# Legacy Fundraising in the USA: Philanthropy Gone Astray

By Mal Warwick

To understand legacy fundraising in the United States, and why Americans – demonstrably so generous to charities in other ways – lag far behind the people of the British Isles in legacy giving, you have to know four things: (1) what is unique about the nonprofit sector in the United States; (2) what is meant by 'planned giving'; (3) what the 'multi-trillion-dollar intergenerational wealth transfer' is all about; and (4) what American charities are, or in most cases aren't, doing to market legacy giving.

**First, the facts**

The most widely trusted source of statistical information about philanthropy in America is *Giving USA*, researched and written by the Center for Philanthropy at Indiana University and published annually by the Giving Institute. The 2010 edition reported that bequest income in the USA during calendar year 2009 totalled $23.8 thousand million ($23.8 billion to us Americans), representing just 8 per cent of the estimated $303.75 billion that constituted total philanthropic giving for the year.

Legacy giving expert Robert F. Sharpe, Jr, estimates that the average bequest in the USA is approximately $35,000. If that number is accurate, then we might assume that 680,000 Americans left bequests to charity in 2009.

Compare that number of legacy donors to 79,520,000, the estimated total number of American households that contributed philanthropic gifts in 2009. (That's approximately 70 per cent of the total number of households in the country.) Compared to the approximately 2.5 million Americans who died that year, 680,000 is a reasonably impressive number. It suggests that more than one in four Americans leaves money to charity upon their death.

By any measure, $23.8 billion is a lot of money. Were it shared equally among the nation's estimated 1.6 million registered nonprofit organisations, each would have received nearly $15,000. However – no surprise here! – the distribution is anything but even. Which leads us to take a look at the unique structure and character of the nonprofit sector in the United States.

Be patient, please. We're getting there.

**Who are you calling a 'nonprofit?'**

Europeans, and most other civilised people, tend to consider philanthropy to be about helping poor people (or people who are disadvantaged in other ways) by means of the organisations or institutions that serve them. Philanthropy is, by and large, a fancy term for charity, a word that has justifiably fallen out of fashion because it smacks of upper-class *noblesse oblige* and colonialism. Philanthropy helps make the world a better place by enabling 'haves' to share with 'have-nots'.

Not so in the United States. Here, philanthropy and the nonprofits that benefit from it encompass a much broader scope. In fact, a large proportion of philanthropic gifts in America are given to institutions that in much of the rest of the world would never be considered in the same breath as 'charities'.

Table 1 shows how *Giving USA 2010* breaks down the recipients of Americans' philanthropic gifts to the three largest sectors in the nonprofit world (figures in billions).

**Table 1. Philanthropic donations to three largest sectors in the USA, 2006 (billions)**

| Sector | Amount | % of total |
|---|---:|---:|
| Religion | $100.95 | 33% |
| Education | $40.01 | 13% |
| Healthcare | $22.46 | 7% |
| Totals | $163.42 | 53% |

As you can see, these three sectors – principally, churches, colleges and universities, and hospitals – claim the lion's share of 'philanthropy' in the USA. There are those, myself included, who question the propriety (or, for that matter, the constitutionality) of granting all these institutions the gift of tax-exemption for themselves and their donors. However, as a practical matter, this principle is engraved into the stone of US law and custom.

More to the point for the purposes of this chapter, well-established institutions such as those in these three sectors (with the addition of art museums) attract an even larger proportion of legacy income. I have no way of estimating with any degree of confidence what percentage of the $23.8 billion in bequest income went to churches, colleges, universities and hospitals in 2009, but I would be astonished to learn that it was anything less than 80 per cent.

There are two reasons for this imbalance in legacy giving in favour of such institutions. First, by their very nature as lasting institutions that propose to serve unchanging needs through the generations, such organisations as universities and hospitals are assumed to be safe repositories for donors' legacy gifts. Second, what passes for legacy fundraising in the United States was until recently principally the province of these three sectors. Most nonprofit organisations in other sectors such as human services, the environment, international affairs and advocacy are relative latecomers to the field. But that's another story, which I'll get into later.

First, you need to understand how 'legacy giving' in the United States is different from the brand of legacy giving you're more likely to be used to if you're from, say, the UK.

**What is this thing called 'planned giving'?**

For starters, it's important to know that most Americans don't refer to this phenomenon as 'legacy giving'. They talk about 'planned giving', and therein lies the tale.

You and I know that legacy giving is about the straightforward, philanthropic act of including a bequest in a will to benefit a nonprofit organisation that (presumably) serves the public interest. However, the Byzantine field of US tax law – deliberately complicated by generations of legislators frequently out to serve their own or special interests – has opened up a legion of loopholes, exceptions and borderline illegal gimmicks to divert tax payments into nonprofit coffers through 'planned giving'.

Some of this is laudatory and actually serves the public interest by channelling needed funds into deserving charities. Some isn't.

Still, this concept of 'planned giving' cries out for explanation. There's no way to get a handle on the state of legacy giving in America – or, for that matter, the state of philanthropy in general in the USA – without understanding what is meant by this inelegant phrase.

Planned giving generally refers to the use of estate planning to serve individuals' philanthropic ends while minimising their and their heirs' tax liabilities. Most 'planned gifts' entail payments after the donor has died. But some provide for fund transfers during the donor's lifetime.

If this is starting to sound complicated, that's no accident. The Internal Revenue Code, the basic tax law of the United States, consists of 24 megabytes containing more than 3.4 million words that fill 17,000 pages. To compound the problem, the Code is amended with alarming regularity by the US Congress. I strongly suspect there is no human being alive who has ever so much as ventured to read the entire Code. And then there are the regulations administered by the Internal Revenue Service (IRS) to implement the Code, which run to an uncounted (and probably uncountable) number of additional pages – and those regulations are also constantly updated, replaced, or reinterpreted by the IRS itself, the courts, or the Congress.

To get the flavour of all this complexity, take a look at one paragraph of the 'Background' section of a seven-page Treasury Department regulation governing the most popular of the dozens of 'planned giving vehicles' that have evolved in this fertile legal environment:

> *Section 664, added to the Internal Revenue Code (Code) by section 201(e) of the Tax Reform Act of 1969 (Public Law 91-172 (83 Stat. 487, 562-64)), contains the rules for charitable remainder trusts. In general, a charitable remainder trust provides for a specified periodic distribution to one or more noncharitable beneficiaries for life or for a term of years, with an irrevocable remainder interest held for the benefit of charity. The amount distributed to the noncharitable beneficiaries may be either a sum certain, in the case of a charitable remainder annuity trust, or a fixed percentage of the net fair market value of the trust's assets valued annually, in the case of a charitable remainder unitrust. Section 664(b) provides rules for determining the character of amounts distributed by a charitable remainder trust in the hands of the beneficiary to whom the distribution is made. In general, a distribution is taxable to the beneficiary if it represents a distribution of ordinary income or capital gain of the trust. A distribution generally is not taxable to the beneficiary if it represents a distribution of tax-exempt income of the trust or of trust corpus. Section 664(c) provides that a charitable remainder trust is exempt from all*

> *taxes under subtitle A of the Code for any taxable year except a taxable year in which the trust has unrelated business taxable income under section 512.*

But the inherent complexity of the tax environment is only one of the reasons why planned giving is fraught with so much mystery and complexity. The people who specialise in planned giving all too often make things worse by obfuscating the obvious.

Yes, there is a veritable army of planned giving specialists: lawyers, accountants, financial advisers and fundraisers with their own arcane jargon, their own professional networks, and their own journals and conferences. These are typically highly educated, highly trained and very highly paid individuals who share a powerful self-interest in aggrandising their profession. In that regard, of course, they're no worse (and no better) than the country's legions of physicians, attorneys, accountants and other professional practitioners.

The problem is that most planned giving specialists have what to my mind is a distorted view of legacy giving – because it serves their own professional ends.

In the prevailing wisdom of the profession, planned giving is for rich people. Poor people don't count, because (a) it requires virtually no professional assistance to write a simple codicil into a will; and (b) the relatively small sums that poor (and middle-class) donors leave behind in the form of legacy gifts simply aren't big enough to support the professional fees of accountants, lawyers and financial advisers.

It's no surprise that highly paid professionals would market their services where the traffic can bear their fees. What is surprising – or at least unfortunate – is that the overwhelming majority of US nonprofits have got the tragically misguided impression that legacy giving is beyond their reach because they (or their donors) can't possibly afford such hefty fees.

Despite the disproportionate attention paid by planned giving professionals and the charities they serve to the rich people who are candidates for tax-avoidance schemes, at least 80 per cent and probably more than 90 percent of all 'planned gifts' in the United States are simple bequests (to cite Robert F. Sharpe, Jr, again).

No doubt, most 'planned gifts' are substantially larger on average than the much more common bequests. Bequests typically involve less than $100,000. Other forms of planned gifts often run to six or seven figures, or more. The largest bequest in recent memory, left to the Salvation Army by the widow of the man who built McDonald's golden arches, exceeded $1 billion – but that gift, assuming it was truly a bequest (as it was publicly described) was very much an exception. Most truly large legacy gifts in America involve tax-minimisation schemes. There are simply too many self-serving 'philanthropic' opportunities lurking in the shadows of US tax laws, and too many advisers eager to help wealthy people preserve their wealth.

Those opportunities notwithstanding, it's worth asking whether rich people are, in fact, more inclined than poor people to leave legacy gifts. On the face of things, it's tempting to think so. Let's define the rich for our purposes as those in the top 1 per cent of American households. There are 1.4 million such families, with annual earnings of $380,000 or more. Is it naïve to think that people commanding such wealth might feel generously inclined towards their fellow humans when contemplating the distribution of their assets following their death?

Unfortunately, yes – it is profoundly naïve. Research tends to show that the wealthiest Americans are no more likely to leave legacy gifts than those with far more meagre means. In fact, I would be hard-pressed to find evidence that America's rich are inclined to share any significant portion of their fast-growing wealth, whether in life or in death. Quite aside from the extraordinarily well-publicised actions of Warren Buffett, Bill and Melinda Gates, and a few other luminaries in the pantheon of the world's 1,000 billionaires, wealth in the United States has been growing at a far faster rate in recent years than philanthropy.

It's all too easy to be mesmerised by the $303.75 billion total received by US nonprofits in 2009. Clearly, that's a great deal of money. In fact, by some estimates, it constitutes half of all the world's philanthropy. Normally, the figure is compared to the Gross Domestic Product, which was approximately 50 times as large (i.e. philanthropy represents about 2 per cent of GDP, as it has for more than a decade). However, since the regressive tax policies of the Reagan administration set in motion a massive resource shift from the poor and middle class to the plutocrats at the top, the wealth of those who already commanded a hugely disproportionate share of the nation's total assets has risen precipitously. Subsequent administrations – those of Bush Sr, Clinton, and Bush Jr –encouraged the trend, though the wealth disparity grew most remarkably during the eight years of George W. Bush's two terms in office. Today, the top 1 per cent of US households own more than one-third of the country's total wealth, making the USA the most unequal of all the world's industrialised nations. Collectively, these 1.4 million households possess net worth more than twice as great as that of the bottom 80 per cent of the population (approximately 35 per cent compared to 15 percent of the country's total wealth).

If wealth continues to gravitate upward, enriching the already rich, where is the evidence that this (mostly unearned) largesse has stimulated wealthy folks to share their good fortune with a more generous nod to philanthropy? I see no such evidence. The steady state of philanthropy, harvesting just 2 per cent of GDP year after year, shows that there has been no upward trend in generosity. After all, if I have $1 million more than I need to support myself in comfort and I contribute $20,000 to 'charity', wouldn't it be reasonable to hope that I would contribute a lot more than $40,000 if I have $2 million available – $2 million I don't need?

Hold your hat now. The plot is about to thicken. Because there is a substantial body of research suggesting that people in America – mostly rich people – are about to become vastly richer in the years ahead.

**What's all this about a 'multi-trillion-dollar intergenerational wealth transfer'?**

Once you untie your tongue from that Brobdingnagian label, you will find yourself in the statistical wonderland of Paul G. Schervish, an extremely able charity researcher who founded and runs the Boston College Center on Wealth and Philanthropy.

Professor Schervish and his colleague John J. Havens famously predicted in a widely cited paper in 1999 that a 'conservatively' estimated $41 million million ($41 trillion) would be handed down – to children, to charity, or to other benefactors – by Americans who die between 1998 and 2052. More significantly, they projected a total of $1.7 trillion *in bequests* to nonprofit organisations during the first 20 years (1998 to 2017) – and a total of $6 trillion over the full 55 years.

Debate about the future of planned giving in America has tended to centre on these projections, which have both their defenders and their critics. However, since we're now over halfway through that first 20-year phase (at the time of writing), it should be possible to evaluate the validity of Schervish and Havens' prediction. *The Chronicle of Philanthropy* began its own re-evaluation back in April 2006 with an article entitled, 'Much-Anticipated Transfer of Wealth Has Yet to Materialize, Nonprofit Experts Say'. The article reported that 'nonprofit groups already should have seen a substantial increase in the amount they receive from bequests'.

However, the article noted, the $127.6 billion bequeathed to charities from 1998 through 2004 (according to *Giving USA*) was 'just 7.5 percent of the charitable-bequest totals that the researchers said would be received through 2017. To meet the researchers' projections, charitable bequests would have to average $120.9 billion annually for 13 years straight, beginning in 2005. That's six times more than the highest annual amount received in bequests since 1998, the first year of the wealth transfer.'

In an article published later in 2006 in the *Journal of Gift Planning* and  now featured on the Center on Wealth and Philanthropy web site, both detractors and proponents of the Schervish and Havens hypothesis commented on that report in sometimes numbingly nuanced ways. As best I can tell without understanding all the arcane references to methodology, the critics looked at the real-world numbers and wondered what Schervish and Havens were smoking when they wrote that article – and the defenders went back to read the fine print in the original and discovered ways to reinterpret the many, many assumptions the researchers brought to bear in their study.

As Craig Wruck, one of those interviewed for the *Journal of Gift Planning*, said, 'the model and assumptions are not well understood at all. In general, the estimate was simply accepted at face value. The number was big … really big! The perceived opportunity was huge, and provided the impetus for heightened hopes and expectations. Nobody was very interested in exploring the arcane details underlying the number.'

I don't know how you feel about explanations of that sort, but my grandchildren have a word for them: lame.

Still, the debate rages on. Surely, there is an underlying reality that gives credibility to the *trend* Schervish and Havens were exploring: at least some Americans – well, a few of us, anyway – are amassing unheard-of amounts of wealth, and it's got to go somewhere when we die.

But the question is whether nonprofit organisations in the USA are maximising the chances that they'll claim a reasonably significant share of this inevitable largesse. At this point, the jury's out.

**What American charities are (or aren't) doing to promote legacy giving**

Not long ago, legacy giving was largely the province of churches and faith-based charities, educational institutions (universities, colleges and what we in this country call private schools), art museums and hospitals. As I've noted, these institutions still claim the lion's share – or perhaps two lions' share – of legacy gifts in America.

Not that other American charities never got into the act. In fact, for many decades, a number of commercial firms have prospered by providing pre-printed planned giving brochures and newsletters to nonprofit organisations that either couldn't, or wouldn't, pay to produce their own. Sold for pennies a copy, these materials bore such arresting titles as *How a Will Works for You* and *Questions & Answers About Gift Annuities*. Such materials are still available from several competing companies.

Traditionally, nonprofits have used these brochures and newsletters in lieu of more targeted legacy marketing efforts. To the extent that they invest in serious efforts to promote legacies, their activities have usually taken the form of 'estate planning seminars'. These events, offered to donors (and sometimes to the general public), typically feature local attorneys, accountants, or financial planners with some degree of expertise in planned giving. The seminars rarely promote either the speaker or the charity in any direct way. The hope – and, often enough, the reality – is that some people who attend a seminar may choose to become clients of the speaker, and some may elect to remember the charity when it comes time to write or revise an estate plan.

But, partly because of the excitement created by Schervish and Havens' high profile studies, the scene is changing.

Increasingly, nonprofit organisations new to legacy giving are exploring its potential. Environmental organisations, advocacy organisations of all sorts, human service groups such as AIDS service organisations and a plethora of other non-traditional recipients of legacy gifts are getting in on the act – with growing success.

At the same time, the realisation is dawning on the fundraising profession that legacy giving is not, and should not be, limited to 'planned giving'. Bequests are the name of the game. The best evidence of this growing awareness lies in the 'Leave a Legacy' campaign undertaken by the National Committee on Planned Giving since 1994. This effort, mounted in collaboration with local charities, community foundations and fundraisers' associations in 165 communities across the USA and 24 in Canada, has achieved a measure of success in alerting potential donors and fundraisers alike to the potential of legacy giving. And 'Leave a Legacy' is all about bequests – what might be termed 'planned gifts for the rest of us'. Among its activities to gain visibility was a partnership with the Hollywood film *The Ultimate Gift*, which conveys the campaign's central message – and includes a 60-second public service announcement for 'Leave a Legacy' in its DVD.

Meanwhile, an increasing number of independent consultants are introducing sophisticated new legacy marketing techniques to a growing roster of nonprofit clients. Using refined donor-research methods, focus groups, customised direct mail, selective, high-touch telephone contact and online resources, nonprofits are now identifying and cultivating thousands of new legacy prospects, most of whom would be spurned by traditional planned giving specialists.

However, at the time of writing, legacy giving constitutes less than 7 per cent of philanthropy in America. That compares to the estimates I've seen of anywhere from 29 to 36 per cent in the UK. It remains to be seen whether American fundraisers can begin to close the gap. Despite all the new developments, there's been no appreciable large-scale movement in that direction during the last decade.

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