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THE CHRONICLE OF PHILANTHROPY
OPINION

From the issue dated August 21, 2008

Should a Big Bequest Go to the Dogs?

By Leslie Lenkowsky

Leona M. Helmsley's decision to leave most of her fortune — worth at least \$4-billion — to a foundation to care for dogs sets a new record for aid to animals. It dwarfs the previous biggest donation to help animals, a 1998 donation of \$200-million in stock by David Duffield, the founder of PeopleSoft, to create Maddie's Fund, which promotes a "no kill" approach to dealing with unwanted pets.

The result of such generosity has been an extensive debate about so much money literally being allowed to go to the dogs. And the debate concerns not just the wisdom of the bequest from Ms. Helmsley, the controversial hotel mogul, but the rationale for charitable giving more broadly.

One prominent critic of Mrs. Helmsley's actions has been Ray D. Madoff, a law professor at Boston College. Ms. Madoff argued in a *New York Times* column that public policy was at fault for giving people such as Mrs. Helmsley a substantial tax deduction for their donations to charity and, especially, to create private foundations that can last forever.

The tax code, she wrote, makes "American taxpayers subsidize the whims of the rich and fulfill their fantasies of immortality." According to Ms. Madoff, Mrs. Helmsley's bequest shows the need to limit the deductibility of such gifts and raise spending requirements for foundations.

Others have taken a more supportive view of Mrs. Helmsley's philanthropy.

Whatever one might think of her judgment in leaving the bulk of her estate to care for dogs, it was her money, and as the Nobel Prize-winning economist Gary Becker wrote in his blog, "Respecting individual preferences, no matter how idiosyncratic, is one important measure of a free society, even when those tastes relate to bequests and inheritances."

Although Mr. Becker, a University of Chicago professor, favors restricting how long foundations should exist, he defends deductions for bequests and other gifts on the grounds that they support services that are not financially sustaining and prevent government from being the sole provider of them.

However, limits on donations have existed for many years. For example, foundations cannot provide support for most political activities, and gifts to organizations that primarily help their members, like fraternal orders or unions, are not deductible (even if they might also provide public services). So respect for a donor's preferences is not enough to justify Mrs. Helmsley's bequest as a legitimately charitable one.

But nor is it correct, as Professor Madoff suggests, to regard it as merely the expression of a wealthy person's whim. To the contrary, helping animals has long been accepted as a charitable purpose, though that was not always the case.

Indeed, the word "philanthropy" itself means "love of mankind," not of dogs, cats, and other animals. Moreover, the Statute of Charitable Uses, enacted in Elizabethan England in 1601 and the precedent for modern tax policy on charities, does not include animal welfare in the lengthy list of purposes for which exemptions could be granted.

Neither did the law passed in 1913 to authorize the income-tax system. It excluded associations "organized and conducted solely for charitable, religious, or educational purposes" from paying the corporate portion of the tax.


But five years later, it became clear that Congress realized it did not include animal-welfare groups originally, because it voted to extend the tax exemption to include charities whose purpose was the "prevention of cruelty to children and animals."

The reason for this change has generally been forgotten, but it apparently had more to do with the two-legged than four-legged creatures.

In 1909, the first White House conference on children was held, followed three years later by the


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
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creation of the Federal Children's Bureau, whose leadership came from settlement houses and other charities. Its goal was to improve conditions for young people from disadvantaged families, which meant not just overhauling labor laws and the juvenile-court system, but also putting more of them under the care of child-welfare organizations, rather than being left to public institutions (or to fend for themselves).

Although hard evidence is scarce, the expansion of the criteria for tax exemption in 1918 was probably an outgrowth of this "child saver" movement.

Animal welfare was also included because many of the groups working with children began as — and still were — animal-protection societies.

Indeed, Henry Bergh, founder of the American Society for the Prevention of Cruelty to Animals, figured prominently in a late-19th-century incident that helped start the "child saver" movement. A few years afterward, the American Humane Association was formed, which continues to include preventing harm to both children and animals in its mission.

Because of this history, in 1918, exempting child-welfare groups, but not animal-welfare ones, would undoubtedly have seemed incongruous to Federal Children's Bureau officials and members of Congress.

But little could they have imagined that in making prevention of cruelty to animals a legitimate charitable purpose, they were also laying the groundwork for Mrs. Helmsley's multibillion-dollar bequest 90 years later.

To be sure, much has changed in that time, not least of all the distance between organizations concerned about children and those whose focus is on animals. Instead of springing from the same humanitarian roots, their efforts now seem to stem from very different ones and, at times, even to be in competition.

To today's "child savers," Mrs. Helmsley's money could have been better spent caring for young people, not dogs. But perhaps to Mrs. Helmsley, her billions do not come close to offsetting the much greater sums spent by foundations and government on child welfare.

In a society that values individual rights, philanthropy gives those with such differing views opportunities to act on them constructively, regardless of what others may think. That is why public policy in the United States, if not always elsewhere, encourages it and gives it broad, but not unlimited, scope.

If it were really unhappy about Mrs. Helmsley's big gift, Congress could redefine what it considers charitable. But where dogs are concerned, don't count on it.

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