

Philanthropic Giving

By John A. Warnick

To Be or Not to Be—Some Thoughts on the Life of Family Foundations

Even when the bulbs of the hourglass shatter, when darkness withholds the shadow from the sundial, when the mainspring winds down so far that the clock hands hold still as death, time itself keeps on. The most we can hope a watch to do is mark that progress. And since time sets its own tempo, like a heartbeat or an ebb tide, timepieces don't really keep time. They keep up with it, if they're able.

– Dava Sobel

In 2006 the Bill & Melinda Gates Foundation—the largest private foundation in the world—announced its intention to spend down its endowment within 50 years after the death of its founders.

And, in June 2006, Warren Buffett announced the largest charitable donation in history, a pledge of Berkshire Hathaway shares worth approximately \$31 billion at that time, to the Bill & Melinda Gates Foundation. The foundation began receiving five percent of the total donation on an annualized basis in July 2006. However, the pledge is conditional upon the Gates Foundation's giving away each year, starting in 2009, an amount that is at least equal to the value of the entire previous year's gift from Mr. Buffett, plus five percent of the foundation's net assets. And upon Warren Buffett's death the remaining Berkshire Hathaway shares he holds are to be spent down within ten years of the closing of Mr. Buffett's estate.

Mr. Buffett's decision represented a significant change of heart. His previously announced intention had been to leave those remaining Berkshire Hathaway shares to his own family foundation. What led Mr. Buffett to reverse course and to adopt a strategy for the accelerated spend down of the largest charitable gift in history?

In a 2009 study released by the Aspen Institute entitled, *Is Time of the Essence: Being Strategic in Spending Down—Or Choosing Perpetuity in Endowments*, the



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researchers determined that many philanthropists make the decision to sunset their foundations in order to “attack today’s problems with today’s money.” In explaining the rationale to sunset the Gates Foundation, Bill Gates noted, “The more I learned, the more I realized there is no time. Disease won’t wait.”

Another study (the “COF Study”) conducted by the Council on Foundations, entitled *Perpetuity or Limited Lifespan: How Do Family Foundations Decide?*, analyzed the intentions, practices and attitudes of 1,074 family foundations. Here are some of the key findings from this research:

- Twelve percent of the respondents plan to have a limited lifespan for their foundations.
- Twenty-five percent of the respondents are undecided on whether the foundation will have a limited term, either because the issue has never been discussed or due to uncertainty about the family’s future involvement with the foundation.
- Most family foundations do not incorporate a decision about intended lifespan in their family foundations.
- Foundations that adopted a plan for a limited lifespan were more likely to make that decision at some point after establishment, rather than at inception.
- When a decision is made at inception to limit the life of the foundation, the leading factors driving the spend down decision were the desire of the founder(s) to have a greater impact during their lifetimes and to be involved in the decisions on how the money would be spent.
- When the decision to sunset the foundation is made later, the most frequently cited reasons were a shift in the attitude of the founder towards the issue of limited life versus perpetuity, family issues, and a belief that subsequent generations will create their own philanthropies.
- Foundations that have made a formal decision to exist in perpetuity are much more likely to make that decision at inception.
- The two leading reasons for deciding to exist in perpetuity are a desire to have a long-term impact on the community and a desire for family engagement across generations.

The “Why” Behind Spend Down

Why do some philanthropists and/or foundation trustees and executives choose to spend down foundation assets?

Charles “Chuck” Feeney, was born during the Great Depression to blue collar Irish-American parents. Chuck was an entrepreneur from an early age. He was always thinking of new money-making schemes, including selling Christmas cards door-to-door and teaming up with a friend to shovel sidewalks during snowstorms.

After becoming the first member of his family to attend college, Mr. Feeney traveled around Europe and eventually co-founded a duty-free business selling cigarettes, alcohol and luxury goods to tourists. The business, Duty Free Shoppers, became the world’s largest luxury goods retailer.

As his wealth multiplied Mr. Feeney became troubled by the implications of that wealth on himself and on his family. In his biography, *THE BILLIONAIRE WHO WASN’T*, he explained, “I had one idea that never changed in my mind—that you should use your wealth to help people.” That idea was the genesis for Mr. Feeney’s motto of “giving while living.”

In 1984, Chuck gave virtually all of his money to Atlantic Philanthropies, a foundation he had formed a few years earlier. At first operating anonymously, Atlantic had made grants totaling more than \$5 billion as of December 2009. It is committed to making improvements in the lives of people who need change the most.

While Mr. Feeney was fascinated by the process of making money he had little interest in the trappings of wealth. Today, Chuck owns neither a home nor a car. He still travels constantly—in economy class—and is well known for wearing a \$15 watch.

Mr. Feeney was greatly influenced by Andrew Carnegie’s Gospel of Wealth. Like Carnegie, he believed that those who made money were well suited to giving it away with impact. In 2002, Chuck’s foundation adopted a plan to sunset. By 2020, Atlantic Philanthropies will become the largest foundation in history to spend down its endowment and close its doors. The driving force behind this decision was its founder’s belief in making large investments to help solve urgent social problems now.

Is Chuck Feeney unique among philanthropists?

The COF study provides some very interesting insights into the thought process of founders of family foundations who have opted for a limited life rather than a perpetual existence.

If the limited lifespan decision wasn’t made at the inception of the foundation, the COF study found that 51 percent of the foundations who had decided to sunset or spend down attributed that decision to a shift in the

founder's attitude toward the issue of limited lifespan versus perpetuity. The second most significant influence on the decision post-formation to spend down could be described as a constellation of family related issues. Some of the quotes from the founders who responded to the COF survey are very insightful:

- “Unless there are hundreds of millions or billions of dollars, perpetuity is not appropriate. Foundations with a limited life are more effective and focused.”
- “The factor that affects the decision most is family dynamics.”
- “After a certain length of time, the donor's wishes are so far in the past that the organization needs to end.”
- “Perpetual foundations become staff bureaucracies.”

When the decision to sunset a foundation after a limited term is made at its inception, the three predominant influences on that decision were:

- Desire to have a greater impact during the founder's lifetime
- Desire to be directly involved in how the money is spent
- Desire to preserve philanthropic intent

The first two factors influenced more than 90 percent of the founders who from the inception of their foundation had determined it would have a limited life span while the third influenced 89 percent of the respondents.

Chuck Feeney may have best captured these influences when he suggested to fellow philanthropists that “you will derive more fun from giving when you are alive than when you are dead.” Undoubtedly, a major component of the “fun” factor is seeing that your philanthropic dollars are being allocated to areas that are of interest to you and being able to see what the results of that spending are.

The “How” Details of Spend Down Decisions

While there are some details around the “how,” which the COF study doesn't address,¹ it does provide some valuable operational details. For instance, it reports that seventy percent of the foundations that have made the decision to spend down have decided to do so over a time frame greater than ten years. In fact, almost fifty percent of the foundations that are spending down are doing so over a twenty year or longer period of time.

Another tactical shift that appears to occur frequently (almost 45 percent) among the sunseting foundations is an increase in the size of grants which are made annually. Another shift that was reported by only about one-sixth of the foundations in spend down mode was a shift in their investment policy away from equities to fixed income. While the COF study doesn't break it down, I suspect the reason only a sixth of the sunseting foundations are changing their investment policies has to do with the fact that most of them are going to spend down over a 10-, 20- or 30-year or longer time frame.

The Competing Forward Alternative

One of the other interesting observations from the COF study is what the “final” outcome of the sunseting foundation will be. Almost two-thirds of the foundations that have not only made the commitment to sunset but have also decided what that final outcome will look like have decided that the foundation will shut down. Nearly one-third of those respondents intend to distribute the remaining assets to selected grantees while another 19 percent will distribute those assets to a donor advised fund or a gift fund at a public charity. There is, however, a significant number of the foundations that have committed themselves to a spend down that have not yet determined what the final picture will look like.

I would like to close this article by suggesting yet a different alternative, which perhaps may be of great interest to those foundations whose founder is still living and in a position to champion a strategic shift in the long-term direction of the charitable fund.

What if the founder had the family “compete” to keep the family foundation in tact? The competition might be based on objective criteria which the founder and his/her posterity would agree upon. There could be what amounts to a “peer review process” which could be either mandated—perhaps every five or 10 years—or triggered upon the death of the last survivor of the next eldest generation of the family.

What if we called this peer review process the Competing Forward Assessment (CFA). The CFA would really be an objective assessment by an independent (nonfamily) professional or team of professionals. Those charged with the duty of reviewing the performance of the family foundation might measure how well it is performing in the following areas:

- Eldest generation involvement
- NextGen involvement
- Empowering the family's youngest generations to become philanthropists
- The family's commitment to grant-making decisions, which respect individual differences, but encourages accountability, transparency and effectiveness
- A level of effectiveness in terms of impact which rivals the performance of at least the top quartile (this bar would be set by the expectation of the founder) of public charities pursuing the category of grants (in terms of fields of interest or geographic emphasis) most closely aligned with the foundation's areas of interest
- The foundation's investment performance would exceed some benchmark (either market driven or perhaps measured by the average rate of return of public charities of a comparable size)

These are just suggestions for what the objective criteria might be. My hope in offering these examples is that each founder would during his or her lifetime initiate a robust intergenerational discussion, carried out through a series of family meetings and conversations, to determine what objective criteria best serve the goals of his or her foundation. The goal would be not just to come up with the criteria themselves but to capitalize on the synergy that could flow from robust discussion about what these criteria should be.

In essence, what I'm suggesting is that the performance metrics that would be evaluated would be the family's involvement and philanthropic interconnectedness, the foundation's impact and investment performance. I refer to these as the Three I's—involvement, impact and investment performance.

So what would the result be if any one of the "I's" is substandard? One possibility, which might be similar to the results of an accreditation review within an academic institution, is that the foundation board is formally put on notice that it has a three-year probationary period within which to address the deficiencies identified in the CFA. A follow-up CFA would then be scheduled. If there was no significant improvement in the areas where the foundation's performance was subpar, then perhaps a family meeting would be called to formally determine what direction the family would want to recommend to the board in terms of sunsetting. However, I am proposing that the family's decision, with all adult generations and family branches participating in that decision,

would be between two options: complete termination of the foundation with the assets committed to public charities the foundation board would select that are aligned with the philanthropic mission and interests of the family or the founder or, alternatively, to a philanthropic restructuring, which would result in each branch of the family receiving its "share" of the family's philanthropic capital through either new foundations or donor advised funds.

Within the Competing Forward concept is the hope that the accountability that a CFA process requires would result in more focused family participation, a dedication to becoming excellent grant-makers, and vigilance in investment performance. If all three of the I's—involvement, impact and investment performance—are healthy then the results should be both a flourishing family and societal good. If one or more of the "I's" is underperforming, when measured objectively, by independent professionals then there is an opportunity to address that. The ultimate outcome of the CFA process should be a renewal of the family philanthropic effectiveness. If not, then the foundation ultimately sunsets.

The Competing Forward alternative may not avoid philanthropic drift or stasis. That danger is inherent in the passage of time. But it allows a founder, through careful reflection and family dialogue, to create a process founded on measured accountability and predetermined objective criteria, which ultimately insures the family's philanthropic capital will be effectively deployed.

I would like to close with this thoughtful quote from Charles Collier, the senior philanthropic advisor at Harvard and author of *WEALTH IN FAMILIES*:

Whether a family foundation should sunset is a difficult decision. There are strong arguments that can be made both for perpetual existence and for limited lifespan. One thing I would encourage is that in making the decision to sunset, parents should engage in a conversation with their children. One of the most important questions to address is this: what is our thinking about intergenerational equity in our giving? In other words, to what extent do we want to solve the world's problems now versus in the future?

Whatever you decide, you should not miss the opportunity to have a meaningful conversation with the next generation around this important family asset.

ENDNOTES

¹ For instance, that research doesn't shed much light on how sunseting foundations are measuring the impact of their spend down nor does it address the short and long term effects which grantees are experienc-

ing as a result of spend down grants. Those are details which I hope this article will encourage those who have either made the decision to spend down or have completed that task to share their experiences with me

in the hope that a future JOURNAL OF PRACTICAL ESTATE PLANNING column might report what those impacts are and how we might ameliorate any negative repercussions from spend down decisions.

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