donors to many foundations have become exceedingly impatient with the progress of their foundations in translating into actual social change the various policy and program priorities of their foundations. Much of the frustration and impatience undoubtedly arises out of the unwillingness of federal or state government to take decisive, effective steps in solving such problems as climate change, ineffective public education, immigration reform, health reform, and deficit reduction, among others. The

turnabout in government's willingness to tackle such problems led by President Obama and the accompanying Democratic control of Congress have undoubtedly encouraged those and other foundations to enlist, as actively as the law allows, in efforts to bring about real change.

#### Future Prospects for Foundation Lobbying and Advocacy

Mario Morino, Chairman of Venture Philanthropy Partners, suggests that "a revolution is coming."<sup>15</sup> This revolution is a "bottom-up, citizen-driven transparency revolution,"<sup>16</sup> a demand by "tens of millions of networked citizens"<sup>17</sup> for greater transparency and accountability among government, for-profit, and nonprofit organizations alike. Foundations should seize the opportunity presented by this revolution. First, they should heed the call for greater transparency and accountability in their own operations. Some foundations have wholeheartedly embraced these principles by openly discussing grants that did not succeed in meeting stated goals. Others are at least opening up by publishing annual reports and other information on their web site. Second, and as importantly, foundations should harness citizens' renewed desire to have their voices heard. In the terminology of Mark Kramer's Catalytic Philanthropy model, foundations should "mobilize campaigns for change,"<sup>18</sup> convening and coordinating various stakeholders to push for policy change.

#### VII. Capacity-Building as a Specific Form of Foundation Involvement with Government

As recounted above, foundations concerned with achieving impact have an additional emerging possibility: capacity-building collaboration with the government. Numerous foundations have been asked by government to finance consulting engagements by expert providers, both commercial and nonprofit, to help government plan and implement operations to achieve greater effectiveness and efficiency. The examples are legion at the state and local levels, but are equally applicable to the federal government. And of course, government itself often purchases capacity-building from consulting firms with government dollars.

Still, there is less history of capacity-building collaboration between government and the foundation sector than of other forms of interaction, advocacy included. But precedents exist. In particular, a number of foundations have pioneered capacity-building strategies with their own nonprofit grantees. The Packard Foundation, for example, has been engaged in capacity-building for over 20 years. Likewise, since its transformation ten years ago to focus exclusively on youth development issues, the Edna McConnell Clark Foundation has developed a rigorous grantmaking approach that emphasizes the development of strong organizations as a necessary predicate to the achievement of programmatic impact. These efforts are built on the sound insight that even the most dynamic and well-laid policy plans will come to naught if they are not effectively implemented. Foundations achieve impact in large part through the ground-level efforts of the organizations they support. The rise of scientific philanthropy over the past hundred years has been a revolution in *how* philanthropy is undertaken. Tools like strategic planning, performance benchmarks, and impact-driven resource allocation are hallmarks of scientific philanthropy. Thus, foundations know well the importance of process and execution as drivers of outcomes and impact.

There are already examples of high-impact capacity-building collaborations between the public and philanthropic sectors. For example, the Packard Foundation (which helped incubate the capacity-building field with its support of Grantmakers for Effective Organizations) has undertaken several such initiatives. It worked with the California Department of Education and the California Governor's office to leverage

<sup>15</sup> <http://www.venturephilanthropypartners.org/learning/enews/index.html#cc1>

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Kramer, Mark. "Catalytic Philanthropy" Stanford Social Innovation Review (Fall 2009).

the major new funding stream for after-school education programs created by the passage of Proposition 49 in 2002. In partnership with several other foundations, Packard funded a study by the Boston Consulting Group to develop short and long term implementation priorities and plans for implementing them, which today are cornerstones of California's approach to after-school education across the State's thousands of schools. Similarly, the Packard Foundation and other funders supported advocacy efforts that convinced California officials that the State's early care and education system was inadequate. To assist in the development of effective solutions, the foundations commissioned a series of studies by the RAND Corporation, which led to several reforms, including legislation mandating the development of a Quality Rating Improvement System (QRIS) which—when complete—will provide tiered early education reimbursement based on higher quality. Finally, Packard has worked for years with state agency leaders to help them maximize the effectiveness of their Children's Health Insurance Programs (CHIPs), a federal-state partnership to expand insurance coverage to families for whom Medicaid is not an option. With support for the National Academy of State Health Plans, the Packard Foundation helped enable state CHIP program directors from around the country to meet, share best practices, and receive technical support, improving the application and outreach processes and ultimately contributing to a decline in the number of uninsured children in the United States.

At the federal level, foundations have supported organizations, such as the Center for Excellence in Government and the Partnership for Public Service's Private Sector Council, both of which have arranged for for-profit sector executives to be loaned to government agencies pro bono to solve particular problems of management, human resources, and information technology, as well as substantive problems in policy formulation and implementation. The Partnership for Public Service, supported primarily by foundations, has, for almost ten years, been working with particular agencies to improve the recruitment and hiring process, to survey employee attitudes toward the work environments in their agencies which results in a publicly available ranking of agencies called *The Best Places to Work*, and to train a cadre of top civil service employees to perform their responsibilities at a higher level of effectiveness.

At the present time, some foundations, including the Rockefeller Foundation and the Gates Foundation, are already in serious discussions with various federal agencies, as well as the White House Office of Social Innovation and Civic Participation, are already directly engaged in designing foundation-supported initiatives aimed at helping under-staffed and inadequately-staffed agencies to implement benefit delivery programs more effectively and efficiently. Many federal agencies have expressed an eagerness to accept help from foundations to enable them to do a better job of delivering government services, and at least some foundations are declaring their willingness to provide such help. Most federal agencies have obtained the legal and policy clearance to accept such assistance either directly or through foundation-financed third parties, both for-profit and nonprofit.

There are other recent examples. For example, the Robertson Foundation provided the financing for a Bain & Co engagement to enable the University of North Carolina to develop its cost-cutting plan to cope with the present financial exigencies. It has been implemented by the University, which has given credit to Bain for the wisdom of the plan. And the Z. Smith Reynolds Foundation is one of the exemplary foundations in engaging in such cooperative work with the North Carolina State government.

As these examples suggest, many of the capacity-building efforts already underway focus on state and local government agencies rather than the federal government. But, given the breadth of the federal government's purview and the tremendous programmatic resources it can command, foundations have considerable incentive to help ensure the operational effectiveness of federal agencies as well. Nor need such engagements put foundation independence at risk. Foundations support for consulting and other assistance to the new White House Office of Social Innovation and Civic Participation is just one example of the potential for fruitful collaboration of this sort between foundations and the federal government.

## VIII. Summary

Americans value a pluralist society in which a wide range of nonprofit and civic organizations provide a venue in which citizens can deliberate about public policies and provide innovative, locally-based services. The citizens who occupy this civic sphere deserve to have their voices heard by federal policymakers. However, all too often, their voices are drowned out by more powerful, often for-profit interests. Foundations can help to amplify the civic voice in a number of important ways. First, foundations can directly engage in lobbying and advocacy through some of the means described above. In this way, foundations can represent their grantees' voices before the federal government. Second, foundations can support mobilization and advocacy among grantees and other stakeholders. Grassroots groups in particular can benefit greatly from both the monetary and technical support that foundations provide. Furthermore, foundations serve as very effective conveners and coordinators of mobilization. Foundations have a broad view of the fields in which they work and understand which organizations and leaders can work together to advance issues.

Technically speaking, foundations cannot “lobby.” But the truth is that they have much more freedom to engage in public policy change activities than they have been willing to exercise in the past. The extraordinary steps which some of them have taken in recent years, and the energy that several of them are putting behind the campaign to get other foundations to do more and more advocacy suggest that we are bound to witness many more examples of this in the years to come.

As the reality of government policy gridlock and bureaucratic ineptitude in delivering services has grown clearer, there is an important niche in which foundations may be able to play a significant role in the future. If foundations are resourceful and tough-skinned enough and governmental agencies are welcoming enough, foundations have the capacity to help train federal agency personnel in strategy and implementation skills aimed at making the expenditure of federal dollars or the implementation of government policies more effective and efficient. Undertaking such tasks would be among the most effective use of foundation funds, as well as thoroughly consonant with foundations' “scientific philanthropy” philosophy of devoting resources to systemic solutions to social problems. That would surely be a “consummation devoutly to be wished.”