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FOREWORD: CORPORATE PHILANTHROPY
LAW, CULTURE, EDUCATION, AND POLITICS

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The papers collected in this Symposium represent a rare scholarly effort to address the practical, theoretical and policy implications of corporate support of the nonprofit sector. As these papers reveal, both the nature of the nonprofit sector and the character of corporate charitable giving have changed substantially over the past twenty years. These changes have important implications for both law and social policy.

Change within the nonprofit sector has meant, especially, an explosion in the diversity of groups and causes organized as charitable organizations. Health care, education, the arts, environmental conservation and religious observance are frequently administered through private, charitable organizations. But powerful, activist organizations such as public policy institutes and non-governmental organizations (which operate as liaisons between business and government) may also be constituted as nonprofit organizations. And even the more traditional charitable organizations have become increasingly active in various forms of policy advocacy. Both the traditional and the more controversial groups benefit from the receipt of tax deductible, "charitable" contributions, as well as the heightened respectability afforded nonprofit organizations.

This increased diversity has been fueled, of course, by increased capital. While overall giving has increased substantially over the past twenty years, corporate giving has grown six-fold, at a growth rate approximating ten percent compounded annually.¹ In excess of \$8.5 billion dollars in value was contributed to charitable organizations by U.S. corporations in 1996.²

Other factors have contributed to the growth and expansion of the nonprofit sector. Privatization and the limited government movement have shifted various traditionally public functions to nonprofit organizations, as well as for profit ones. It has also become apparent that private, charitable organizations play a crucial role in fostering the accumulation of *social* capital necessary to the operation of markets and civil society. In addition, the development of new technologies has affected the expansion of the nonprofit sector. In addition to the widespread availability of air travel, personal computers and facsimile machines have encouraged

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1. See Hayden W. Smith, *If Not Corporate Philanthropy, Then What?*, 41 N.Y.L. SCH. L. REV. 757, 760 (1997).

2. See AAFRC TRUST FOR PHILANTHROPY, GIVING USA 1997: THE ANNUAL REPORT ON PHILANTHROPY FOR THE YEAR 1996, at 94 (1997).

decentralization, individual initiative and the formation of new types of nonprofit organizations.

As the community of charitable organizations has expanded and become more diverse, so have the varieties and objectives of corporate charitable giving. Some proportion of corporate giving can be explained as an investment in community welfare, or "corporate social responsibility." In other cases, company giving is linked to highly structured, publicized marketing initiatives designed to benefit the donor firm; such programs include corporate sponsorships of sporting or arts events and cause-related marketing. In other cases, gifts are structured to exploit the political influence of various charitable organizations in the corporation's interest. And in other cases, corporate giving testifies to the continued power of individual corporate executives who may dominate and exploit their firms' giving programs to suit their individual preferences and self interest. Corporate giving thus raises fundamental questions about the purpose of the business corporation and the structure of corporate decision-making—and the law's influence on both of them.

The "diversification" in corporate giving has been made possible by the states' deregulation of the law of charitable giving. At present, the states' corporate philanthropy laws neither establish procedures for the proper administration of giving programs, nor impose a disclosure requirement on companies' contributions. The states have also freed corporate executives from the need to consider their firms' commercial interests in regard to charitable contributions. Federal law has also encouraged increased corporate giving through various tax reforms and Congressional initiatives, as well as the absence of a disclosure requirement.

In addition to exploring and analyzing the issues described above, this Symposium is intended to give new stimulus to alternative inquiries within corporate legal scholarship. The diverse papers presented herein highlight the interconnectedness of the law of taxation, nonprofit organizations, corporations and securities law, as well as law's connection to economic and sociological analysis. Furthermore, as Edward Rubin has written, the time is ripe for a new synthesis in legal discourse, one which takes account of both the critiques of the law and economics movement, and progressive, "alternative" voices within legal scholarship.³ As Rubin has suggested, the competing claims of efficiency and social justice may best be analyzed in the context of particular institutions.

3. See Edward L. Rubin, *The New Legal Process, The Synthesis of Discourse, and the Microanalysis of Institutions*, 109 HARV. L. REV. 1393 (1996).

The Symposium is therefore dedicated to re-envisioning the business corporation (and the laws through which it is constituted) as an institution interacting with other institutions—nonprofit, governmental, and political—within a culture that seeks to support both capitalism and a free, civil society.

