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Shouldering the Burden of Our Neighbours: How Exemptions in US Tax Law affect Global and Domestic Health Philanthropy

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Abstract

Changes in healthcare have historically been driven by an equilibrium between two key institutional actors: the government and the private sector. This symbiotic relationship has offered advantages to both sides, as private foundations supplemented the resources and attention given to areas of public concern that were beyond the government's reach, and the government reciprocally exempted such charitable giving from taxes and afforded them the freedom to donate where they see fit. However, as the influence of private foundations only grows, their shift from a focus on domestic issues to global health may inevitably shift this equilibrium away from government benefit. Can upward trends in global health outcomes explain the downward trends in domestic ones, and if so, are tax exemptions on charitable donations responsible for the steep decline in US healthcare? In this paper, I will trace the tax exemptions in charitable giving that span from their roots in the autocratic rulers of 15th Century Europe, through their evolution to the democratic governments of today. I will analyse the public health effects of expanding tax-deductible status to organizations engaged in international rather than domestic activities. These tax exemptions are enabled by clause *501(c)(3),* a law enforced by the US Internal Revenue Service (IRS). As case studies, I will analyse the Ford Family and Bill Gates, two of today's key actors in global health, who divested from the corporations they founded through their charitable foundations. Despite a glaring decline in US health outcomes, both foundations continue to invest in projects outside the US. In light of current calls for reform, quintessential questions of biopolitics emerge, namely, should one prioritize human life differently within their borders than beyond them? Should these priorities be different for government versus private, non-state actors?

Keywords: Health Policy; Philanthropy; Tax Law; Politics; Global Health, US

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“If, however, there is a needy person among you, one
of your kinsmen in any of your settlements
in the land that the LORD your God is giving you, do not
harden your heart and shut your hand against your needy
kinsman. Rather, you must open your hand and lend him
sufficient for whatever he needs For there will never cease
to be needy ones in your land, which is why I command
you: open your hand to the poor and needy kinsman in
your land.”

-Deuteronomy 15. 7-8,11

Introduction

When Elizabeth Warren rolled out her Billionaire Wealth Tax Plan on her presidential campaign trail in 2020—a plan that would have placed a 2% tax on all assets worth over $50 billion—some billionaires panicked and most headed to their charities (1). As America approached federal elections in November 2020, candidates searched for means to fund progressive social issues such as education and housing programs and most prominently, national healthcare schemes. Increasingly, candidates have pointed to the modern-day titans of our economies to fund these programs, promising to reform tax codes and initiate systemic change.

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In this paper, I will trace the tax exemptions in charitable giving that span from their roots in the autocratic rulers of 15th Century Europe, through their evolution to the democratic governments of today. I will analyse the public health effects of expanding tax-deductible status to organizations engaged in international rather than domestic activities. These tax exemptions are enabled by clause 501(c)(3), a law enforced by the US Internal Revenue Service (IRS). As case studies, I will analyse the Ford Family and Bill Gates, two of today's key actors in global health, who divested from the corporations they founded through their charitable foundations.

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Charitable Tax Deductions: History and Law

The status of tax exemptions for philanthropies and charitable institutions in America today is an evolutionary product of hundreds of years of western tax law. As early as the 15th Century, English landowners bequeathed their land to trusts owned by the Church in order to avoid feudal tax. Under Queen Elizabeth I's reign at the turn of the 16th Century, British Parliament enacted a Charitable Corporation Act (1597) and the Statute of Charitable Uses (1601), which provided specific charitable institutions such as hospitals and poverty relief funds with exemptions from government charges, and allowed tax-free property transfers from individuals to various social service agencies (2).

These exemptions were exported across the Atlantic and adopted by colonists in various states in America and eventually enacted on a national level. In 1863, the US Treasury Department enacted the exemptions, declaring, "income of literary, scientific, or other charitable institutions, in the hands of trustees or others, is not subject to income tax" (2). This ruling was upheld in various cases brought before the Supreme Court who was guided by the general principle that funds used to provide services that would ultimately be of value to the State, were subject to tax exemptions because these services offset expenditures from government institutions on a dollar-for-dollar basis. These state-valued programs included philanthropic gifts to religious, educational, medical, and social welfare institutions (3).

The end of the Civil War and the ushering in of the Industrial Revolution saw the widening of economic gaps in America and an outburst of the philanthropic movement. Entrepreneurial tycoons such as J.P. Morgan, Andrew Carnegie, Andrew W. Mellon, and John

D. Rockefeller disproportionately controlled vast amounts of the US economy and established private charities from the fortunes of the Gilded Age to efficiently distribute their accumulating wealth. Concurrently, as the US faced mounting national debt at the onset of the Great War, Woodrow Wilson signed the Underwood Tariff Bill of 1913 and the War Revenue Act of 1917 to raise national funds to support the war effort (2). These laws effectively introduced tiered income taxes to redistribute the tax-burden, successfully alleviating national debt, while serving to fund the war machine and other domestic social services. However, the government was eager to avoid disincentivizing ultra-wealthy individuals from continuing their philanthropic endeavours, which provided services to the public that ultimately replaced and saved Government dollars. Now taxing their income at exponentially higher rates, Congress added 100 percent deductions for their charitable gifts (2).

Codified into law, the ultra-wealthy began utilizing these deductions to shelter profits and thus remain in lower tax brackets. Over the last century, these tax codes have morphed into a series of legal loopholes as shrewd accountants sought out ways to maximize deductibles and maintain the trillion-dollar philanthropic industry in the US. The US Tax Reform Act of 1969 re-affirmed the practice of transferring stock and real estate holdings as gifts to charitable trusts and organizations classified under the 501(c)(3) statute. Today, this gifting of 'non-cash items,' termed a 170(c)(1), allows individuals to avoid taxation on capital gains within one's lifetime, and reduces inheritance and estate tax after death. The gifts can also be classified as 'itemized deductions' and thus can be further subtracted from taxable income during the calendar year in which they are donated. Moreover, once these assets are transferred to a 501(c)(3), the profits gained from their appreciation are only nominally taxed, allowing endowments to grow for years (3).

When these private foundations were established, their founders sought to bring their own professional expertise to provide services to the public, or even optimize existing services, in areas where the government could not. Thus, a limited number of charities satisfied the criteria necessary to obtain a 501(c)(3) status. In order to be eligible for charitable deductions from federal tax, gifts and organizations had to directly discharge public functions from the government. However, the current state of the law calls into question whether these gifts aptly fulfil their original purpose of supplementing government responsibilities and spawning values of altruism and benevolence, or whether it has been tarnished and instead become a mechanism of tax evasion and libertarian bias, two by-products of Neoliberalism (4).[1]

Today, there are over 1.8 million registered IRS-recognized tax-exempt organizations, and questions of their efficacy and their alignment with national issues have begun to emerge (5). The long-debated question of whether private individuals provide public services and charitable efforts more efficiently than the government is outside the scope of this paper. However, it is worth acknowledging the enormity of their holdings and noting the potential that these diverted dollars could contribute to furthering government priorities. Amounting to $5.79 trillion in assets and $410.02 billion in annual giving as of 2017, the otherwise taxable funds diverted from public coffers to private organizations have drawn increasing scrutiny as figures continue to rise (6). Furthermore, an amendment to the tax code in 1971 extended 501(c)(3) status to any organization that "conducts a part or all of its charitable activities in a foreign country," as long as it is dispensed by a domestic corporation (7). Thus, the diversion of taxable dollars is especially noteworthy, as increasingly, many of the charitable organizations in the US do not only benefit domestic causes, but also serve as intermediaries through which private individuals fund and support international religious, medical, humanitarian, educational institutions.

Foreign Charity by Private Citizens

In order to demonstrate the way in which funds are diverted from domestic causes towards international development in the health sector, in this section, I will analyse the activities of two leading philanthropic institutions in the US: The Ford Foundation and the Bill & Melinda Gates Foundation. [2]

It is important to note the mathematical limitations of this study as the actual tax filings of private individuals are not public record. Furthermore, the US Tax Code is cumbersome and convoluted and has been interpreted and sometimes distorted countless times by 'tax planners.' Therefore, throughout the paper, the total calculations of diverted tax dollars reflect rudimentary calculations based off the crude tax rates on individuals and their holdings prior to deductions from other sources of wealth in accordance with US tax law. These numbers serve as a hypothetical framework in which democratically elected governments are the sole authority to determine priorities, allocate funds, and execute public services, thus removing

[1] It is often cited that Neoliberalism emerged in post-WWII America, as a reaction to national socialism and the heavy hand government placed on all aspects of the economy through Franklin Delano Roosevelt's (FDR) New Deal, both to fuel the war machine and emerge from the Great Depression (8). Neoliberalism sought to bring market freedom and liberate the tightly regulated American economy, thus shifting power from authority and government to the American consumers.

[2] The author concedes that utilizing case studies, rather than a systematic literature review, cannot provide an all-encompassing nor definitive review of the practices of all 501*(c)(3).* However, by specifically selecting institutions that are amongst the largest in financial size and global influence, the author argues that through examining their practices, industry standards at large can be extrapolated.

the philanthropy of the private individual and the deductibles available to them. I believe that the qualitative power and importance of performing this study deeply resonate despite its quantitative weaknesses, and further the argument that a more precise, and mathematically sound analysis must necessarily follow.

Ford Foundation

Facing the frightening possibility of losing family control of Ford Motor Company due to insurmountable taxes on inheritance, the Ford Family innovatively divested from its company through gifting, and thus evaded taxes that would have contributed to public services. By 1924, the newly enacted estate and revenue taxes from 1913 and 1916 had reached 40% on estates exceeding $10 million (7). An aging Henry Ford was aware of the unprecedented challenges that such taxes would pose to his family, who hoped to retain control of the Ford Motor Company, the largest privately owned company in America at the time. In anticipation of the largest estate tax in American history, Roosevelt enacted the 1935 Revenue Act which raised taxes on estates above $50 million to 70% (7). However, the act retained existing tax exemptions for charitable organizations. Therefore, had Henry Ford simply bequeathed the company to his family in his will, the astronomical taxes incurred by the transmission of the company to his children would have forced the family to sell most of the stock and likely leave them no choice but to surrender voting control over the business. While the law caps the amount of income that individuals and corporations can claim as tax deductible at 20% and 5%, respectively, an estate or trust can deduct without limitation (2). Thus, Ford reclassified the stock in his estate into two tiers, 90% non-voting and 10% voting. This non-voting stock would be donated to charity, 100% deductible as an estate, and offset the taxes of the 10% of voting shares upon his death (7).

With this, The Ford Foundation was established in 1936 by Edsel Ford, then President of Ford Motor Company. The foundation's mandate was to allocate resources towards "scientific, educational, and charitable purposes, all for the public welfare." With an initial gift of $25,000, the foundation worked locally in the city of Detroit and in the greater state of Michigan, notably funding the Henry Ford Hospital (9). However, with the death of Edsel Ford in 1943, and Henry Ford in 1947, the family's careful tax manoeuvring sparked the foundation's growth overnight, rerouting the organization's focus from local to international causes.

In 1951 the 90% non-voting shares of Ford Motor Company, valued at $417 million or roughly $4 billion today, officially transferred to the foundation, making it the largest philanthropic organization in the world (7). With this growth came seismic change to the foundation's focus and seismic focus to the foundation. The US Treasury was effectively denied $2,854,239,340.74 in inheritance taxes from the founder of the largest industry in the country.[3] This money, instead of going to the government, pushed the foundation to prove its philanthropic promise and spend its vast holdings under the guidelines set forth by the 1935 Revenue Act.

However, instead of continuing to pursue the local agenda Henry Ford had practiced in his lifetime, the Gaither Study Committee, commissioned by the board of trustees to assess the foundation's holdings, recommended that the foundation shift to "an international philanthropy dedicated to the advancement of human welfare through reducing poverty and promoting democratic values, peace, and educational opportunity." Thus began the transformation of this

[3] This is based on the aforementioned 1935 Revenue Act which raised taxes on estates above $50 million to 70%. Therefore 70% of $417 million is roughly $2,854,239,340.74.

local Detroit foundation to an international organization, shifting its offices from Detroit and opening its first field office in New Delhi, India in 1952, followed by Pakistan, Burma, and Beirut, shortly after (7).

In 1951, the first year following this transformation, the Ford Foundation dispersed $28,237,380. Of these grants, $12,755,000, or 45%, was sent overseas to “underdeveloped areas,” making it the foundation’s largest program (7). In the McCarthy Era, when fear of anti-American, and specifically Communist, values pervaded all aspects of American culture, these grants came under fire. In 1954, Gathier, the president of the foundation at the time, testified before the Reece Committee, the United States House Select Committee to Investigate Tax-Exempt Foundations and Comparable Organizations. He argued that although nearly $35 million had been spent abroad, these activities “served the interests of the American people” (Duquette). While shifts in the foundation’s leadership over the years prompted fluctuations in the amount of funding it has allocated to international programs, global development, specifically in the field of reproductive and sexual health, has emerged as a top focus.

In 1987, the Foundation began combating the global AIDS pandemic, and since then, their financial distributions have swelled to over $29 million in 2010 alone. From 2006 to 2019, the Ford Foundation gave 20,135 grants to 6,050 grantees, totalling $6.975 billion. These grants allocated $479 million to organizations outside the US, and $1.6 billion dollars to sexual and reproductive health rights in particular (10).

The Bill & Melinda Gates Foundation

Like the Ford Family, since 1996, Bill Gates has consistently reduced his stake in Microsoft, going from a 24% to a 1.3% shareholder (11). Bloomberg Financial Services reports that in total, this has amounted to $45.3 billion in pay-outs (12). These holdings are classified as long-term capital gains, or gains on assets held for over one year, and, Washington State, Gates’s state of residence, does not impose state tax on capital (13). Thus, at an average Federal capital gains tax rate of 23.8%, Gates would have owed the Federal Government roughly $10,781,376,000 over the course of that time (14). However, as of 2017, Gates has gifted $35 billion to the Bill and Melinda Gates Foundation, utilizing the aforementioned itemized deductions defined in the tax code 170(c)(1) to effectively avert federal taxes on most of this liquidation (15).

In 2018, the Bill and Melinda Gates Foundation distributed just over $5 billion. Of these funds, $2,962,930,000 was allocated towards Global Health causes outside the US such as polio, vaccinations, family planning, child health, nutrition, and hygiene. The Foundation donated only $493 million to the US, none of which was directly earmarked towards public health causes (16). Concurrently, in 2018, Bill Gates’s net worth increased from $86 billion to $90 billion. As a US citizen, this gain of $4 billion, technically taxed at a crude 37%, would amount to $1.48 billion in annual revenue tax in 2018 alone (17).

As of December 10, 2019, Bill Gates’s total net worth was estimated at $110 billion, making him at the time the richest man in the world, and he has claimed publicly that over his lifetime, he has paid over $10 billion in taxes (18). Although this amount is far from insignificant and some might argue that Gates earned the freedom to allocate his money as he sees fit, one might also argue that this prerogative should only come into effect once he has paid the full amount he would owe in tax-obligations if these exemptions did not exist. This would first enable the government to fund healthcare projects in the US first, and then allow Gates to pursue global health efforts at his will.

Global Health vs US Healthcare

As the largest contributor to global health, the US spent over $10 billion in health official development assistance (ODA) in 2016, equal to half of the total health ODA provided by members in the OECD (19). In 2019, Congress increased this figure to $11 billion in order to fund major global health projects such as The President's Emergency Plan for AIDS Relief (PEPFAR), which contributes bilaterally to the Global Fund and the Joint United Nations Programme on HIV/AIDS (UNAIDS) (6).

Paradoxically, while the US is the greatest donor to Global Health concerns in the OECD, it also has the worst domestic health outcomes. According to a report published in JAMA in 2018, life expectancy in the US is 78.8 years, compared with a mean of 81.7 in other countries (20). The US also has the worst outcomes in reproductive health, with the highest infant, neonatal, and maternal mortality rates. The US has the fewest physicians and hospital beds, and falls below the mean in annual physician consultations, possibly contributing to the highest number of avoidable hospital admissions for diseases like asthma and diabetes. The US had the highest level of horizontal inequity, defined as inequities stemming from non-inherent qualities like income and race. People in the US care have the lowest self-reported satisfaction with their health system, with 10%, or 27 million people, remaining uninsured and lacking coverage for their basic health care needs (20).

These disparaging health statistics provide a clear explanation for why healthcare was such a defining issue in the 2020 US election, specifically in the democratic party primary race. The Kaiser Family Foundation (KFF), a non-profit organization focusing on national health issues, has used its Health Tracking Poll to monitor the prevalence of healthcare in the national debate. The tracking system identified that 1 in 4 democrats or democratically leaning Americans, believe healthcare to be the most important issue in the primary (21). However, reform is not cheap and current overhauls such as Medicare For All are estimated to cost $20.5 trillion over the next 10 years (22). While then candidates Elizabeth Warren and Bernie Sanders argued over the technical components of its funding, both agreed that a large sum would come from taxing the richest Americans at rates between 1-8% for assets above $32 million as well as taxing capital gains annually for the top 1% (23). According to their campaign economists, these taxes on solid assets would generate $3 trillion and prevent the 'ultra rich' from evading taxes by diverting liquid funds to charities. However, this notable tax increase could disincentivize philanthropists from giving altogether, both domestically and internationally, and thus inadvertently reduce the annual $4 billion in private donations to global health organizations (24).

Conclusion

The intervention of private foundations in global development work in general, and in global health in particular, has produced significant dividends for mankind. For example, in the field of vaccines, the Global Alliance for Vaccine Immunization (GAVI), led by the Rockefeller Foundation and the Gates Foundation, has reduced the burden of communicable disease globally (25). Foundations and private citizens, especially celebrities, have brought critical attention and funds to global diseases like HIV/AIDS, tuberculosis, and malaria. The 'doing good and talking about it' model, as coined by Rushton and Williams, has undoubtedly increased altruistic behaviour amongst the wealthy as philanthropic contributions continue to rise (26).

Private profit-making individuals often engage in non-profit activities for various reasons. In order to diversify to new markets and improve their reputations, private citizens will engage in acts of corporate responsibility, which tend to bolster workplace satisfaction while often producing financial dividends. These actors apply corporate strategies, models, and metrics to their charitable giving and focus on inputs, outcomes, and impact. While the early philanthropists of the Industrial Era sought to simply dole out charity to alleviate the symptoms of poverty and provide social services to the public, today's givers focus on dissecting the root causes of a problem and introducing systemic change through science and technology (26).

With fewer stakeholders, less accountability, and more funds, private foundations have been able to set their own agendas and often bring more efficient and innovative responses to global health challenges. For example, the Gates Foundation's Malaria Atlas Project shifted from an approach which simply increased the volume of malaria drugs administered to African nations. Instead, they employed Microsoft technology to build road maps and identify malaria hot zones into distinguishable geographic treatment targets (26). Unlike governments, who are bound by a mandate to react immediately to outbreaks and disasters, private foundations have the luxury of taking a step back and looking at global health issues from a proactive, microscopic perspective. While the work of private foundations in global health has drawn criticism for its ability to exert power and set governmental agendas, these discussions are beyond the scope of this paper. However, it is worth questioning whether many US philanthropists and their foundations should have blanket freedom to tackle to the greater world's most pressing problems while ignoring, or underfunding, the significant domestic health crisis facing the US, especially when the funds used toward these projects comes from money that one could claim should have been paid in taxes to the United States government.

Whereas Biblical connotations have traditionally prioritized the needs of a person's neighbour above those outside of their geographic periphery, the current age of unprecedented globalization may be dissolving the lines between neighbour and outsider. Historically, even as recently as the McCarthy Era, loyalties belonged first and foremost to a citizen's government and fellow citizens. Yet, the globally-focused approach to healthcare discussed above may reflect a deeper change in the way the modern Western World has come to value human life. It is possible that wealthy American philanthropists consider themselves citizens of the world and of the US in equal parts, and wish to provide globally in order to compensate for the disparities their global neighbours face. Private foundations may value lives in and outside of the United States equally; however, given the widespread deficits in healthcare affecting hundreds of millions of people in the developing world, their apparent preference for donating to global causes is proportionate to metrics such as the Global Burden of Disease, and thus more cost effective. While we have demonstrated the failures of the US government to adequately provide for the health of its citizens, the gaps in the developing world are exponentially greater. A direct comparison of the unaddressed healthcare needs in the US versus these countries is warranted, but it would be impossible to determine that a life in one country is inherently more valuable than a life somewhere else. Although the government must undoubtedly prioritize the protection of its own constituents, particularly at the time of elections, citizens should have the prerogative to look beyond these borders. In light of this, perhaps a revaluation of the balance between the two is necessary to ensure an effective approach to tackling the needs of people both domestically and internationally.

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