

Games Universities Play: And How Donors Can Avoid Them

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To the Reader

What responsibilities do universities have to their financial supporters, many of whom are alumni? Presumably, one fundamental responsibility is to respect their wishes when using the funds they donate for specific purposes. Yet, as Martin Morse Wooster shows in this report, universities often neglect the wishes of contributors.

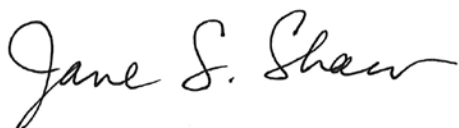
“Games Universities Play: How Donors Can Avoid Them” offers examples of universities’ failure to honor donor intent. It also points out that donors have a responsibility to be clear about their wishes and to act carefully when they give money to their alma mater or to other universities.

The study includes advice to potential donors to guide them through the process of giving money to universities.

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It's a question every college alumnus faces: **Should I give to my school?** And if so, how should I give? Money? A donation of art or real estate? What about endowing a chair? Donations can lead to a clash between the intentions of the giver and the desires of school administrators, as the following case shows.

In 1995 Marie Powers willed her farm to the Iowa State University Agricultural Foundation as a memorial for her husband, Kiley Powers, intending that the farm should “be operated as the Kiley Powers farm.” The remainder of her property, including cash and machinery, was to be used “for the purpose of improving and maintaining the farmland and buildings thereon.”

Despite Marie Powers' clear intentions, the following year the foundation persuaded a court that it could not operate the property and should be allowed to sell the farm. The foundation failed to tell the court that several farm buildings were still standing and another party could have operated the property. The judge allowed the sale of the farm for \$1.2 million on the assumption that there were no buildings standing on the property. After the sale, the Iowa State University Agricultural Foundation transferred the funds to the Iowa State University Foundation.

When all of this came to light a few years later, Marie Powers' grandniece, Amy Blaess, told the Associated Press that “there is no question Marie Powers wanted the farm to continue. The first thing ISU wanted was to bulldoze the buildings and get the money.”¹

Iowa State Vice President Ben Allen offered profuse apologies and promised that a task force would review donor intent policies. He also promised that all the money from the sale of the Powers farm would be used for the agriculture school and said that he couldn't explain why the judge didn't know that the farm still had buildings remaining. None of that brought back the Kiley Powers farm.

The Powers case shows the problems facing individuals who want to donate to colleges and universities. School officials may seem perfectly cooperative with the donor, take the money or property, but use it as they want despite the donor's intentions. This essay explores the games universities often play with contributed money or property. Like foundations,² colleges and universities have a poor record of honoring donors' wishes, particularly after a donor has died and can no longer protest. The university is not always at fault in these disputes. Poorly written donor agreements sometimes cause the trouble. But it is usually the case that the universities wish to untie or eliminate the strings donors have carefully attached to their gifts.

The first section of this paper shows how the tradition of giving to colleges began and why it is breaking down. The second section describes cases in which colleges have misused donors' money. The last section examines programs donors have established to ensure their legacies on campus.

How Colleges Began to Court Alumni

According to the Council for Aid to Education, in 2010 alumni contributed 59 percent (or \$7.1 billion) of the total giving to colleges by individuals, with non-alumni contributing 41 percent (or \$4.9 billion).³ After Williams College invented the alumni association in 1821, alumni have been coming to colleges ever since to meet each other and to see how students are doing.

Not until 1870, however, did anyone suggest that alumni ought to be encouraged to donate money. In an article in *The Nation*, sociologist William Graham Sumner argued that alumni should contribute money to their alma mater: "No graduate of the college has ever paid in full what it cost the college to educate him. A part of the expense was given by the funds given by former benefactors of the institution. A great many can never pay the debt. A very few can, in turn, become munificent benefactors."⁴

Historian Roger Geiger posits the 1904-05 academic year as the beginning of professional alumni fund-raising. Harvard and Yale had had alumni offices since about 1890, but Yale's donations increased dramatically after the school created a "Principal Fund" so that alumni, for the first time, could donate directly to the school's endowment. Harvard, under the direction of fund-raising pioneer Abbott Lawrence, decided to target two groups of donors: New York City alumni and alumni celebrating their 25th anniversary. The members of the class of 1880 dutifully donated \$100,000; since then Harvard has made a point of asking alumni to increase their contributions 25 years after they were graduated.⁵

Fund-raising became professionalized between 1905 and 1915, and that professionalization affected universities. Ernest B. Stewart, Jr. notes that in 1914-15, University of Michigan alumni were the first to create a capital campaign, a successful million-dollar effort for a new building. Soon, colleges were using an array of fund-raising gimmicks, as R.J. Prendergast showed in an article in the April 1928 issue of *American Mercury*. Colgate University launched a million-dollar drive by asking each alumnus to give \$333. Williams College asked donors to buy bricks for a new school gymnasium. Yale, in the early 1920s, held dinners across the nation—climaxed by a live radio broadcast from New Haven.

As college and university fund-raising has grown over the decades, two disparate views of the role of alumni have emerged—what we might call the "Hutchins view" and the "Buckley view."

Some alumni began to think that their dollars meant they should have some say in how the campus was governed. In a 1936 article in *Harper's Magazine*, University of Chicago president Robert Maynard Hutchins decided to disillusion them. "In this strange country that strange phenomenon known as the alumni plays a weird and oftentimes a terrifying role," Hutchins wrote. "It is very

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odd, when you come to think of it, that people who have been the beneficiaries of an institution should think that they should control it, and for that very reason. If you think that the graduates believe they should control the university because they give money to it, I beg to disillusion you.”⁶ Hutchins believed that alumni could play a useful role in defending their alma mater from public criticism, but they tended to be a “reactionary element” otherwise.

In contrast, in *God and Man at Yale* (1951), William F. Buckley, Jr. argued that alumni *should* actually govern colleges and exert veto power over course content. That view was anathema to universities and aroused a legion of critics, but Buckley raised important questions that have never been satisfactorily answered. Should donors have the right to attach strings to their donations to colleges? If so, how much control should donors have? If donors are to have no say in how their gifts are used, why should they bother giving to a college or university?

The balance of this essay explores the controversy represented by these two views.

The Problem of Donor Intent

When donors contribute money or property, they sometimes have specific ideas as to their use. Assuming that they make their desires known, it is generally understood that college officials should honor them. In a volume devoted to ethical issues facing fund-raisers in colleges and universities, University of Montana philosopher Deni Elliott and Dartmouth ethics professor Bernard Girt warn fund-raisers about bad behavior (don't lie, don't cheat, don't use sex or power to get a donor to give). And then they write, “It is morally unjustifiable for an institution to fail to respect the donor's intent. . . . As time passes and the understanding of a donor's intent fades, preserving that intent may not be an easy task. It is unfair for fund-raisers to fail to solicit, comprehend,

and carry out the donor's wishes in the best of the institution's ability.”⁷

Colleges and universities do not, however, always respect those wishes. The last two decades have seen a number of major cases in which the intent of the donor has been subverted. They are summarized in chronological order.

Lee Bass (Yale University, 1991-1995)

In 1991 Yale University announced that Lee Bass, a 1979 graduate, had agreed to donate \$20 million to fund 11 professorships designed to teach freshmen and sophomores about Western civilization. The grant was made in response to an article by Donald Kagan, a historian and dean of the college at Yale, published in the November 1990 *Yale Alumni Magazine*. Kagan wrote that “it is both right and necessary to place Western Civilization and the culture to which it has given rise at the center of our studies. We fail to do so at the peril of our students, our country, and of the hopes for a democratic, liberal society emerging throughout the world today.”⁸

A number of Yale professors vigorously denounced the grant. “Western civilization?” said English professor Sara Suleri Goodyear. “Why not a chair for colonialism, empire, racism, and poverty?” “The major export of Western civilization is violence,” said historian Geoffrey Parker.”⁹

“The Sturm und Drang over Western Civ has replaced ‘Boola, Boola’ as a rallying cry down here,” Joseph P. Kahn reported in the *Boston Globe*. Kahn added that the Bass gift would be used for “an integrated group of courses, aimed primarily at sophomores and probably introduced in academic year '93-94. It will emphasize Western traditions and institutions from the ancient Greeks to the present, without the sort of multiculturalism that conservatives like Kagan feel has infected the post '60s curriculum.”¹⁰ Part of the

problem was that the two men who had solicited the gift, President Schmidt and Dean Kagan, both left the college administration (Kagan remained on the Yale faculty). Incoming Yale president Richard Levin had his own ideas on how to best use the Bass funds but apparently never communicated them to Lee Bass. Perhaps he assumed that because several of Bass's brothers were active alumni (including one who was a trustee), Lee Bass would be informed. (Lee Bass has never spoken publicly about his donation.)

In September 1993, Bass wrote to Yale asking what had happened to his money. President Levin promised to respond soon. Yale, the *Wall Street Journal* reported later, did not respond to him until November 1994,¹¹ after Pat Collins, writing in the conservative Yale student magazine *Light and Truth*, broke the story that Bass's program had not been, and was unlikely to be, implemented. Collins's article inspired an editorial in the *Wall Street Journal*, stating that "whatever new courses emerge at Yale University—under the watchful eye of faculty ideologues—they will clearly bear no resemblance to the kind the remarkable Bass grant was supposed to pay for."¹²

Levin frantically tried to repair relations with Lee Bass, visiting him in Texas. Other emissaries went on diplomatic missions on Yale's behalf, most notably Lloyd Cutler, White House counsel in the Carter and Clinton administrations. Bass, worried about what was going on at Yale, then added an additional demand—that he have a limited veto power over the four assistant professors who would be hired to teach Western civilization courses. Yale balked.

On March 14, 1995, the *Wall Street Journal* reported that Bass had decided to withdraw the grant. "In the nearly four years that have passed since the grant was made, no new directed curriculum in Western Civilization materialized," the *Journal* editorialized. "Someone was bound to notice. Among those noticing was donor

Lee Bass himself. Some days ago, Mr. Bass came to the logical conclusion about Yale's treatment of his endowment. He has asked for a full refund of his money, and the university has acceded to this request." The editorial concluded that Bass's experience "should serve as an object lesson to alumni who come bearing large gifts to universities."¹³

Fourteen years after the Lee Bass affair, Richard Levin (who remained Yale's president) told the *Wall Street Journal* that the Bass controversy was "not a happy episode. I learned a lot from it. I should have found some way to satisfy the donor's generous intent."¹⁴

David Mugar (Boston University, 2002)

In 1993 David G. Mugar, an entrepreneur and philanthropist, gave \$3 million to Boston University to renovate the Mugar Memorial Library, named for his grandfather. The project went nowhere. In 2000, when Mugar asked what happened to his donation, university officials told him that the money was "lost" because of bad accounting practices. Mugar's lawyer then wrote to Boston University and was told that the library renovation project "lost momentum and has been, in effect, on hold for the past seven years." As consolation, Mugar was offered naming rights to a dormitory or a theater.

In December 2002, Mugar publicly announced that he was going to sue Boston University if the school did not return the \$3 million, plus an additional \$1.3 million in interest. Mugar said that he planned to divide the \$4.3 million between the Cape Cod Hospital and WGBH, the Boston public television station. He also said that when he made the original gift, Boston University chancellor John Silber had threatened him that if he did not give the \$3 million, the school would build a new library across the street from the Mugar Memorial Library and name it for someone else.¹⁵

Had the Robertson Foundation case ever made it to trial, it would have been the largest donor intent case ever.

Boston University attorney Robert Popeo responded to Mugar that the university had calculated that it would now cost between \$11 and \$15 million to renovate the Mugar Memorial Library, and that the university was not willing to make up the difference between the total cost and Mugar's initial gift. Subsequently, Boston University agreed to donate \$3 million to WGBH and the Cape Cod Hospital. Mugar then dropped his demand that the university pay interest on his initial gift.

Robertson Foundation (Princeton University, 2002-2008)

Had the Robertson Foundation case¹⁶ ever made it to trial, it would have been the largest donor intent case ever. Since the foundation's wealth amounted to as much as \$900 million, or 6 percent of Princeton's endowment, the battle over who would control the foundation was long, protracted, and bloody.

Charles Robertson, who was graduated from Princeton in 1926, married Marie Hartford Hoffman Reed, granddaughter of the founder of the A&P grocery chain, in 1934. In 1961, they gave 700,000 shares of A&P stock, worth \$35 million, to create the Robertson Foundation. The goal of the foundation was "to establish and maintain at Princeton University, and as part of the Woodrow Wilson School, a Graduate School, where men and women dedicated to public service may prepare

themselves for careers in government service, with particular emphasis on the education of such persons for careers in the Federal Government that are concerned with international relations and affairs."¹⁷

The Robertson Foundation was designed to be a supporting organization of Princeton, legally independent of the university but effectively controlled by the school because the foundation board had seven seats, of which Princeton controlled four. The best explanation as to why the Robertsons did this came as part of a deposition by General Andrew Goodpaster, who helped the Robertsons create the Robertson Foundation in 1961 and who served on the Robertson Foundation board from 1960-2002. General Goodpaster explained that the foundation's structure represented Charles Robertson's "observation, and I might say mine as well, that on occasion gifts were made to universities, and they were not applied the way intended by the giver, and he and his wife wanted to make sure that this gift, which was of magnificent size, would be applied in the way in which they envisaged, so rather than make it outright because of that concern of giving assurance that the intent would be fulfilled, he wanted to stay in considerable contact with just what was done with the money."¹⁸

On December 22, 1960, Robertson's lawyer, Eugene Goodwillie, wrote a memorandum about the proposed Robertson Foundation's mission and purpose. He wrote that the foundation's goal was "to overcome the shortage of trained men qualified to hold responsible positions in government departments and agencies concerned with foreign affairs." Goodwillie then posed a series of questions. After asking whether there really was a shortage and how government agencies could retain bright students, Goodwillie then asked, "What, if anything, could be done to ensure that a substantial proportion of students enter government service?"¹⁹

When asked, “how important do you think showing respect for a donor’s wishes is to the ethical governance of nonprofit charitable organizations,” 83 percent of those surveyed said it was very important and 15 percent said it was somewhat important.

Goodwillie’s question was a good one, but it was never satisfactorily answered. Despite Goodwillie’s warning, the Robertsons gave Princeton the money. Over the next two decades, Charles Robertson repeatedly complained that not enough Woodrow Wilson graduates were pursuing government careers.

It should be noted that Charles Robertson’s vision was flawed. He thought that his money, in and of itself, could somehow persuade Princeton students to pursue careers in international affairs after receiving their degrees from the Woodrow Wilson School.

Princeton’s response to Robertson was to apologize for a circumstance it really could not control. Privately, school officials asked if the Robertson Foundation could be dissolved. For example, in 1973 Provost Sheldon Hackney wrote a memorandum to Princeton’s president, William Bowen, saying, “Eventually, in the very long run, it would be a good idea if the Foundation itself were to be dissolved and the funds given to the University

earmarked for the same purposes for which they are currently being used.”²⁰

For the next 40 years, the debate between Charles Robertson and his children and Princeton over how the Robertson Foundation was managed continued behind the scenes. The debate erupted into the open in July 2002, when four of William Robertson’s children and a cousin²¹ sued Princeton to sever the relationship between the Robertson Foundation and Princeton. Initially the Robertson family argued that Princeton had illicitly commingled the foundation’s funds with Princeton’s endowment, diverted foundation money to construction projects that had nothing to do with the foundation, and had forced the foundation to replace its own investment advisers with Princeton’s, which the family saw as a prelude to a forced merger.

Princeton responded by saying that the Robertsons had acquiesced in Robertson Foundation decisions for 20 years and thus had no right to complain now. Princeton also tried to persuade the court to dismiss the case or deny the Robertson family standing to sue. Judge Neil Shuster rejected the motion to dismiss and in September 2003 set a tentative trial date of October 2005.

For the next two years, Princeton and the Robertson family collected depositions and traded charges. In June 2005 the Robertsons announced that they had obtained evidence during the discovery process that the university had diverted \$100 million from the foundation to programs that shouldn’t have been funded by Robertson money.²² In December 2005 the Robertsons released a Zogby poll on donor intent. The poll reported that 53 percent of Americans surveyed said they “would definitely stop giving” and 36 percent said they would “probably stop giving” if a charity “used a donation for a specific purpose and you know they ignored your request.” When asked, “how important do you think showing respect for a donor’s wishes is to the ethical governance of nonprofit

charitable organizations,” 83 percent of those surveyed said it was very important and 15 percent said it was somewhat important.

The Robertsons were substantially helped by an investigative report by John Hechinger and Daniel Golden that appeared in the *Wall Street Journal* in January 2006. Hechinger and Golden reported:

- An audit of Princeton’s School of Religious Life found that a \$1 million grant made by the Danforth Foundation to Princeton in 1959 to strengthen “religious work” on campus had been largely misused. The Danforth endowment had grown to \$18.5 million, but in 2003 \$6,000 of the money had been used to support religion while \$650,000 had been used for general funds.
- A 1993 investigation of the Woodrow Wilson School by former Federal Reserve chairman Paul Volcker said that Robertson Foundation funds had been used in ways “hard to relate to the mission” of the Woodrow Wilson School.
- In 2002, Princeton University secretary Thomas M. Wright sent an email to Princeton president Shirley Tilghman stating that the university had inappropriately billed the foundation for student tuition for courses that weren’t part of the Woodrow Wilson School and that this spending would “greatly upset” the Robertson family and the school should promptly disclose it. Princeton, however, chose not to disclose the diversion of funds.
- The Robertsons hired Michael McGuire, a PricewaterhouseCoopers accountant who was formerly the finance director of the Harvard Medical School, to conduct a “forensic audit” of the Princeton Foundation books. McGuire’s report stated that \$207 million of the \$330 million the Robertson Foundation spent between 1996 and 2003 was “diverted” improperly

and that only \$26 million of the \$330 million was used for classroom instruction. He found that Princeton had double-billed the foundation for building and equipment expenses by first charging the foundation for the construction of a building, and then charging the foundation a second time when the building or the equipment depreciated.²⁴

Princeton responded by saying that reporters Hechinger and Golden were being “selective,” although they did not say how the reporters could read hundreds of thousands of pages of documents without being selective. Princeton claimed that the Danforth funds were properly used “for academic and non-academic programs of a religious nature.”²⁵

The Robertson case dragged on for another two years. Princeton returned \$782,000 to the Robertson Foundation that it acknowledged it had misspent in March 2007. In October 2007, Judge Shuster rejected Princeton’s claim that it was the “sole beneficiary” of the Robertson gift and ordered Princeton to return an additional \$62,000 to the foundation. But he also ruled that the Robertson family’s claim that Princeton had misspent \$17.6 million would have to be determined at trial and that the Robertsons would have to show “egregious and nefarious behavior” on Princeton’s part if they were to prevail.²⁶

A month before the trial was finally supposed to begin, the parties settled out of court. Princeton took over control of the Robertson Foundation and fully integrated it into its endowment. In return, Princeton agreed to contribute \$50 million over 10 years to the Robertson Foundation for Government, a new nonprofit designed to give scholarships to students interested in pursuing careers in government service.²⁷ Princeton also agreed to repay \$40 million in court costs to the Banbury Fund, the Robertson family foundation that had funded the lawsuit.²⁸

Newcomb College (Tulane University, 2006-11)

The controversy over Newcomb College, a women's college affiliated with Tulane University until its dissolution in 2005, is a case similar to that of the Robertson Foundation. The stakes were far smaller, with the Newcomb endowment only worth \$40 million. But the five-year lawsuit lasted nearly as long as the Robertson battle.

Josephine Louise LeMonnier was born in 1815 and settled in New Orleans in 1831. In 1845 she married Warren Newcomb, and the family moved to New York, where Warren Newcomb ran a wholesale grocery business. Josephine Newcomb was a canny investor and made nearly \$4 million. She used the money to create a memorial for her daughter, who had died in 1870. Newcomb increasingly spent time in New Orleans and determined that Tulane University president William Preston Johnston was a strong advocate of women's education. In 1886, she spent \$100,000 to create the H. Sophie Newcomb Memorial College, which she endowed with \$3.6 million in 1898.

Newcomb College was the first "coordinate college," a women's school separate from, but equal to, a men's college with which it partnered. Other coordinate colleges—Harvard and Radcliffe, Brown and Pembroke, Columbia and Barnard—may have been more prominent, but Newcomb and Tulane were the first.

Newcomb was always a department of Tulane University, but the school, located across the street from Tulane, had a great deal of independence. John P. Dyer, author of the definitive history of Tulane, stated, "Newcomb College prepared its own curricula, maintained the endowment as a separate fund from the rest of the university, and determined its own academic policies. The fact the first head of the college was designated as a 'president' gives a good idea of the almost autonomous position of the

college. It was a part of and yet separate from Tulane University."²⁹

In the fall of 2005, in the wake of Hurricane Katrina, Tulane University announced that it was fully merging Newcomb and Tulane as of the 2006-07 academic year. The university announced that a clause in Newcomb's deed of trust naming Tulane as the "universal legatee" of her fortune permitted this. Tulane declared that an "H. Sophie Newcomb Memorial Institute," designed to promote feminist causes, would be created to be the legal successor to Newcomb College.

Newcomb alumnae vigorously protested, and "The Future of Newcomb College" was created as a support group to raise money for their lawsuit. In 2006, Parma Matthis Howard and Jane Matthis Smith, who were both great-great-nieces of Josephine Newcomb, sued to force Tulane to reverse its decision and restore Newcomb's semi-independence. The case eventually reached the Louisiana Supreme Court, which, in July 2008, declared that Howard and Smith did not have standing to sue because they were not Josephine Newcomb's heirs under Louisiana law.³⁰ (The Louisiana Civil Code is based on the Code Napoleon, which requires heirs to leave an unbroken stream of money from one generation to the next. Because Howard and Smith's grandmother left all her money to their grandfather, Howard and Smith were not Newcomb's heirs.)

The Louisiana Supreme Court remanded the case and suggested that The Future of Newcomb College should try again with another Newcomb descendant. Susan Henderson Montgomery, another great-great-niece of Josephine Newcomb, sued in 2008, but in 2010 both the trial court and appellate court ruled against her, holding that Josephine Newcomb's will declared Tulane to be her "universal legatee" and that her gift to Tulane was unconditional and could not be challenged by her heirs.

Donors to art museums, including those operated by colleges and universities, usually demand strong protections that colleges will preserve the art they donate in perpetuity.

In February 2011 the Louisiana Supreme Court refused to hear *Tulane v. Montgomery*, ensuring that, contrary to the wishes of Josephine LeMonnier Newcomb, Tulane was allowed to end Newcomb College's autonomy.

Shelby Cullom Davis Grant (Trinity College, 2009 to Present)

In 1976, investor Shelby Cullom Davis gave \$750,000 to Trinity College to support the teaching of free-market economics. In 1981, the school appointed Gerald Gunderson as the Shelby Cullom Davis Professor of American Business and Economic Enterprise, a position he retains today. In a letter to Davis, Trinity College president Theodore D. Lockwood proposed a number of associated activities the gift could be used for, including bringing in business executives to give lectures. Davis responded to Lockwood's letter, saying, "It is my wish that the funds and income from the Endowment be used for the various purposes you have described . . . and for no other purposes."

Over decades, the Davis grant grew to \$9 million, or 3 percent of Trinity College's endowment. In a 2009 *Wall Street Journal* article, Gunderson revealed that Trinity College planned to divert all of the Davis funds that did not directly pay his salary into scholarships for international students. A son and grandson of Davis approved the diversion while a daughter said she had never been contacted by Trinity and was opposed. Davis's widow at first supported the diversion but then explained that Trinity College had never explained the restrictions

her husband had imposed on the gift and she was now opposed to the change.

Professor Gunderson filed a complaint with the Connecticut Attorney General's office and found that financial data Trinity had filed with the attorney general showed that the school had already diverted \$200,000 into an internship program. The attorney general's office reported in February 2009 that there was no evidence that Davis wanted the college or his family to divert his money for any purpose "other than the study and promotion of the economic theories of the free enterprise system."³¹

In an interview, Gunderson said that the case remains under investigation and the college had not diverted any funds from the Davis endowment as of January 2011.³² Thus far, Trinity has been blocked from its desire to violate the donor's intent.

Controversies over Art Donations

Donations of art to universities have also been a source of considerable controversy. Donors to art museums, including those operated by colleges and universities, usually demand strong protections that colleges will preserve the art they donate in perpetuity. The ethics codes of both the Association of Academic Museums and Galleries and the Association of Art Museum Directors state that art in their museums is only to be sold (or "deaccessioned") if the funds from the sales are kept within the museum's budget and used to buy more art.

Sales are not supposed to occur so that the funds from university art sales are used for other purposes, such as maintaining a college endowment.³³ “You don’t sell art to fix the boiler,” American Association of Museums president Ford Bell told *Newsweek*. “The ethics are very clear on that.”³⁴ In cases where schools violate those guidelines, the Association of Art Museum Directors can impose sanctions that include suspension of loans and shared exhibitions.

Nevertheless, some colleges have sold or have tried to sell art in their museums as a budgetary fix, as the following examples indicate.

Georgia O’Keeffe and Fisk University

In 1949, famed American painter Georgia O’Keeffe donated a number of her paintings and photographs to Fisk University (a historically black university) because she wanted to make a statement supporting civil rights. She named the collection in honor of her husband, Alfred Stieglitz, and repeatedly said that Fisk did not have the authority to sell the collection. Fisk’s president promised to abide by her wishes. In 1951, however, she wrote to Fisk to express her disappointment with the maintenance of the collection: “[Y]ou do not seem to have anyone to take care of it (the collection) and you have written me nothing about air-conditioning or controlling dust and humidity.” In addition, she wrote that “if you find the collection too much of a problem and wish to consider giving it up, let me know so that I can plan what to do with it next.”

Despite O’Keeffe’s clear intentions, in 2007 Fisk tried to sell two of the paintings from the Stieglitz collection for \$7.6 million. The Georgia O’Keeffe Museum, representing the O’Keeffe estate, sued to block the sale. In that court proceeding, Chancellor Ellen Hobbs Lyle, citing O’Keeffe’s wishes that the paintings not be sold, ruled against the sale. The museum then sued to have the Stieglitz

collection transferred to its collection, claiming that the proposed sale showed that Fisk was no longer a proper guardian of the collection. Chancellor Lyle denied the museum’s request in 2009.³⁵

Fisk then proposed selling a 50 percent interest in the collection to the Crystal Bridges Museum of American Art, created by Wal-Mart heir Alice Walton, in a deal in which Crystal Bridges and Fisk would jointly own the collection and each institution would display it six months a year. Chancellor Lyle at first blocked that sale, but then approved it in November 2010, provided that \$20 million of the \$30 million sale be used to create an endowment for the collection, with only \$10 million used for general operating support. The proposed endowment will be controlled by a foundation independent of Fisk; Fisk will have access only to the interest from the endowment, to be used exclusively for maintaining the collection.

Georgia O’Keeffe’s intention was that Fisk University control the Stieglitz collection in perpetuity. Chancellor Lyle partially abrogated those wishes by allowing the Crystal Bridges Museum to acquire a half-interest in the collection. In making her decision, Chancellor Lyle ensured that most of the money Fisk would receive for its partial sale would be used to maintain the collection, not for general operating support. The breach of donor intent therefore netted the Fisk administration less money than it had hoped.

Randolph College

In October 2007, city police in Lynchburg, Virginia, removed four paintings from the walls of Randolph College’s Maier Museum of Art, most notably George Bellows’ “Men of the Docks.” The paintings were removed at the direction of Randolph College president John E. Klein, who told the *Washington Post* the sale was necessary because “we have very hard financial issues

College officials, facing pressure to find cash, will treat art donations as expendable and revocable, even if donors of art originally intended for the school to keep the art in perpetuity.

we're trying very hard to deal with."³⁶ The paintings had been donated in the 1920s by Randolph-Macon Woman's College³⁷ art instructor Louise Jordan Smith, who donated some artwork, persuaded others to give, and occasionally held fund-raising drives to buy art. In 1928, she died, leaving the school \$28,000 for art purchases.

The seizure of the paintings prompted the museum's director, Karol Lawson, to resign.³⁸ In November 2007, a circuit court judge in Lynchburg temporarily blocked the sale, contingent upon the opponents providing a million-dollar bond. The judge gave opponents until February 15, 2008, to raise the million dollars, but when they could only provide \$500,000 by the deadline, he lifted the injunction and allowed the paintings to be sold.³⁹ In May 2008, one of the four paintings, Rufino Tamayo's "Troubadour," sold at Christie's for \$7.2 million, a record for a Latin American painting.⁴⁰ As of February 2011, the remaining three paintings remain in storage at Christie's. They will not be sold until the art market improves.⁴¹ Once again, donor intent was not sufficient to prevent the sale of artwork when college officials wanted to turn it into cash.

Brandeis University's Rose Art Museum

In January 2009, Brandeis University president Jehuda Reinharz announced that the university would close the Rose Art Museum and sell off the entire contents of the museum, a move that the school hoped would add \$400 million to its endowment. "Given the recession

and the financial crisis," he told the *Boston Globe*, "we had no choice."⁴²

The Rose Art Museum had been built up since 1961 by numerous donors and housed some 6,000 works, many reflecting the Abstract Expressionist movement. News of the university's plan to sell the collection prompted outrage in the art world and among the museum's board of overseers, who had not been informed of the decision. Within a week, Reinharz retreated, saying that the school would sell only "a minute number" of paintings "if and when it is necessary."⁴³ He announced that the museum would eventually become a "gallery." Rose Art Museum chairman of the board Jonathan Lee told the *Wall Street Journal* that Reinharz's proposal was "spin" and "a smoke-and-mirrors ploy."⁴⁴

In July 2009, three of the Rose Art Museum's board of overseers—Meryl Rose, Jonathan Lee, and Lois Foster—launched a lawsuit to block Brandeis from closing the museum, selling its art, or eliminating the museum's endowment. Brandeis president Reinharz resigned at the end of the 2009-2010 academic year, several years before he planned to, but maintained that his resignation had nothing to do with the Rose Art Museum controversy.⁴⁵

The lawsuit ended in July 2011 with a victory for the forces of donor intent. The four plaintiffs withdrew their lawsuit, and the Massachusetts attorney general's office agreed to end an investigation of Brandeis's management of the Rose Art Museum. Brandeis in return agreed not to sell or lease any of the art in the Rose Art Museum, to conduct a formal search for a new executive

director of the museum, and to spend \$1.5 million renovating the museum.

The cases of Fisk, Randolph, and Brandeis show that college officials, facing pressure to find cash, will treat art donations as expendable and revocable even if donors of art originally intended for the school to keep the art in perpetuity. The pressure to do that is understandable given the costs of preserving the art in a quality environment—and especially if the college is in desperate straits—but the cost of supporting the donated art’s preservation and exhibition should be addressed at the time of the donation.

Donor Strategies

Although donor intent is not necessarily a political issue and has no inherent political label, those most concerned about donor intent are often conservatives and libertarians. Recognizing that most college campuses are dominated by leftist thinking, they often want to use their funds to provide ideological balance and thus are sensitive to the possibility that faculty and administrators could attempt to misuse their funds.

However, it should be noted that relatively small numbers of the large gifts to universities come from conservative and libertarian donors. The Manhattan Institute’s Center for the American University recently analyzed 1,313 large grants made between 2003 and 2010 and found that the three most popular categories for grants were for general operating support (19 percent), science (18 percent) and medicine, with particular emphasis on neuroscience and brain research (18 percent). Reporting on this study and analyzing grants to the Ivy League colleges and eight other large universities, Charlotte Allen observed that gifts by large donors tend to have “an outsized focus on medicine, scientific research, trendy ‘green’ and global-minded projects, and the inevitable buildings named for their donors.”⁴⁶

Conservative or libertarian donors have used several strategies to provide more balance. One of them is to create centers—small and large—that bring in scholars and add a conservative or free-market voice on campus. Another strategy is the creation of endowed chairs in free-market economics or political philosophy.

The Rise of Conservative/Free Market Centers

One technique for addressing ideological imbalance on campus has been the creation of university centers—nodes of conservative or libertarian research and teaching within universities that may otherwise be dominated by liberal orthodoxies. As many as 37 formal conservative or libertarian centers are affiliated with colleges in some way. At least, that is the figure that Stephen Balch, founder of the National Association of Scholars, gave to the *New York Times* in September 2008.⁴⁷ Most are connected with schools through professors in the history, government, or political science departments.

The oldest of these centers is probably the Salvatori Center for the American Founding, operating at Claremont McKenna College since 1969. The best known is the James Madison Program in American Ideals and Institutions, associated with Princeton University and headed since its founding in 2000 by Robert P. George, a Princeton political scientist.⁴⁸ Described by *Chronicle of Higher Education* reporter Robin Wilson as “the Cadillac of the new history centers,”⁴⁹ the Madison program brings in visiting professors to teach courses—the guest lecturer in the spring of 2011 was Allan Guelzo, a noted Civil War scholar. The program awards postdoctoral fellowships, gives prizes for undergraduate papers, and hosts lectures, many open to the public.

The goal of the center, George told the *Wall Street Journal* in 2009, is to encourage students to sit “down

with Plato, St. Augustine, and James Madison, to think through the perennial issues of politics and citizenship.” George added that “students are very interested in founding principles. Our class enrollments are very high. In the Constitutional Interpretation class, which has the reputation of being the hardest non-science class at Princeton, 100 to 125 students are currently enrolled.”⁵⁰ (The typical Princeton class has fewer than 20 students.)

In a 2005 article in *Academic Questions*, Russell K. Nieli wrote that George decided to start the Madison program in the late 1990s because the growth of the Princeton political science department and the increased emphasis on “formal and quantitative analysis” in his discipline meant that traditional political philosophy was rarely taught. Nieli credits the Olin and Bradley foundations with providing initial support, along with crucial aid from donor Donald Drakeman, a Princeton alumnus and chairman of Medarex, a biotech firm based in Princeton. Drakeman “was instrumental in establishing valuable help and advice on how to raise money and establish a network of supportive alumni and friends who could keep the program running.” In addition, the chairman of the Princeton politics department, Jeffrey Herbst, was “a fair-minded liberal” who wanted to revive the study of public law at Princeton, which had stagnated as political science became a more numbers-oriented discipline.⁵¹

Two of the most controversial centers are those at Hamilton College and the University of Illinois. The creation of the Alexander Hamilton Center for the Study of Western Civilization was announced at Hamilton College in the fall of 2006. Two months after its creation, however, school officials declared that the center would no longer be associated with the college because the center, with only one faculty member on its board, would have too much independence.

The center’s backers charged that the real reason behind their opposition was that school leaders had succumbed

to political correctness, since anything not overtly hostile to Western civilization is anathema to many faculty members. The institute’s founder, history professor Robert Paquette, said that the school’s decision was in part retaliation for his opposition to the school’s unsuccessful attempts to bring convicted Weather Underground terrorist Susan Rosenberg and radical ethnic studies professor Ward Churchill to campus as guest lecturers. In March 2007, Carl Menges, a lifetime trustee of Hamilton who had pledged \$3.6 million to fund the center, resigned from the university’s board.⁵²

Those who wanted a non-leftist center at (or at least near) the college did not give up. In the fall of 2007, the Alexander Hamilton Institute for the Study of Western Civilization opened as a nonprofit institute run by three Hamilton College professors. Located a mile away from the Hamilton campus, it awards fellowships, conducts seminars, and holds a monthly book club for area residents interested in political philosophy. This experience shows that donors who want to ensure a sympathetic voice for Western civilization on a college campus may encounter strong opposition and have to separate from the school.

Another controversial center is the Academy on Capitalism and Limited Government, set up by \$10 million donated to the University of Illinois in 2006 by alumni who wanted to promote free-market views on campus.

The controversy surrounding the academy ostensibly concerns its affiliation with the University of Illinois, although it is unlikely that objections would have been raised if it weren’t dedicated to free-market scholarship. In 2007, the University of Illinois Faculty Senate launched an investigation of the academy. The senate determined that because the academy was connected to the university through the University of Illinois Foundation and not through an academic

department, it “sounded like a research center was being created with donor control and an ideological agenda.”⁵³ The senate demanded that ties between the academy and the foundation be severed.

Three years later, the faculty senate launched a second investigation and once again recommended that ties between the university foundation and the academy be severed. The senate declared that the creation of the academy was conducted in secret and that the academy has “consistently evaded the processes of faculty governance and oversight.”⁵⁴ In December 2010, the academy’s CEO, Matthew Brown, told the *Champaign News-Gazette* that the academy’s board of directors doesn’t “feel it is appropriate to make any further changes” in its relationship with the University of Illinois Foundation and will continue to fight to maintain its status as a supporting organization of the University of Illinois Foundation.

Currently, the academy retains its affiliation with the University of Illinois Foundation. A disclaimer on its website states that the academy “is not a unit of the University of Illinois, but rather is a supporting organization to the University of Illinois Foundation providing philanthropic investment in programs which comport with the Academy Mission and expressed donor intent and the teaching, research, and service missions of the University.”⁵⁵ The academy is small; in 2009, it spent a total of \$64,250 on six grants, of which the largest was \$27,500 for a symposium on “Are We Regulating Capitalism Out of Existence?”⁵⁶ The academy has recently received a grant from the Charles G. Koch Charitable Foundation, which makes it all the more likely that faculty foes will continue to attack its relationship with the university.

A less controversial center is the Miller Upton Memorial Endowments at Beloit College, affiliated with Beloit’s economics department. Beloit economics professors Emily

Chamlee-Wright and Jeff Adams created it in 2004 after discussions with potential alumni donors who asked them what help they needed on campus. Several foundations provide funding, including the Bradley, Koch, and Neese Family foundations.⁵⁷ The Upton programs have brought noted economists to campus, including Nobel laureates Douglass North and Elinor Ostrom. The programs also provide for an annual lecture series, a senior seminar for gifted economics majors with the annual Upton lecturer, and subsidies for internships. To date, the Miller Upton programs have not come under attack, probably because their focus has been on academic issues in economics rather than on controversial current topics.

One of the most successful efforts to present free-market philosophy on campus is that of the foundation of the southeastern bank Branch Banking & Trust (BB&T). The BB&T Charitable Foundation has created institutes at colleges and universities for the purpose of promoting the teaching of laissez-faire economics, which includes as part of the curriculum the Objectivist philosophy of writer Ayn Rand.

John Allison, former chairman of BB&T, is a fervent believer in Ayn Rand’s philosophy. “My favorite book is *Atlas Shrugged*, which I think is the best defense, I believe, of capitalism ever written,” Allison told National Public Radio in 2008.⁵⁸

Through the BB&T Charitable Foundation, Allison has established 65 programs at 60 colleges and universities to support the study of capitalism and free markets. In an interview, he said that the foundation currently spends \$6.8 million a year on its Moral Foundations of Capitalism Program. Typically, a small college will get a 10-year grant for \$500,000, while a larger university will receive a 10-year grant for \$1.5 million.

Allison said that the foundation “encourages, but does not require” that *Atlas Shrugged* be taught as part of the curriculum. He said that the foundation

does extensive recruiting through the Association of Private Enterprise Education and other networks to find professors—“traditional conservatives, libertarians, and Objectivists”—who wouldn’t mind teaching Rand. Typically the professor—or the school—voluntarily agrees as part of the contract to include *Atlas Shrugged* or other Ayn Rand book as a course requirement.

These programs have created considerable controversy over the requirement at some (but not all) of these schools that *Atlas Shrugged* be taught as part of the curriculum. Faculty at a number of schools have denounced the *Atlas Shrugged* requirement. “I think it’s a curious interpretation of philanthropy to use corporate funding to promote proven extreme ideology,” Rick Wilson, a Marshall University sociologist and director of the West Virginia Economic Justice Project, told National Public Radio.⁵⁹

The BB&T Charitable Foundation’s capitalism programs are limited to the states, mostly in the South, where BB&T operates in the banking business. Allison hopes to make the capitalism programs a national enterprise through the Fund for Inquiry into the Morality of Capitalism, a donor-advised fund independent of the BB&T Charitable Foundation and administered by the Center for Excellence in Higher Education. Fund-raising for this program is ongoing and no grants have yet been made by this fund.

BB&T’s approach to the donor intent problem is two-fold. First, it diligently searches for professors who are strongly committed to the foundation’s free-market principles. Second, it can stop the funding, which is annually renewable, if the professor or the school fails to live up to the agreement.

One of the largest foundations supporting libertarian scholarship on college campuses is the Charles G. Koch Charitable Foundation. Since the early 1970s, according to Ryan Stowers, the foundation’s program officer for university programs, the foundation has given “hundreds of millions” to colleges and universities. A significant part of its funding has gone to create free-market programs at the campus of George Mason University, a public university in Virginia.

Currently, the foundation supports programs “at over 200 campuses,” according to Stowers in an email.⁶⁰ Although much of the foundation’s grants support economics, “the Foundation invests in interdisciplinary research and teaching programs in a wide variety of areas including law, economics, history, political science, business, philosophy, and the sciences,” Stowers wrote.

In May 2011, the Koch Foundation’s grants created controversy when the details of its grant to Florida State in 2008 to support the school’s economics department surfaced. According to *Inside Higher Ed*, Koch agreed to give \$1.5 million to Florida State, which would be combined with \$4.1 million provided by the university. As part of the agreement, the school would create an advisory committee of three economists (two of whom were teaching at Florida State) to oversee the grant and to suggest which programs and scholars should receive money.

The most controversial clause in the grant concerned two new positions to be hired under the program. A faculty committee would suggest names to the advisory committee, which would review them and recommend

Through the BB&T Charitable Foundation, Allison has established 65 programs at 60 colleges and universities to support the study of capitalism and free markets.

candidates considered qualified to receive funding. No individual can receive funds under the grant without review and approval from the advisory committee.

After two Florida State faculty members attacked the Koch grants, claiming that it was wrong for an outside organization to control hiring decisions, university president Eric Barron announced that he was asking the school's faculty senate to investigate the Koch agreement.⁶¹ Florida State completed its review in mid-July and concluded that the university "maintained its integrity" in its negotiations with Koch because Florida State ignored the stipulations in its contract with Koch and hired faculty without advice from the foundation. Barron told the *St. Petersburg Times* that he would allow the Koch Foundation contract with the FSU economics department to continue, but that in the future clauses that could be interpreted as saying that a donor had veto power over faculty hiring would be barred. "Every donor out there wants to make sure that their money is used the way they've intended," Barron said. "We just have to make sure the role is advisory."⁶²

In his June 8 email, Ryan Stowers stated that the Koch Foundation "does not hire or fire professors. All of our agreements are approved by the university and consistent with each university's policies regarding retention, promotion, and tenure to ensure professors and members of the university administration control all aspects of selection and hiring. Candidates under consideration are subject to the standards and procedures typically required of professors in similar positions at each university."⁶³

Former Olin Foundation President James Piereson, in an essay on the website *Minding the Campus*, wrote that the Koch contract with Florida State "is in no way unusual in higher education. Donors constantly enter into agreements with colleges and universities to make gifts for particular purposes, often with detailed conditions attached, which affect the hiring of faculty or the kinds of research undertaken on campus. If donors could

not attach such conditions, then they would not make the gifts. This is well understood by both parties to the transaction."

Piereson added that while he was Olin Foundation president, "we asked academic partners to run the names of faculty candidates by us before attaching John Olin's name to them. This was always done in an informal way." Piereson noted only one case where a faculty proposed a scholar to be an Olin fellow and the foundation refused. "The point of this exercise was not to tell faculty who or what to hire but only to make sure that the Foundation's funds were spent in a manner consistent with our aims." Because Olin's grants to universities were term-limited, Piereson added, the foundation could decide not to renew the grant if it didn't work out.⁶⁴

Funds that Aid Centers

The new centers and smaller programs on campuses get support from a wide variety of donors. Some foundations, such as the John W. Pope Foundation and the Searle Freedom Trust, support campus activities as part of a broader giving policy. Only a few focus specifically on funding higher education centers. Two of these are the Veritas Fund, associated with the Manhattan Institute, and the Jack Miller Center.

Veritas, created in 2007, is a donor-advised fund located at Donors Trust but administered by the Manhattan Institute. Its head, Manhattan Institute fellow James Piereson, quoted above, was formerly the president of the Olin Foundation until that foundation spent itself out in 2008. In fact, the last grant Olin made was a \$1 million grant to start Veritas.⁶⁵

Through December 2010, Veritas has spent \$4 million. Over this time, it has funded 27 centers at various colleges, with the largest grants to centers at the University of Texas, Boston College, Georgetown, Notre Dame, and the University of Virginia.

The Olin Foundation was well known for funding the work of particular academic scholars such as Allan Bloom and Samuel Huntington. In an email, James Piereson said that the goal of the Veritas Fund was somewhat different in that Veritas “earmarks its grants on a limited term basis to programs run by professors whom we admire. The funds are not for the professors but the programs. Should the professor retire or move, we would either keep the program in place (if a good replacement is found) or end it as quickly as possible. No grant is made for longer than a three-year term.” None of the grants is for endowments, but “if a professor should move to another college, the money would not follow him/her, but we might easily fund a new program at that institution headed by that professor.”⁶⁶

In those restrictions Veritas ensures that the funds it disperses are not used by the university for general operating support or shifted to its favored programs. “Veritas is trying to crack the undergraduate curriculum with the goal of reaching students with courses, books, and ideas that have been discarded via the academic revolution of the past 40 years—e.g., courses in classical liberalism, limited government, Adam Smith and Hayek, capitalism, the Founding Fathers, Federalist Papers, etc.,” Piereson added. “Veritas is also an alternative to external critics of the academy who accuse it of being politically correct, left wing, out of touch, etc. These criticisms are valid, but do not change anything because they don’t affect life inside the walls of academe. Veritas, by funding programs on campus and by reaching students, hopes to affect academe in a more direct way. Instead of lobbing cannon balls over the wall, we have gone inside.”⁶⁷

Veritas works in collaboration with the Jack Miller Center for Teaching America’s Founding Principles and History, a Philadelphia-based nonprofit originally part of the Intercollegiate Studies Institute but that split off in 2007. The Jack Miller Center is named for Jack Miller, founder of Quill Corporation (now part of Staples). Unlike Veritas,

the Jack Miller Center is specialized, supporting scholars who conduct research on the Founding Fathers and other important thinkers on political philosophy.

The Jack Miller Center has collaborated with the Veritas Fund and has matched \$1.5 million in Veritas grants. It also funds postdoctoral fellowships and aids scholars who want to publish books on important American political thinkers. The center’s budget in 2009 was \$8.1 million, of which 60 percent came from Jack Miller and the remaining 40 percent from other donors.⁶⁸

Endowed Chairs

College and university donors often choose to provide the funding for a school to establish a professorship in a specific field, and sometimes with a particular philosophical emphasis, a practice known as “endowing a chair.” Individuals, families, and organizations wishing to ensure a voice for free-market economics and traditional political philosophy at a campus have often used this approach. The results have been mixed.

For example, in 2002, Canada’s McGill University refused to accept a C\$1,000,000 donation from Gilles Tremblay for a proposed professorship of Ayn Rand studies. The university instead tried to persuade Tremblay to endow a chair in contemporary philosophy with the money, but Tremblay refused because such a chair would not “expose Ayn Rand’s philosophy to the average student” at McGill. McGill president Bernard Shapiro told the *Chronicle of Higher Education* that his decision to refuse the Tremblay donation “has nothing to do with Ayn Rand’s philosophy. Our endowed chairs are ‘in perpetuity,’ so the subject must be sufficiently broad to sustain long-term scholarship. . . . For example, we’d turn down a chair in John O’Hara’s name, not because there’s anything wrong with his writing or short stories but because it would be too restrictive to study in perpetuity.”⁶⁹

This case demonstrates a problem free-market donors may encounter, namely, philosophical hostility. The idea that the study of laissez-faire is not sufficiently deep for academic work in perpetuity is not convincing. But since the university was not fertile ground, perhaps it is better that Tremblay didn't donate his money and then face the daunting prospect of preventing subversion of his intent.

The case of Robert Novak and the University of Illinois shows the problems that can beset even a donor who is alert to the dangers. Novak, a well-known columnist and loyal alumnus of the school, decided that he wanted to endow a chair on Western civilization at his school. He wrote in his memoirs, *The Prince of Darkness*, that he first held meetings with University of Illinois fund-raisers in 1996. "My hope for the University of Illinois is for as long as can be imagined into the future, young men and women can on a bright early morning attend a lecture on Western civilization as I did as a 17-year-old from Joliet and have their eyes opened to the riches of our great tradition of learning and virtue," Novak wrote.⁷⁰

Novak was aware that the university could take his money and use it for purposes inconsistent with his vision.

"Conservative friends to whom I revealed my intentions told me I was taking a terrible risk with a left-wing public university," Novak wrote in his memoirs. "Surely after I was dead and perhaps when I was still alive, those skeptics warned, my chair would be filled by an exponent of racial and gender diversity. If I was determined to part with my money this way, they said, I would be better off endowing a chair at right-wing Hillsdale College. My response was that Hillsdale did not need my chair, but the University of Illinois did."⁷¹

Novak told the *Chicago Sun-Times* in 2006, "I'm going to have faith that the university will stick" to having chair holders "contribute directly to academic work in [their] academic discipline and to the broader goals of the College of Arts and Sciences as it relates to sustaining

understanding of the central values and traditions of Western civilization and culture."⁷²

With Novak's approval, Jon Solomon was named the Robert D. Novak Professor of Western Civilization and Culture in the fall of 2006. Solomon is indeed a distinguished professor of classics, but he holds a joint appointment in the classics and cinema studies department at the University of Illinois. His books include *The Ancient World in the Cinema* and *The Complete Three Stooges*. Among his scholarly publications are chapters in books on the movies *Gladiator*, *Troy*, and *Alexander*. According to his website, one of his current projects is "a study of Ben-Hur as the prototype for commercial success and synergy."⁷³

Robert Novak died in 2009 and we do not know what he thought about the teaching and research being done in his name. It is highly questionable whether his chair is really bringing to the University of Illinois the voice for Western civilization that he envisioned.

Novak failed to perform due diligence with the university. Solomon's *Three Stooges* book, for example, was published three years before he was hired to fill the chair. Novak did not include language in his gift prohibiting the university from hiring a joint faculty appointment with his money. Although some of Solomon's research fulfills Novak's mission, much does not. As a result, the University of Illinois has partially subverted Novak's gift.

The Problem with Chairs

Frederic J. Fransen is ideally positioned to provide an overview of the endowed chair approach. As president of a consulting firm specializing in educational philanthropy, Donor Advising, Research & Educational Services, he has advised dozens of clients about the best way to give to colleges. In an interview, he argued that endowed chairs aren't the most effective approach.

He notes first that salaries are fungible. If a donor gives \$2 million to endow a chair, universities can take the money they've saved on that professor's salary and use it to hire people they like, even if they're professors who teach subjects a donor might find abhorrent.

"Suppose you've found Friedrich Hayek," Fransen said, "and you want to endow a chair for him. The university can then use the money they've saved on salary . . . to hire a Marxist professor or a professor of women's studies."⁷⁴

Moreover, universities often take advantage of donors' desire to endow chairs. A donor may think that a million dollars should endow a chair, but universities often tell them that, with a 5 percent payout rate for salary and benefits, it takes two million dollars to fully fund a chair. They then promise the donor that the university's financial officers will invest their gifts and the chair will be created once that higher endowment figure has been met. Universities often charge one or two percent annual fees on partially funded endowed chairs. These fees, says Fransen, "put universities in the banking business." Because these investment fees provide a steady flow of money for general operating support, universities have every incentive to prolong the creation of endowed chairs as long as they can. Some larger universities have over 100 partially funded endowed chairs in their endowments. These partially funded chairs can take years or decades to fully vest—and every year of delay allows the university to divert 1 or 2 percent of the gift into general operating support.

An example of the lengthy delays resulting from partial funding of endowed chairs comes from the University of Wisconsin. In 1996 noted military historian Stephen Ambrose, who earned a doctorate from the University of Wisconsin in 1963, decided to endow a chair in military history in honor of himself and his favorite teacher, William

Hesseltine. Ambrose personally donated \$250,000 to endow the chair and, before his death in 2002, had raised \$750,000 from other donors. He told the *Washington Post* in 1997 that the Ambrose-Hesseltine chair was necessary because the school's historians "don't think anything military is worth teaching. All the professors came of age in the '60s and all they know is Vietnam, Vietnam, Vietnam."⁷⁵

In October 2006 *National Review* reporter John J. Miller reported that the Ambrose-Hesseltine chair remained unfilled and alleged that this was due to biases against military history. Miller interviewed William P. Harris, a donor who tried to give Dartmouth College \$1.5 million for an endowed military history chair and said he was turned down because "liberals on the faculty objected to the word 'military.'" (Harris then offered the money to Hillsdale College, which happily accepted the grant.)⁷⁶

The University of Wisconsin said that it could not fill the Ambrose-Hesseltine chair until the endowment had risen from \$1 million to \$1.5 million. Six weeks after Miller's article created a national controversy, the university said it was launching a formal search to fill the position. University of Wisconsin History Department chairman David McDonald told the *Daily Cardinal* that it was "an undeniable coincidence" that the announcement of the search came so soon after Miller's article.⁷⁷

The Ambrose-Hesseltine chair was finally filled in April 2009, when Major John Hall, an Iraq War veteran and an expert in the American military's battles with Indians, was hired beginning in the 2009-10 academic year.⁷⁸

It may be that the University of Wisconsin is biased against military historians, but that bias is irrelevant here. By keeping the chair unfilled, the university raked off investment fees for its general operating expenses for years. The school had no incentive to fill the chair but a huge incentive to prolong the vesting of the chair as long as possible.

Fransen offers one more reason not to endow chairs. After one or two generations, perpetually endowed chairs create far more money for general operating support of a university than for the cause the donor prefers. In a 2008 article in *Worth*, Fransen looked at what could happen to a \$1 million gift for an endowed chair over 75 years.

Assume that the million dollars achieves a 9 percent return and that 4.5 percent of the investment is used to pay an endowed professor's salary and benefits. This would turn the million dollars into an endowment of \$26 million. Assuming 3 percent inflation, this leaves a university \$2.83 million in inflation-adjusted dollars. Given that the number of organizations that honor donor intent after 75 years is vanishingly small, Fransen writes, it's fair to assume that the school will use the \$3 million for causes it prefers. Thus, the end result of creating an endowed chair, Fransen writes, is that "for every dollar that went to support the designated program, the university will have gained nearly \$3 for other things."⁷⁹

"I would never endow anything in perpetuity," Fransen adds. "It seems crazy to me that someone in the future would have a better sense of how to spend my money than I do."

Fransen advises donors that instead of giving money to endow chairs, they should seek professors at colleges they like and ask: "What is it you need to make you more effective?' Then work with the professor to make it happen." Professors in the hard sciences or in experimental economics might use extra funds to buy better lab equipment. Others might use it to fund teaching

assistants to help them work on jointly authored papers. And it's best, Fransen says, to start small, because "good professors aren't necessarily good administrators," and a donor wants to make sure his or her money is used wisely.

In addition, Fransen suggests that donors thinking about endowing chairs consider other ways that don't necessarily involve payroll. A \$500 gift to a favorite student organization, he suggests, can buy a lot of beer, pizza, and enthusiasm. Donating \$2,000 can bring a good speaker to campus. Particularly useful, in Fransen's view, would be grants to enable graduate students who have completed their coursework to finish their dissertations. More often than not, he argues, colleges give these students no money to work on their dissertations, leaving them scrambling to get adjunct professorships or temp work. Giving these students \$15-\$20,000 to finish their dissertations "could let the students write their dissertations in one or two years instead of five or six"—and might give a donor the satisfaction of funding groundbreaking scholarship.

Fransen offers two pieces of advice to donors wanting to make long-term gifts to schools. The first is to insist that a third party, such as a donor-advised fund or a family foundation, administer the gift after a donor's death. The case of the Robertson Foundation, he contends, shows that this administrative entity should be completely independent of the university. "I'm sure the Robertsons got the best tax advice they could," Fransen says, "but the Robertson Foundation should have been completely independent of Princeton."

Fransen advises donors that instead of giving money to endow chairs, they should seek professors at colleges they like and ask: 'What is it you need to make you more effective?'

The second piece of advice concerns the rule of *cy pres*. The law surrounding donor intent says that if a donor's wishes are illegal, impracticable, impossible, or wasteful, courts must use the rule of *cy pres*—which means that a gift should be used “as close as possible” to the donor's original intentions. Universities routinely include clauses in their contracts stating that donors waive their *cy pres* rights in their gifts. Fransen advises donors to strike out such clauses, observing that judges usually interpret *cy pres* law fairly and in a politically neutral manner. To provide further protection, Fransen suggests that donors always include a secondary beneficiary in case the university violates their intentions. Including such a beneficiary, he argues, further inhibits a university's tendency to use restricted gifts for causes it prefers.

Additionally, donors should include language in their gifts either prohibiting a university from using any portion of the gift for “overhead,” “associated program costs,” or a “levy” or barring a school from raising the overhead charges once a gift is made. Without such prohibitions, colleges can raise the amounts they subtract from restricted gifts and use for general operating expenses. In June 2011, for example, Dartmouth announced that as of July 1, 2011, it would increase the percentage it takes out of restricted grants for “associated program costs” from 14.3 percent to 19.1 percent, a move calculated to subtract \$2 million from the income of endowed chairs to fund general operating expenses. Institutions contacted by *Inside Higher Ed* found that their overhead charges ranged from nothing to 15 percent of a grant.

“Many donors (at Dartmouth) who thought that about 85 percent of their gift money was going straight to whatever areas they supported now have no choice but to see more of the funds shifted to administrative costs,” reported *IHE*'s Kevin Kiley.⁸⁰ If those donors had included clauses prohibiting a school from imposing or artificially raising overhead charges, they would have more protection.

A Short Primer for Donors

We have seen some great disparities between the purposes of college donors and the ways school officials actually use their money or property. What principles should donors follow when giving money to colleges? Here are several.

Don't give unrestricted funds. Avoid contributing to the annual fund or any other gift where you have no say in how the money is spent.

“Many alumni view supporting their alma mater as an annual tithing obligation that must increase along with one's wealth,” notes George Mason University Law School professor Todd J. Zywicki, a former Dartmouth trustee.⁸¹ “Universities have developed a special skill in manipulating this sentiment—indeed, some of my friends express feelings of genuine guilt about withholding donations over their disagreements with university policy.”

“Unrestricted funds often go to solve the administration's immediate political concerns rather than some higher educational need or even announced institutional priority,” notes former Yale provost Frank M. Turner. “Often the highest priority is one that's just been established by whoever threw the most recent tantrum in the president's office. Unrestricted income may be used for purposes that have little to do with education or research, such as hiring additional secretarial support for the faculty, providing multiple offices for a single professor, funding faculty conferences on subjects of marginal significance, paying extraordinary salaries and perks to university administrators or sending trustees on lavish retreats.”⁸²

Turner adds that universities ought to recognize the merits of restricted gifts. “There's nothing undesirable about restrictions in and of themselves,” he writes. “The much-maligned ‘strings’ attached to restricted funds are in truth the lifelines that link colleges and universities to the marketplace of ideas within a democratic society.

Restrictions insulate administrators from temporary political pressures and prevent funds from being raided for purposes of the moment.”⁸³

Don't give in perpetuity. Within 30 years after a donor's death, the donor's funds could end up controlled by people who prefer to abandon his or her intentions and spend money on causes they prefer.

State your instructions as specifically as possible and assume that a college will abrogate your wishes by any means necessary. “Alumni should keep in mind that colleges and universities have teams of lawyers devoted to creating and exploiting loopholes in donor intent cases,” Todd Zywicki notes. “Even if the current administration is trustworthy, they will not remain so.”⁸⁴ Always include a secondary beneficiary in case the original terms of your gift don't work out.

Recognize the limits of donor power. Donors cannot tell professors what to teach or how to teach. Milton Friedman made this point over 20 years ago when he told me, “I am opposed to chairs of free enterprise, as I am to chairs of Marxism or socialism.”⁸⁵

Donors can do little if a professor changes his mind. Let's say that a donor works to bring a particular professor to a campus and, after he is hired, the professor decides that he has a different view of a particular subject. The donor can then neither withdraw his support nor compel the professor to teach as he wants him to. Donors can and should conduct due diligence, but even the most careful donors make errors. (Did Robert Novak wonder *why* Jon Solomon wrote a book on the Three Stooges?)

Understanding the limits of donor power provides donors with valuable lessons. They should know that endowing chairs is a counterproductive strategy. Far better to make term-limited grants to centers that express a range of views, or, as with the BB&T Charitable Foundation grants,

to enable Ayn Rand as well as her critics to be taught on campus. Or, as Frederic Fransen notes, provide aid to help professors complete their research or to enable graduate students to complete their dissertations. What would be a better legacy—giving 20 graduate students with the potential to become great free-market economists the help they need to start their careers, or endowing an F.A. Hayek Professorship of Economics to one senior scholar?

Be entrepreneurial. Find schools with programs you like and introduce yourself to professors. Discover what help they need and determine ways to help them. Remember that struggling but admirable colleges need your help far more than do wealthy Ivy League universities.

Don't limit your gifts to a college. Many nonprofits are trying to help students achieve a good grounding in free-market economics and traditional virtues. The Institute for Humane Studies and the Intercollegiate Studies Institute help students with their studies. The Student Free Press Association and the Fund for American Studies help students trying to establish themselves as journalists. The John W. Pope Center for Higher Education promotes academic quality and transparency. Don't assume that giving to a college is the only or best way to aid higher education.

Conclusion

Giving to colleges is not like sitting on a sunny college green. It's more like running across a minefield. Donors should never assume that college or university officials will agree with and honor their intentions, even in the short run. They usually have their own intentions and priorities and, the evidence reveals, aren't averse to redirecting donations of land, art, or money toward their own goals. Certainly, donors can use their wealth to improve higher education, but they must be alert to the pitfalls.

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Jane S. Shaw is the president of the Pope Center. She can be reached at shaw@popecenter.org. More information about the Pope Center, as well as most of our studies and articles, can be found on our Web site at popecenter.org. Donations to the center, a 501(c)(3) organization, are tax-deductible.

Games Universities Play: And How Donors Can Avoid Them

Martin Morse Wooster

From the Robertson family's suit against Princeton, charging the school with diverting funds from a family gift, to accusations that Trinity College siphoned funds from an endowed chair, examples abound in which universities failed to carry out the wishes of donors.

"Games Universities Play: How Donors Can Avoid Them" by Martin Morse Wooster discusses these and other disputes over donor intent. Its message is that donors have a responsibility to be clear about their wishes and to act carefully when they give money to their alma maters or to other universities.

The author is Martin Morse Wooster, a veteran of the study of philanthropy. He is a senior fellow at the Capital Research Center in Washington, D.C., and a contributing editor of *Philanthropy* magazine. He is the author of several books, including *Great Philanthropic Mistakes*.

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