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Philanthropy's Function: A Neo-Classical Reconsideration

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Rob Atkinson¹

So if you are willing, we shall begin our inquiry as to its nature in cities, and after that let us continue our inquiry in the individual also, looking for the likeness of the greater in the form of the less.

Plato, The Republic.²

And the same principles of virtue and vice are characteristic of cities and constitutions; for the constitution is in a figure the life of a city.

Aristotle, Politics.³

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Abstract

This essay lays the groundwork for a “new unified field theory” of philanthropy. That theory must have two complementary parts, an account of philanthropy’s core function and a measure of its performance, a metric for comparing philanthropic organizations both among themselves and with their counterparts in the for-profit, governmental, and household sectors. The essay first explains the need for such a measure, in both theory and practice. It then considers the critical shortcomings of today’s standard theory of philanthropy, which accounts for the philanthropic sector as subordinate and supplementary to our capitalist market economy and liberal democratic polity. Chief among the limits of standard theory is taking the ends of that economy and polity, satisfying aggregate consumer demand and majority voter preference, as given. After showing how this critical assumption begs the basic normative questions of classical political and ethical theory, this essay outlines a way of reconciling the two in a neo-classical theory of philanthropy. In that theory, the goal of both the market and the state, guided by philanthropy, would be to ensure all citizens the fullest possible development of their best abilities. That regime would require no one to agree with its goals and values, but it would give everyone every possible opportunity to be able to appreciate them.
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**Introduction: From Basic Rationales to Relative Merits (and Back)**

We may define a good thing as that which ought to be chosen for its own sake; or as that for the sake of which we choose something else; or as that which is sought after by all things, or by all things that have sensation or reason, or which will be sought after by any things that acquire reason; or as that which must be prescribed for a given individual by reason generally, or is prescribed for him by his individual reason, this being his individual good; or as that whose presence brings anything into a satisfactory and self-sufficing condition; or as self-sufficiency; or as what produces, maintains or entails characteristics of this kind, while preventing or destroying their opposites.

* * *

Since, however, it often happens that people agree that two things are both useful but do not agree about which is the more so, the next step will be to treat of relative goodness and relative utility.

*Aristotle, *Rhetoric*.  

Aristotle, with amazing prescience (if comical cumbrousness), neatly anticipates the twin tasks of today’s students of philanthropy: to move from defining philanthropy’s distinctive goodness to measuring that goodness and comparing it with others. As he suggests, beginning the latter task implies having completing the former; before measuring, first identify what is to be measured. Students of philanthropy have wrestled with the first of these two fundamental questions for the better part of three decades – without, alas, finding a fully satisfactory answer.

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5 This sector goes by various other names. Economists tend to call it the nonprofit sector; political scientists, the voluntary sector; sociologists, “civil society.” As we shall see in more detail below, *infra* Part II.A, its constituent organizations have two defining attributes: they are voluntary, and they are nonprofit. They include public benefit organizations, mutual benefit organizations, and cooperatives. The focus of this paper is the first of these three types, more commonly called charities or philanthropies. Somewhat in tension with general practice, I use “philanthropy” to cover the entire sector, not simply the subsector of public benefit organizations; where the difference matters, as in taxation, I will be more specific. Although, in describing public benefit organizations, “charity” is more commonly used than “philanthropy,” the latter term suits this project much better. Not least, philanthropy is the name of its sponsor, the National Center on Philanthropy and the Law. “Philanthropy” also has the advantage of its etymology, “love of humankind.” “Charity,” on the other hand, has lost much of that connotation, despite its eloquent expression in Paul’s Second Epistle to the Church at Corinth. What is worse, in the narrower sense of “alms-giving,” “charity” tends to connote that its recipients are somehow insufficiently self-reliant, and thus that they should bear a measure of shame or other social stigma. See *THE CODE OF MAIMONIDES (MISHNEH TORAH),* BOOK VII, THE BOOK OF AGRICULTURE 92-93 (Issac Klein, trans., 1979) [hereafter MISHNEH TORAH] (“One should always restrain himself and submit to privation rather than be dependent upon other people or cast himself upon public charity….”).
If anything, we have come to appreciate Mencken’s wry wisdom: “there is always a well-known solution to every human problem – neat, plausible, and wrong”. And at least some of us have come to rue our own efforts to improve on Aristotle’s comprehensive, if cumbrous, definition of goodness. The upshot is this: We have no single entirely satisfactory unified field theory of philanthropy.

Yet, even as we accept yesterday’s embarrassment of theoretical riches, we are pressed, perhaps today more than ever before, to add a new layer of analytic complexity. Onto our multiple theories of why philanthropies arise and what functions they serve, we now want to overlay a metric of philanthropy’s relative merits. Beyond our theories of what makes philanthropies distinctive, and distinctively good, we are trying to extrapolate ways to compare their goodness, or goodnisses. Having analyzed philanthropy as a matter of kind, we now want to assess it as a matter of degree. That effort to move from qualitative to quantitative, from defining the hallmarks of philanthropic purpose to setting the benchmarks of philanthropic achievement, is the theme of this paper.

Its thesis is that the standard theory of philanthropy delivers both less than we need and more than it promises: Less than we need, because it at best brackets, and at worst begs, our most basic questions about philanthropy: Is what it does really good? And what does it require of me? But also more than it promises, because, if carefully reconsidered, it both shows why it cannot give us what we want and points us to where we can find what we need. That source, it turns out, is the philanthropic sector itself. In trying to derive the function of the philanthropic sector from its sectoral siblings, the market and the state, the standard model makes philanthropy the subordinate and supplementary sector. And yet, in doing that, the standard model produces a peculiar paradox: The most distinctive way that philanthropy supplements the other sectors’ functions is to provide us with standards by which we assess not only all three sectors,

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8 See, e.g., Steven Rathgeb Smith & Kirsten A. Gronberg, *Scope and Theory of Government-Nonprofit Relations, in The Nonprofit Sector* 221 (Powell & Steinberg, ed., 2006) (setting out three broad and overlapping theories of the nonprofit sector’s role vis-à-vis the state and the market).
but also our individual roles within them. Even as we begin to measure philanthropy by the standards of the other sectors, we find that we must measure them by standards only the philanthropic sector can give us. And so, as we shall see, what standard theory seeks to measure it shows us to be both the measure and the measurer of all.

But, even as we come to appreciate that paradox, we find ourselves approaching another. In our liberal democratic and capitalist market economy, the complementary philanthropic sector must be voluntary and pluralistic. Accordingly, our philanthropic sector’s component organizations produce, not one vision of the social and individual good, but many, each with its own measures of performance. What’s more, many of these normative visions are at odds with each other; and some are at odds with the other sectors as they are now constituted. This, then, is the standard theory’s second paradox: Liberal democracy and market capitalism cannot provide standards for choosing among those competing normative standards philanthropy offers; to assess the normative offerings of the philanthropic sector, we must first chose one of those offerings.

And, even as we analyze this choice, we come to another paradox. We cannot choose entirely freely; we necessarily choose as the product of our society and its current sectoral arrangements. In those arrangements, organizations in the philanthropic sector do not merely offer us competing visions of the good, social and individual; they also try to shape us according to the very criteria they offer us. The standard model of philanthropy has us seek to analyze and assess philanthropy as an adjunct to our society’s other sectors; in the course of that process, we come to see ourselves as the products, not just the assessors, of our philanthropic sector.

This paper sets out to unpack these paradoxes of the standard theory, as a first step toward moving past them to a fuller understanding of philanthropy. Part I briefly examines our need for means of assessing as well as defining philanthropy. It shows how, across the whole spectrum of our wide-ranging interactions with philanthropy, we have always needed, never more than now, a means of making comparisons. It also identifies the two perspectives from which each of us views these issues: That of system
evaluators and that of agents within the system – or, in Aristotle’s terms, politics and ethics.

Against that background, Part II takes up the insight of Aristotle with which we began this introduction: before we measure, we must know what we are measuring; in philanthropy as elsewhere, “what is good about this?” logically precedes “how good is this, compared to that?” It first identifies the critical assumptions that both produce the standard model’s basic paradoxes and distinguish the standard model from classical normative philosophy. The standard model, we will see, eschews critical problems at the foundation of classical ethics and politics, but only at the cost of leaving us with no guidance on their most basic questions, including questions about the proper function of all three social sectors.

Part III outlines the prospect of a neo-classical account of philanthropy. This account would synthesize classical normative theory with the standard model of philanthropy, using the strengths of each to correct the short-comings of the other. With this possibility in mind, we can more fully appreciate the paradoxical contribution of the standard model itself: To show us why philanthropy offers more than the standard model can evaluate, the answers to the deepest questions that Classical ethics and politics have posed.

I. The Need to Measure Philanthropy’s Performance: Multiple Comparisons, Dual Perspectives.

Philanthropy: The love of humankind; the disposition or effort to promote the happiness and well-being of one’s fellow people; practical benevolence. Shorter Oxford English Dictionary.9

Man is the measure of all things.

Protagoras.10

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10 See PLATO, THEAETETUS 494 (Benjamin Jowett trans., Modern Library ed., 1928) (“Man, he [Protagoras] says, is the measure of all things, of the existence of things that are, and of the non-existence of things that are not….”). The actual work in which Protagoras made this statement is lost. P. H. Epps, Protagoras’s Famous Statement, 59 THE CLASSIC J. 223 (Feb. 1964). Plato, if not Protagoras, would have
Across the whole spectrum of our wide-ranging interactions with philanthropy, we have always needed, never more than now, a means of making comparisons. This part first surveys the contexts in which this need arises, then distills them down to two basic perspectives: Analysis of the proper role of philanthropy in our society and assessment of our own proper practice of philanthropy as individuals.

A. Multiple Comparisons.

Philanthropy permeates our society, touching our individual lives at every turn. We regulate charities, even as we run them. We provide charities with their revenues -- as individuals, by gift and by purchase; as a society, by grants and other subventions. So, too, in multiple and overlapping capacities, we receive charities’ benefits, sometimes as quid pro quo, sometimes as pure gratuity.

In all these capacities – as regulators and operators, as patrons and as protégés, benefactors and beneficiaries -- we need to know, not just how an organization is charitable, but also how charitable an organization is. Sometimes we need to compare one charity with another; sometimes we need to compare charities with alternative providers in other sectors, even the philanthropic sector as a whole to other sectors; sometimes we need to assess the achievement of a single charity in different periods or on different projects. We need to know what to devote resources to, and what to expect results from, in what amounts, and when, and we need to know how well those allocations have gone.

Not at all well, we must be ready, when appropriate, to admit. Some charities, we all recognize, are simply not very good at doing good. No one will soon forget the Acorn videos. And what some charities do, we all suspect, is simply not good, or not good enough. It is not, as we shall see, merely that they transgress the present legal bounds of charitability; more seriously, those bounds themselves have sometimes been badly drawn.

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been comfortable replacing “man” with “humanity,” even if he could not agree that either was the appropriate standard.

Charities, to state the matter none too starkly, do not always benefit the public, their ultimate raison d’être; sometimes they are a burden, even a bane.

Sometimes that burden is obvious, as in the patently wasteful use of precious resources. But sometimes that burden is both more subtle and more serious: Sometimes charities displace other sectors of our society from work that is more properly theirs, work that they can do better, and thus should have been doing in the first place. We all hope, sooner rather than later, to beat our swords into plowshares, and our spears into pruning hooks; in the meantime, we would do well to use each tool according to its proper task. We need, again, better measures of which social sectors should be doing what.

These are hardly novel questions. At the most basic level, the Scriptures of the West’s three Abrahamist faiths themselves all recognize both competing demands on the resources at our disposal and complementary social institutions. Make your hajj, even as you give your alms\textsuperscript{12}; from even the most sacred sacrifice, save a share for the priests and Levites, and another for the widow, the orphan, and the resident alien\textsuperscript{13}; render unto Caesar, that which is Caesar’s, and to other authorities, whether higher or lower, their due.\textsuperscript{14} Nothing could more radically require a proper division of essential sectoral functions or more clearly imply careful allocations to each. Of those to whom much is given, we are told elsewhere, much will be required\textsuperscript{15} (although with no specifics about how to relate present receipts to future accountings).

\textsuperscript{12} See Ahmad ibn Naqib al-Misri, The Reliance of the Traveller: A Classic Manual of Islamic Sacred Law 275 (Nuh Ha Mim Keller, ed. and trans., rev. ed. 1994) (“Giving voluntary charity is recommended at all times; especially during Ramadan … and at all noble times and places … (… such as Mecca or Medina)”).

\textsuperscript{13} See Deut. 14:28-29 (RSV) (every third annual tithe to be shared among the Levites, and “the sojourner, the fatherless, and the widow”); Deut. 26:12-13 (same). See also Numbers 18:8-20 (Levites’ share of sacred gifts and animal sacrifices); Deut. 18:1-8 (reciting Levites’ entitlement to first fruits and select parts of all animal sacrifices).

\textsuperscript{14} Matthew 22:21.

And, of course, our Scriptures do not deal merely in generalities; they also
descend to the level of quite minute detail. They mandate minimum contributions,\(^{16}\) even as they teach that it is better to give more by a progressive measure,\(^ {17}\) but best to give all, at least at certain levels of wealth.\(^ {18}\) Maimonides ranked charitable giving on a descending scale of excellence, with eight tiers in all and almost as many implicit metrics.\(^ {19}\)

The Internal Revenue Code itself contains a host of comparative measures of charitability, both implicit and explicit. That most cabalistic of all its arcana, Section 170, places a plethora of quantitative limits on the deductibility of contributions, according to a wide range of factors. The “pay-out” requirement for private foundations clearly, if crudely, tries to ensure that these organizations do a minimum of grant-making each year,\(^ {20}\) thus explicitly favoring at least this much present over future spending. Perennial disputes over appropriate levels of private foundations’ administrative expenses bespeak the continuing quest for measures of what we will call productive efficiency, “bang for the buck.” (Closely parallel issues arise outside the Code in the very different context of charitable solicitations; their resolution has required repeated interpretation of our fundamental law by our highest court\(^ {21}\)).

The basic income tax exemption itself\(^ {22}\) has at its very core an implicitly graduated test. Whatever an organization’s charitable virtues, if it engages in more than an insubstantial amount of non-charitable activity, it simply ceases to be a charity in the

\(^{16}\) Genesis 14:18; see also AHMAD IBN NAQIB AL-MISRI, supra note 13 (defining zakat, periodic payments obligatory on all Muslims).

\(^{17}\) Mark 12:38-44.

\(^{18}\) See Mathew 19:16-22 (Jesus's instruction to “rich young ruler” to sell all his possessions and give the proceeds to the poor); see also AHMAD IBN NAQIB AL-MISRI, supra note 29 (“It is recommended to give away in charity everything that is in excess…. Provided one can be patient with the resultant poverty”).

\(^{19}\) MISHNEH TORAH, supra note 4, at 91-93 (Issac Klein, trans., 1979). See AHMAD IBN NAQIB AL-MISRI, supra note 13, at 266-74 (listing eight categories of proper recipients of zakat, periodic payments mandatory for all Muslims, id. at 246).

\(^{20}\) I.R.C. § 4940.

\(^{21}\) Vill. of Schaumburg v. Citizens for a Better Env’t, 444 U.S. 620 (1980) (striking down municipal ban on in-person solicitation of charitable donations to organizations that did not use at least 75% of their receipts for charitable purposes); Riley v. Nat’l Found. of the Blind, 487 U.S. 781 (1988) (striking down, among other things, state-imposed percentage limits on professional fundraisers’ fees).

\(^{22}\) I.R.C. § 501(c)(3).
contemplation of the Code. Thus, in the law of charity as in the law of nature, quantitative changes can become qualitative differences. At zero Celsius, water stops getting colder and becomes ice; so, too, though at an admittedly less precise tipping point, a charity engaged in too much non-charitable activity forfeits its entire exemption. Less explicitly, a similar “state-change” must lurk behind the “relatedness” test for exempting business income; as anyone who has ever read copy in a museum catalogue can attest, the nexus between merchandise offered and mission to be accomplished can wear remarkably thin; beyond some point, surely, the attenuation must expose the charitable vendor to tax liability.23

Even in the notoriously glacial-paced development of charitable trust law, a distinctly quantitative test is emerging. The threshold for altering charitable purposes under the cy pres doctrine has inched forward from the common law’s rigid standard of “impossible or illegal,” past the more malleable “impracticable,” toward the potentially fluid “inefficient.” We still have, here, no precise definition of efficiency.24 But at least a binary, all or nothing, standard is giving way to a more relativistic, quantitative measure.

Both proper budgeting for charity and proper performance monitoring of charity are all the more imperative in times of economic crisis (not to mention heightened political scrutiny). Budgeting and monitoring, in turn, both require comparisons, not only between organizations, but also over time.

B. Dual Perspectives.

In all the assessments we make of philanthropy, we take one of two basic perspectives. We look at philanthropy from above, as designers, describers, or evaluators of its role in our social system more generally. Or we look at charity from within, as individuals involved with philanthropy as members of our society. Although these perspectives are conceptually distinct, they are by no means functionally separate. To

23 To choose only the first item, from the catalogue readiest to hand: “Our silk tie is adapted from Pablo Picasso’s (Spanish, 1881-1973) Daniel-Henry Kahnweiler, a work now on view in the Modern Wing.” The Art Institute of Chicago, Gift Catalog 2009, page 1, Item A, inventory number 113418, “Tie $54” (color photograph with matching “cubist” wrist watch omitted).
know how much to contribute to philanthropy, we must know how much “work” our society assigns, by design or by default, to philanthropy, and how well philanthropy is doing that work. We need to know where need is greatest, and we need to know how best to meet it with the means at hand. And yet, even as we make these decisions, we must bear in mind that they, in their turn, shape as well as reflect philanthropy’s role.

These two perspectives, from “inside” and from “above,” recall two complementary aspects of classical normative analysis: the political and the ethical. In the following analysis of philanthropy, we will see that, even as in Plato and Aristotle’s analysis of society generally, personal virtue and political justice are intimately linked. And we will ask whether philanthropy might be that link, or even more: perhaps the Archimedean lever with which we move our whole world.

C. Back to the Basic Question.

As individuals and as a society, we must make multiple comparative judgments about philanthropy: What is its role vis-à-vis other sectors? How well are particular philanthropies, and the philanthropic sector as a whole, performing their assigned tasks? How much of our resources, personal and public, should we commit to the philanthropic sector, and how shall we allocate those resources among its constituents? All these questions point us back to the most basic one: What, exactly, are we assessing and comparing? What is philanthropy, and what is its function?

II. The Standard Model of Philanthropy’s Function: Supplementing the Market and the State.

Order gives due measure to the members of a work considered separately, and symmetrical agreement to the properties of the whole.

Vitruvius, The Fundamental Principles of Architecture.26

25 PLATO, THE REPUBLIC, supra note 2, at 44 (proposing to derive a definition of justice in individuals from a definition of justice in the city); ARISTOTLE, POLITICS, supra note 3, at 167 (“We showed at the commencement of our inquiry that the virtue of the good man is necessarily the same as the virtue of the citizen of the perfect state.”); ARISTOTLE, NICOMACHEAN ETHICS 4 (Martin Ostwald trans., 1962) (“[T]he end of politics is the good for man.”).
26 THE TEN BOOKS OF ARCHITECTURE 35 (Morris Hicky Morgan, trans., Harv. 1914) (Google Project).
Aristotle famously, if unsuccessfully, accounted for all forms of matter in terms of two qualities, temperature and moisture, whose polar extremes, in combination, produced four basic elements: earth (cold and dry), air (hot and wet), fire (dry and hot), and water (cold and wet). Not to be outdone by the elegance of his example (or chastened by the extent of its failure), modern social theorists have offered a structurally similar macrocosmic model. This model accounts for all social organizations in terms of two qualities, one economic, the entitlement of an organization’s individual constituents to its net profits, and the other political, the mode of including the organization’s constituent individuals within its ambit. An organization is for-profit if some set of its individual constituents are ultimately entitled to its net assets; non-profit if they are not. An organization is voluntary if its members choose to join; involuntary if their inclusion is automatic. For this model, as for Aristotle, the intersection of these two qualities in pure form produces four basic organizational possibilities: for-profit (for-profit and voluntary), governmental (nonprofit and involuntary), philanthropic (nonprofit and voluntary), and household (for-profit and involuntary).  

Aristotle, much to his credit, understood the limits of precision in human, if not physical, sciences. He begins his studies of both ethics and politics with a warning against expecting more precision in these matters than the subjects permit. Modern theorists’ four-quadrant chart of our social world gives us at least a very good start in situating both the philanthropic sector in our society as a whole and particular philanthropic organizations within that sector. Without ignoring Aristotle’s dictum on achievable precision, this part addresses several deficiencies in the standard account, to

28 See Matthew Turnour, Beyond Charity: Outlines of a Jurisprudence for Civil Society 331-48 (Dissertation submitted for doctorate of philosophy, Queensland University of Technology, 23 September 2009) [hereafter Beyond Charity] (modeling society as a tetrahedron, with apexes assigned to “business,” “government,” “family,” and “charity”); Matthew Turnour and Myles McGregor-Lowndes, From Charity to Civil Society: Sketching Steps to an Alternative Architecture for the Common Law at 12, Figure 5, 2007 ARNOVA Conference, Session D10 (Atlanta, Georgia, 15 November 2007) [hereafter From Charity to Civil Society] (copy on file with author) (same).
29 ARISTOTLE, NICOMACHEAN ETHICS, supra note 28, at 5(with particular reference to ethics and politics, “a well-schooled man is one who searches for that degree of precision which the nature of the subject at hand admits: it is obviously just as foolish to accept arguments of probability from a mathematician as to demand strict demonstrations from an orator.”) id. at 35 (“one can demand of a discussion only what the subject matter permits”); see also ARISTOTLE, POLITICS, supra note 3, at 93 (“perfection in everything can hardly be expected,” with particular reference to Socrates’s political ideas).
make that account more adequate for the task at hand, overlaying measures of philanthropic performance onto a workable account of philanthropy’s function.

For all its explanatory power, the standard model has several implicit limits: It equivocates on the role of the household sector; it implies that the philanthropic sector is subordinate to the market and the state; and it obscures important implications of its essentially functionalist structure. This part takes up each of those limits in turn.

A. The Ambiguous Position of the Household Sector.

The standard model, as we have seen, implies four social sectors: the for-profit, which is for-profit and voluntary; the governmental, which is nonprofit and non-voluntary; the philanthropic, which is nonprofit and voluntary, and the household, which is for-profit and non-voluntary. But the standard model critically equivocates on the role of the fourth, household sector, assigning it a position that is sometimes too small and sometimes too large. On the one hand, with a single notable exception\(^\text{30}\), the standard model of philanthropy tends to omit the household sector altogether. If philanthropy proverbially begins at home, it has attracted scholarly analytic attention only when it steps out into the wider world of the state and the market. Whatever the reason, the omission of the household sector is general, so general, indeed, as to be reflected in the more widely used name of the theory itself; the “three failure theory”\(^\text{31}\) of philanthropy refers to failures of the for-profit, governmental, and philanthropic sectors, thus leaving the household sector entirely out of account,\(^\text{32}\) with only occasional mentions, mostly in the margins.\(^\text{33}\)

\(^{30}\) See Beyond Charity, supra note 30; From Charity to Civil Society, supra note 30.

\(^{31}\) See Richard Steinberg, Economic Theories of Nonprofit Organizations, in The Nonprofit Sector: A Research Handbook 119 (Walter W. Powell and Richard Steinberg, eds., 2006) (referring to “the stream of literature that has become known as the ‘three failure theory’”).

\(^{32}\) See, e.g., id. at 117.

\(^{33}\) See Jon Van Til, Mapping the Third Sector: Voluntarism in a Changing Social Economy 87 (1988) (describing three-sector model and noting the possibility of identifying an additional “household” or “informal” sector); James Douglas, Political Theories of Nonprofit Organizations, in The Nonprofit Sector 43, 46 (Walter W. Powell, ed. 1987) (“Private nonprofits are subject to competition for survival from three other forms of social organization – the family, commercial for-profit firms, and government-run services.”).
Fully to correct those slights to the household sector would, alas, require more
time and space than is warranted by the additional light that the corrections would shed
on philanthropy, which is itself something of a sectoral step-child. Thus this
reconsideration of the standard theory will, like that theory itself, relegate the household
sector to relevant footnotes and sidelights in the discussion of its sectoral siblings. Here,
at very least, the slight is not without apology.

In defense of the standard model, its omission of the household sector may be a
kind of backhand concession that the household sector is too basic, or too complex, for
fuller discussion. But only brings us to the other, and larger, side of the problem. Even
as the standard model omits explicit analysis of the household sector on a par with the
other three, it seems to assign that sector an implicit priority. The household sector’s
place in the standard model thus becomes, not fourth to the philanthropic sector’s third,
but rather first to the philanthropic sector’s last. That implicit priority bespeaks a
tendentious sequencing in the standard model’s analysis of the three public sectors.

B. The Subordination of the Philanthropic Sector.

The standard model’s omission of the household sector is critically related to
another of its short-comings, subordination of the philanthropic sector. That model
unfortunately implies a dubious chronology of sectoral development in which the
philanthropic sector is both historically and functionally last. The standard model
explains the philanthropic sector’s function as responding to failures in the other two (or
three) sectors. That explanation tends to begin with the for-profit sector, treating the
governmental sector as primarily functioning to correct various market failures, and
assigning any functions left over to the philanthropic sector.\(^{34}\)

In what might be called the standard theory of the standard theory, this sectoral
sequencing is almost completely innocuous, no more than an accident of the model’s
intellectual history and an artifact of its structure. To take the latter first, the idea is that

\(^{34}\) See Steinberg, *supra* note 33, at 119-27 (summarizing the “three failure theory” in the conventional
order); *id.* at 120, Figure 5 (“Schematic of Three-Failures Theory” with markets at the top, government in
the middle, and nonprofits at the bottom); *see also* BURTON A. WEISBROD, THE NONPROFIT ECONOMY 33-41
(assessing the relative merits of for-profit firms, then government, and finally nonprofits) 16-25 (1988).
some sequencing of sectors is logically inevitable. Any cyclical theory or three-dimensional model must be explained linearly; to move from the model’s two- or three-dimensional depiction to its verbal explanation, one must start at some point in the schema and work one’s way, as it were, “around.”35

And, as a matter of intellectual history, theories of the philanthropic sector developed relatively late; its theorists did in fact begin with existing theories of the other sectors and “map” their account of philanthropy onto those.36 Their course was, accordingly, somewhat “path-dependent.”37 But to start your map where you find yourself is not necessarily to say that regiouss you chart later, as you reach them, are any less important than “home.” On this view, what may appear to be a chronology of sectoral evolution or a normative ranking of sectors is really neither. It is, rather, merely an accident of intellectual history and an artifact of modeling a cycle or mapping a sphere. As long as we bear that in mind, the standard model’s sequencing of sectors does no harm, or at least no avoidable harm.

As far as it goes, this benign view of the standard theory’s sequence of sectors is accurate enough. Unfortunately, this view gives us far less than the full picture. It omits two significantly peculiar aspects of the standard model that we need to note, one here and the other in the next subsection. The peculiarity to note here is how seamlessly the standard model’s sequencing suits a Lockean, even libertarian, conception of social

35 Steinberg, supra note 33, at 127 (noting that “[t]hree-failures theory does not presume any sector is ‘first’ and the other sectors react to its failures,” but “rather, the approach arranges the three sectors around a circle, with each reacting to the failures of its neighbors,…” although admitting that the standard presentation, beginning with the for-profit sector “perhaps falls short in developing our intuition about the whole circle.”).
36 See Steinberg, supra note 33, at 118 (tracing the developments of the “three failure theory”).
37 See Kenneth Arrow, Social Choice and Individual Values (1951) (describing how ordering of choices posed affects the ranking of choices made).
development, in which the order of sectoral development carries the most serious of normative consequences.

The standard model suggests something like this sequence of events. In the beginning, a happily autonomous set of householders found that they could improve all their lots if they specialized production by comparative advantage, then traded with other households for their respective needs. Thus they created the for-profit sector and behold, it was good. The happy free-holders then discovered that both their original property entitlements and their new system of inter-household trade could be made to work even better if they created, by mutual assent, a mechanism for precisely those twin purposes. Thus they created a sort of night-watchman state; it, too, was good. Finally, as something of an after-thought, the Founders added the philanthropic sector, to provide anything they could not make at home, buy in the market, or secure by universal political agreement. Just so, the standard theory leads us to believe, today’s four-sector society developed naturally and properly from the voluntary interactions of aboriginal households in a generally Edenic “state of nature.”

Presented this way, the standard theory is obviously reminiscent of John Locke’s account of the origin and function of the state. It simply adds to that account the idea that the philanthropic sector developed last, as a sort of stop-gap response to failures in the other, more significant, sectors. This amended Lockean account implicitly assigns those other sectors a priority in both time and right. The household sector is more primordial than primary, something like Paradise itself, the home the Creators create for themselves ex nihilo. To nurse and keep that garden for their greater delight, they create the for-profit sector. Finding that sector not quite fully self-fulfilling, they form the governmental sector, an Eve to the market’s Adam. Though formed from essentially the same matter as the market -- voluntary, self-interested agreement -- the state is always secondary and subordinate, ever the help-meet, never the master. Last on the scene, as a sort of man Friday, is the philanthropic sector. A rather distant and residual fourth, of somewhat shadowy origins, it functions as a something of a general factotum, tidying up areas of the household beneath the concern of the master market and the help-meet

38 JOHN LOCKE, TWO TREATISES OF GOVERNMENT 289 (Peter Laslett, ed. 1988) (Second Treatise).
It hardly needs to be added of the whole arrangement: Behold, it is very good, the best of all possible worlds.

But some, of course, will always quibble. Hobbes,\(^{40}\) Bentham,\(^{41}\) and Calhoun,\(^{42}\) to name but three, present a considerably less sanguine view of the state of nature; for them, humankind under the state and its laws is much closer to Pandemonium Ameliorated than Paradise Improved. We need not take a position here on that dated, if not dubious, “chicken-and-egg” debate, which modern political theory studiously attempts to skirt.\(^{43}\) We need only to notice, for now, that the standard model’s account of philanthropy has a distinctly Lockean bias, and to watch, later, for the implications of that bias in our fuller consideration of the model.

C. The Implicit Assumptions of Its Functionalist Approach.

The standard model’s implicit chronology of sectoral development may be an accident or an artifact, but its normative assumptions about sectoral function are absolutely fundamental, if not always entirely apparent.\(^{44}\) Fully to appreciate those normative assumptions, we must first notice an even more basic aspect of that model, its fundamental functionalism. As the name suggests, a functionalist model defines and assesses its objects, in this case philanthropy, in terms of their function, what they are supposed to do, and how well they do it, not in terms of any inherent or essential quality or form of operation in isolation. Thus functionalist models, as such, always ask “What is this good for,” never “Is this good, period?”

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39 See Lester M. Salamon, Partners in Public Service: The Scope and Theory of Government-Nonprofit Relations, in THE NONPROFIT SECTOR: A RESOURCE HANDBOOK 99, 111 (Walter W. Powell, ed. 1987) (faulting prior theories for “explain[ing] the existence of the voluntary sector in terms of failures of the market system and of government,” with the result that “the voluntary sector is thus seen as derivative and secondary, filling in where other systems fall short.”).
40 Thomas Hobbes, Leviation, or the Matter, Form, and Power of a Commonwealth, Ecclesiastical and Civil (1651).
41 JEREMY BENTHAM, THEORY OF LEGISLATION (4th ed. 1882).
42 John C. Calhoun, A Disquisition on Government (1849).
43 E.g., JOHN RAWLS, A THEORY OF JUSTICE 11-12 (1971) (setting out the conditions of the hypothetical “original condition” as “correspond[ing] to the state of nature in the traditional theory of social contract” and distinguish it from both “an actual historical state of affairs” and “a primitive condition of culture”); RICHARD A. MUSGRAVE & PEGGY B. MUSGRAVE, PUBLIC FINANCE IN THEORY AND PRACTICE 9 (3d ed. 1980).
44 Here we merely make those normative assumptions explicit; elsewhere I explore their full implications. See Atkinson, “Shades of Virtue: Measuring the Comparative Worthiness of Charities,” supra note 1.
The functionalist structure of the standard model, we should note here at the outset, offers several significant advantages for our analysis of philanthropy. Most significantly, it promises not only to provide both things we are looking, the “good” of philanthropy and a means for its measure, but also to reduce philanthropy’s aim and metric to common terms. Every function will be assigned to the sector that performs that function best. Thus, to show us what a particular sector’s function is, what that sector is supposed to do, the standard model will have to show us that it performs that function better than the other sectors. And, once sectoral assignments are made on the basis of relative performance of function, assessment of the sector must also be in terms of performing that function. How well a sector performs, then, will be the basis of both the assignment and the assessment of its function.

Consider this example, the way the standard model derives philanthropy’s most distinctive function, supplying comprehensive normative standards. These standards are not typically available from for-profit suppliers, because they are public goods. And they are not typically available from the liberal democratic state, because that state is doubly constrained. As a democracy, it is not likely to promote ideas seriously at odds with those of a majority; as a liberal state, it is limited, to a greater or less extent, in promoting any particular vision of the good ordering of society or the good living of individual lives, and that is precisely what these standards from the philanthropic sector entail. Thus, in this special case as in all of its functions, the philanthropic sector responds to failures of both the market and the state to meet consumer and citizen demand.

The standard model’s functionalism has another advantage: It maps nicely onto two related schools of classical normative philosophy, consequentialism, or teleology, and virtue ethics. At least as far back as Aristotle and Plato, these schools have

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46 Saying that, of course, implicitly concedes that the model fits considerably less well with another major strand of western normative theory, the deontological, which focuses, to use a standard shorthand, primarily on the “rightness” of actions and social arrangements and only secondarily, if at all, on the “goodness” of their consequences. See W.D. Ross, *THE RIGHT AND THE GOOD* (Oxford Univ. Press 1930).
measured merits in terms of purposes or ends; something’s goodness, or (to borrow their term) virtue, is derived from the purposes it properly serves, its function; its function is proper to it precisely because, operating optimally, it performs that function best. Here again, assignment of function and assessment of functional performance become reciprocal. A thing’s function is what it does best; its virtue is the condition in which it does what it is supposed to do best (and its vice, conversely, the condition in which it does it badly, or not at all).

That structural parallel noted, we must quickly add a qualifier. Pointing to that parallel is not merely a matter of nostalgia or antiquarianism. That parallel is, rather, of the utmost analytic importance to our project, better understanding and assessing philanthropy. When we trace the parallel between the standard model of philanthropy and classical normative philosophy far enough, we reach a profound divergence. That divergence, in its turn, reveals a fundamental strength and weakness of classical normative philosophy and the standard model’s functionalism relative both to each other and to the task at hand.

To get at this critical divergence, we need to consider exactly the question that the standard model of philanthropy asks itself: What is the function of philanthropy in our society? In posing the question just that way, the standard model implicitly takes both the goals and the performance criteria of liberal democracy and market capitalism as given, and, from those assumptions, derives both the function and the performance measure of philanthropy. The standard model thus analyzes philanthropy in a significantly conditional way, as the best complement to those other sectors. It does not declare, much less prove, either that the goal of the other two sectors is unconditionally
good, or that the other two sectors are the best means of advancing that good. It only
takes them as good for what they, at least in theory, have as their goal: giving consumers
and voters most of what they want, at least cost in terms of other things they want.

Implicit in the standard model’s approach to accounting for the philanthropic
sector are two fundamental but generally unarticulated assumptions, one as to ends, the
other as to means. The assumption about ends is that giving people what they want is our
basic goal; the assumption about means is that a capitalist market and a liberal
democracy, operating optimally, are the best ways, economically and politically, to reach
our stipulated goal, again, giving people what they want.

So far, the standard theory runs perfectly parallel to classical ethical and political
theory. Both Plato and Aristotle\textsuperscript{48} are very clear that what counts as good varies with the
regime being assessed. They both thus identify the goals of various regimes, with their
corresponding virtues, social and individual.\textsuperscript{49} Like classical political theory, the analytic
structure of the standard model of philanthropy could be applied to any society, not just
ours. It would work equally well if applied, say, to European social democracy or
Chinese Marxism. What we must bear in mind is that the standard theory, in explaining
the function of philanthropy in our society, takes the other three sectors as it finds them:
liberal democracy in our governmental sector, market capitalism in our economic sector,
Western nuclear families in our household sector.\textsuperscript{50} From the common goal of those
other sectors, giving people as much as possible of what they want, the standard theory

\textsuperscript{48} PLATO, REPUBLIC supra note 45, at 222 (“Do you know… that it is necessary that there also be as many
forms of human characters as there are forms of regimes?”); ARISTOTLE, POLITICS supra note 3, at 149
(“The goodness or badness, justice or injustice, of laws varies of necessity with the constitutions of
states.”). See also CHARLES DE MONTESQUIEU, THE SPIRIT OF THE LAWS 13 (Thomas Nugent trans., Great
Books ed., 1992) (“The laws of education will be… different in each species of government: in monarchies
they will have honor for their object; in republics, virtue; in despotic governments, fear.”).

\textsuperscript{49} PLATO, REPUBLIC supra note 45, at 222-75 (analyzing “timocracy,” the regime that makes honor the
highest end; “oligarchy,” or plutocracy, which makes wealth the highest end; “democracy,” which makes
equality the highest end; and tyranny, the aim of which is injustice.); ARISTOTLE, POLITICS supra note 3,
(analogous catalogue of regimes and their goals).

\textsuperscript{50} See WEISBROD, supra note 36, at 27 (“If the nonprofit sector exists to respond to diversity of demands for
collective goods, is size relative to government should differ across nations.”). See also Smith & Gronberg,
supra note 9, at 234 (identifying four different types of regimes, the liberal, the corporatist, the social
democratic, and the statist, classified according to the relative size of their government’s social welfare
spending and philanthropic sectors).
shows how philanthropy, for its part, should best function to advance that same goal. The standard theory does not, significantly, say that that goal is, itself, good.

This is a critical point for our analysis. At this point the standard theory of philanthropy stops, even as classical normative theory takes another step. In stopping here, the standard theory cannot give us something that we, both in our quest for philanthropy’s function and in our capacity as consumers and voters, really need, something that both classical theory and philanthropy itself promise us. Even as the standard theory consciously rejects taking this step with classical theory, it also explains why the most distinctive function of the philanthropic sector is to supply us with what we need to take that step.

To identify that next step, the step at which the standard model stops and classical theory advances, we have only to ask either of two deceptively simple additional questions about the basic assumption of the standard model itself: Is what the people want really good? Is what I myself want, good? The first question takes us to the basic concern of classical politics; the second, to the basic concern of classical ethics: What is the proper goal of human beings, socially and individually? Notice that the standard model neatly – for our purposes, too neatly – avoids both these questions. In public matters, economic and governmental, it takes as given the goal of giving people, in the aggregate, what they want; in private matters, it takes no position on the goodness of what people pay for or vote for. It sets itself only the task, in other words, of showing how each of our society’s sectors – economic, political, and philanthropic – functions to give people what they want. It takes no normative position on either the political question of what society should have as its goal or the ethical position of what goal individuals should have as theirs.

Classical theory, by contrast, does not merely identify, as we have seen, the goals and related virtues of particular existing societies. It also sets out the goal and the virtues of the ideal society and its citizens. In contrast to the standard model, in other words, classical philosophy would not just identify the goal of our society and how its various sectors should function to advance that goal; it has also given us a standard by which to
evaluate that goal itself. Its ultimate standard was human flourishing, individually and collectively, citizens and society performing their proper functions well, and the higher the function, the better. Its metric was, to use its own word, justice, a proper ordering of all constituents, personal and societal, in the way that each best performs its highest function, integrated with every other: a virtuous citizen in a just society. All functions are thus comparable, but all comparisons are not, strictly speaking, mathematical. All goods are ultimately commensurate, though not all “goodnesses” are ultimately quantifiable. The proper mix of goods is a matter, not of measure, but of balance; the means for finding the balance is not the skill of computation, but the virtue of wisdom (even as the proper assessors of the ideal equilibrium are not economists or political scientists, much less accountants or lawyers, but philosophers, the proper philanthropists).

It is no accident that the standard theory of philanthropy declines to follow classical philosophy in taking this next normative step, identifying the ideal human goal. Post-classical philosophy itself has taught us to worry that this step may lead us, if not quite off a cliff, then at best down a rabbit-hole. The classical answer about humankind’s proper function may come from asking the wrong kind of question, what later philosophy identified as a category error. The category error here would be this: To be able to ask the function of the heart, or the circulatory system as a whole, suggests a question that may have no such answer: What is the function of the sum of all the parts, a full human being? So, too, to ask the function of the economy or the polity may dubiously imply an analogous “meta-function” for all of society. But the fact that every element in a complex system has a given function does not necessarily imply that the system itself has

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51 PLATO, THE REPUBLIC, supra note 2; ARISTOTLE, POLITICS 51, supra note 3 (“But, if all communities aim at some good, the state or political community, which is the highest of all, and which embraces all the rest, aims at a good in a greater degree than any other, and at the highest good.”); id. at 149 (“In all sciences and arts the end is the good, and the greatest good and in the highest degree a good in the most authoritative of all – this is the political science of which the good is justice, in other words, the common good.”); and NICOMACHEAN ETHICS, BOOK I, THE AIM OF MAN, SECTION II, PRIMACY OF STATECRAFT, SECTION VII FUNCTIONAL DEFINITION OF MAN’S HIGHEST GOOD (Philip Wheelwright, trans., 1951); see also RAWLS, supra note 42, at 414(edition?) (adopting the “Aristotelian principle” “that, other things equal, human beings enjoy the exercise of their realized capabilities (their innate or trained abilities), and that this enjoyment increases the more the capacity is realized, or the greater its complexity.”).

52 JAMES D. CARNEY & RICHARD K. SCHEER, FUNDAMENTALS OF LOGIC 118 (Macmillan Publishing Co. 2d ed., 1974) (“If someone mixes categories in a serious and unintentional way, this is called a category mistake.”).
such a function. What, after all, is the function of the termite, alone or in its mound? So, too, even if every element in an artistic composition has its place, the composition as a whole – not to mention art itself -- may have no such “place” in any “grand scheme.” Art may be for art’s sake, even as human beings, individually or collectively, may be ends in and unto themselves, or may have no end at all, other than those they assign themselves.

The classical philosophers’ conception of individual and social excellence may, we now suspect, have been less a discovery than a choice, even an invention; theirs may well have been one way to order ourselves and our world, but not necessarily the only good way, and maybe not even the best. What’s more, whether their way was a matter of choice or discovery, we know, as they knew, that there are, in fact, alternatives; our own populist, consumerist society is one of them.

Thus classical normative philosophy comes to an impasse at least as serious as that of the standard model of philanthropy. Classical philosophy fails to give us proof that its reasons for preferring the order it offers are anything more than preferences; the standard model gives us no reasons for preferring one of philanthropy’s global normative orders over another. That, fortunately, need not be the end of the matter.


In all sciences and arts the end is a good, and the greatest good and in the highest degree a good in the most authoritative of all – this is the political science of which the good is justice, in other words, the common interest.

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The standard theory of philanthropy, taking our liberal democracy and capitalist market on their own terms, can only point to the philanthropic sector as the product of their joint failure to give us what we want; in particular, standards to tell us what we should want, as individuals and as a society. Even as it identifies the provision of these standards as the proper function of philanthropy in our society, it refuses to tell us which of those standards to choose. Its means of evaluating philanthropy’s performance leave us, paradoxically, with no way to assess what it says is philanthropy’s distinctive product, comprehensive normative systems. Thus, for all it explains, the standard theory ultimately disappoints.

One of the comprehensive normative systems our philanthropic sector offers is classical ethical and political theory. Classical theorists, for their part, tell us we should want the kind of society that produces the kind of people they thought were best, the kind of people they themselves tried to be. But classical normative theory also disappoints. It does not deliver to our satisfaction what most of us take to be its greatest promise: To ground its norms, not on our own individual desires, but on the rock of universal reason itself. In the face of that failure, classical normative theory seems not only incomplete, but also arrogant. It would have us make both ourselves and others what classical theorists wants us all be, for what may be no reason other than the preferences of classical theorists themselves. Hardly modest, and most definitely not democratic.

And yet that very charge threatens, in turn, to undermine itself and, in that undermining, to clear the foundation for a new synthesis, a neo-classical alternative to both classical normative theory and the standard model of philanthropy. To appreciate either of those understandings of philanthropy, with their reciprocal strengths and weaknesses, one must have had the opportunity to become, in one critical respect, the kind of person that classical theory would give everyone the opportunity to be, the kind

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56 ARISTOTLE, POLITICS supra note 3, at 149. See also ARISTOTLE, NICOMACHEAN ETHICS, supra note 26, at 4 (“This good…belongs to the most sovereign and most comprehensive master science, and politics clearly fits this description.”).
of person that the standard theory says we are free to choose to be: A person able to make the subtlest of theoretical arguments, about the most profoundly important of human matters, on behalf of those who cannot make those arguments for themselves, in a society where that kind of argument is permitted, even encouraged. Such a person would have to realize this: We ourselves can no more have chosen to have the opportunity to become who we are than would those whom classical theorists insist should have that opportunity as well. From this perspective, classical political theorists are not so much insisting that everyone become as they themselves have chosen to be; instead, they are insisting that everyone be given the opportunity to become what their critics have had the opportunity to become. That sounds a lot less like arrogance, and a lot more like fairness.⁵⁷

Giving everyone that opportunity is the goal not only of neo-classical philanthropy, but also of its ideal society as a whole. Not to give people what they want, as an adjunct of our democratic state and market economy, but to make it possible for them to be what we ourselves have been able to become, with the help of others like us, in an unbroken line of succession all the way back through Aristotle and Plato to Socrates himself. And that function of philanthropy, in its turn, also assigns the state and the market their respective functions: enable everyone, everywhere, to attain the highest forms of human excellence our society’s greatest sages have ever imagined and – if we ourselves can imagine it – even more.

**Conclusion: Philanthropy as the Market’s Servant or Society as Philanthropy’s School?**

Philanthropy’s function in the standard model is to perfect a universal market, with two branches, one where we buy what we want, the other where we vote for what we cannot buy. Philanthropy, from that perspective, supplies those of our wants that neither the economic nor the political market can satisfy. By contrast, the function of the market and the state, in neo-classical philanthropy, is to enable universal enrollment in an academy for philosopher-kings. If you have followed this argument, you have that

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⁵⁷ It is, perhaps, a special case of what Rawls meant by “justice as fairness.”
academy, our common alma mater, to thank – and, if you choose, to open to all of our fellow folk.

Before we make that choice, we must answer two other questions, questions we will have to examine elsewhere. The first is whether we can build a satisfactory neo-classical normative theory without the rationally provable foundation that classical normative theory is generally believed to have required. Even assuming we can get past that theoretical question, we would still be left with the second, and perhaps larger, practical question: Can we get from where we are now to where our neo-classical normative theory would take us? In particular, can we get there in a way that acknowledges the core values of our liberal democratic polity and capitalist market economy? And would we be able to accommodate our religious as well as secular values and traditions? The standard model of philanthropy cannot provide much, if any, help answering those questions.

And that reminds us of Mencken’s maxim: “there is always a well-known solution to every human problem – neat, plausible, and wrong.” Still, it would be wrong to say, following Mencken, that the standard theory is wrong; as far as it goes, it is quite right. The problem with the standard theory – and perhaps with Mencken’s maxim – is that, for all its elegance, it is simply too simple. The standard model, properly understood, does not so much fail as reveal its limitation: Our most basic questions about philanthropy take us to the fundamental ethical and political questions of classical philosophy, which cannot be answered from the perspective the standard model offers. For those answers, the standard model itself shows us that we must choose among the normative standards our philanthropic sector offers, and that we can only be guided in that choice by the philanthropic standards we choose. It also shows us that we cannot choose among those standards without both preferences and capacities shaped by all three of our social sectors, not least the philanthropic. The standard model, then, ultimately shows us this: Philanthropy, what the standard model sets out to define and measure, becomes not only the source of standards by which we measure everything, including ourselves and our social world, but also a shaper of both, according to its own standards. From an

admittedly limited model of philanthropy, that is a lot to learn about our world and ourselves.