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The Donation Registry

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#### **Author**

Cooter, Robert D.

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## “The Donation Registry”

By Robert D. Cooter

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### **Abstract:**

To redistribute income, charitable giving must supplement progressive taxes. One person can sometimes observe another’s donations to specific charities, but one person cannot observe another’s total donations to all charities. Consequently, people do not have enough information to know whether each person is doing his fair share of charitable giving. In these circumstances, the social norm concerning how much people ought to give remains inchoate and redistribution is deficient. To remedy this problem, I propose various means to publicize donations, ultimately leading to a donation registry.

“The Donation Registry”<sup>2</sup>

When Al Gore disclosed his 1997 tax return, his cash contributions to charity were \$353 dollars on income of \$197,000.<sup>3</sup> Charitable organizations were distressed by the example he set. The typical person in his tax bracket gives 10 times as much. Discussion ensued about the appropriateness of his behavior and he defended himself in various ways that I won't discuss. I drew two conclusions from this case. First, the social norm with respect to charitable giving is relatively inchoate, by which I mean nobody really knows how much you are supposed to give. Second, except for a few famous politicians like Al Gore, people who fail to meet their charitable obligations go unidentified and escape social sanctions. We don't know exactly how much we ought to give to charity and we don't know who gives how much.

To document the problem, consider the data on charitable giving provided by the Internal Revenue Service.<sup>4</sup> Each year it publishes a table showing charitable contributions by people who itemize their deductions when filing their income tax returns. According to this data, most people in the middle classes (say, income of \$50,000 per year or more) donate between 2 and 3 percent of their income to charity. People in the highest bracket, which is over \$10 million dollars in income per year, donate more than 4 percent of their income to charity. People in the low income brackets who itemize their deductions give a much larger percentage of their income to charity than wealthier people. This fact, however, is misleading because most people in low

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<sup>1</sup> Herman Selvin Professor of Law, University of California at Berkeley.

<sup>2</sup> I would like to thank Ian Ayres, Blair Dean, Aaron Edlin, Paul Edwards. and Jennifer Ulveling for comments and suggestions.

<sup>3</sup> CNN, A. P. (1998). “Gores' Charitable Giving Raises Some Eyebrows.”

<http://www.cnn.com/ALLPOLITICS/1998/04/15/gore.taxes/>.

<sup>4</sup> See Individual Tax Returns 2000, IRS **Table 2.1**--Returns with Itemized Deductions: Sources of Income, Adjustments, Itemized Deductions by Type, Exemptions, and Tax Items, by Size of Adjusted Gross Income. (All numbers are estimated based on samples.)

income brackets take the standard deduction and do not itemize. In reality we do not have accurate information on donations by people in the lower income brackets.<sup>5</sup>

The rate of charitable giving would, I believe, be much higher but for an information problem that arises. Charity is a type of obligation that is “disjunctive” because you have an obligation to do A, or B, or C, etc., but you do not have an obligation to do A and B and C, etc.<sup>6</sup> For example, you have an obligation to give to this needy person, or that needy person, or another needy person, but you do not have an obligation to give to every needy person. In contrast, the obligation not to lie applies, with some exceptions, whenever you speak. The obligation to tell the truth is “conjunctive” in the sense that you have an obligation to do A and B and C, etc. (Disjunctive and conjunctive obligations are also called “imperfect” and “perfect” obligations.)

Conjunctive and disjunctive obligations in ethics differ dramatically in the information required to detect a violation. With conjunctive obligations, observing a single act is sufficient to detect a violation. In contrast, with disjunctive obligations, detecting a violation requires observing many acts. Indeed, detecting a violation of the obligation to be charitable usually requires summing all of a person’s donations and comparing it to the person’s income. We almost never know the proportion of income that another person donates to charity. The lack of information has two consequences: First, we cannot discuss concrete cases as required in morality and law to make an obligation precise. So it’s no surprise that our charitable obligations remain vague and we are unsure about how much we ought to give to charity. Second, we cannot apply social sanctions to against uncharitable people. So it’s no surprise that many people like Al gore do not comply with their charitable obligations.

The problem can be restated in the language of economics. Decentralized information collection cannot support the evolutionary development of disjunctive

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<sup>5</sup> In the lower income brackets, most people take the standard deduction instead of itemizing their deductions. So those who do itemize are special people, specifically the small percentage of poor people who donate a large percentage of their income to charity.

<sup>6</sup> The phrase “imperfect obligation” is historically applied to acts that a person has an obligation to perform, but the beneficiary of the act does not have a right to the performance. A disjunctive obligation is imperfect.

obligations. There is an inherent failure in the “market for norms.” Overcoming this problem requires a mechanism to centralize information. Furthermore, I will explain that the creation of a good mechanism requires state action.

Experimental evidence is relevant to understanding this problem.<sup>7</sup> Behavioral economists and social psychologists have experimented with so-called “trust games.” The characteristic of a trust game is that a player who trusts others takes a risk. By trusting, the player wins if the other person is altruistic, and loses if the other person is selfish. To illustrate a typical trust game, the experimenter gives me a dollar and then says, “You can either keep the dollar or you can give it to this other person. If you give it to this other person, I am going to give the other person two more dollars and then the other person will decide how much to give back to you.” If the other person is altruistic, he returns the original dollar and more besides, whereas a selfish person keeps everything.

One of the characteristic results of trust games is that people are more altruistic than standard economic model of rational self-interest would predict. Indeed, those people who play the game based on the assumption that everyone else is strictly self-interested, as economists are inclined to do, get lower payoffs than those who place some trust in others. That is because people are in fact more altruistic than the classical economic model assumes, so the classical economists forms his strategy based on factually incorrect beliefs.

Another conclusion of these experiments is that information makes an enormous difference to what people do. If the games are played under conditions of perfect anonymity, where it is impossible to know anything about the identity of another player, a smaller proportion of players are altruistic than when they have some information about

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<sup>7</sup> Sugden, R. (1984). "Reciprocity: The Supply of Public Goods Through Voluntary Contributions." Economic Journal **94**: 772-987.

Hoffman, E. and M. Spitzer (1985). "Entitlements, Rights, and Fairness: An Experimental Examination of Subjects' Concepts of Distributive Justice." Journal of Legal Studies **14**: 259.

Rabin, M. (1993). "Incorporating Fairness into Game Theory and Economics." American Economic Review **83**: 1281-1302.

Fehr, E., A. Klein, et al. (2002). Fairness, Incentives and Contractual Incompleteness. The Law and Economics of Contracts, Law School, University of Virginia.

the identity of the other players. Charities act as if they understand this fact when they publish long lists of donors distinguished by the amount of their gift. For example, the back of the program at the Metropolitan Opera tells exactly how much the richest New Yorkers donated to it. However, no one has a way to find out the sum of anyone's donations across all charities, or the percentage of income donated. No one publishes the ratio of cash contributions to adjusted gross income for New York's wealthiest taxpayers, or for anyone else except a few politicians like Al Gore.

Another kind of evidence about charity comes from religious groups. The Judeo-Christian tradition recognizes the obligation to "tithe." Some religious organizations have ways to enforce this obligation. For example, Mormons who want to participate in special ceremonies of the church have to receive annual certification from their Bishop, which requires an interview. One of the questions in the interview is, "Have you paid your full tithe?" Mormons are also required to make the "fast offering," which consists of the money that they save from not eating two meals per month. The tithe provides Mormons with a definite standard of each person's fair share of charitable donations and the institutionalized church provides a mechanism of social enforcement.<sup>8</sup>

Although few religious groups are as successful as Mormons in this respect, religion still tends to exert a positive influence. Social surveys using interviews indicate that religious people are more likely to donate than secular people. According to a probit regression by Brooks on a large data set, a person who identifies himself as secular rather than religious is 23% less likely to have made a donation in the last year and 26% less likely to have "volunteered."<sup>9</sup>

Apparently the tradition of the tithe and its continuing enforcement by religious institutions influence charity among religious people. I would ideally replicate this

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<sup>8</sup> I am grateful to Paul Edwards for this information. For a statement on tithing among Mormons, see Holland, E. J. R. (2003). Like a Watered Garden. <http://www.lds.org/conference/talk/display/0,5232,23-1-225-13,00.html>. Basic Mormon teaching on tithing can be found in Gospel Principles: Chapter 32, Tithes and Offerings on the web at [http://www.lds.org/gospellibrary/materials/gospel/GospelPrin\\_Chapters/GospelPrin31110\\_37.pdf](http://www.lds.org/gospellibrary/materials/gospel/GospelPrin_Chapters/GospelPrin31110_37.pdf).

<sup>9</sup> Brooks, A. C. "Religious Faith and Charitable Giving." Policy Review October & November 2003: online: <http://www.policyreview.org/oct03/brooks.html>.

success at the civic level. An overlapping consensus among religious doctrines and ethical philosophies recognize charity as an obligation. We should generalize the obligation of charity to citizens. Every citizen who enjoys wealth ought to do his share to help less fortunate people.

The problem is to make the civic duty of charity precise and enforce it with social pressure. I propose proceeding in three steps. First, the organized charities of the United States should create a donation registry on the Internet with open access to the information that it contains.<sup>10</sup> At the same time, the organized charities should insist that politicians disclose their income and charitable contributions by disclosing their tax returns to the donation registry. Second, after the registry becomes accepted among politicians, the organized charities should pressure all public figures to disclose to the donation registry the ratio of their charitable contributions to adjusted gross income. They would not be expected to reveal their income or tax return. By “public figures,” I mean people who are examples for the rest of us, including politicians, administrators, business leaders, entertainers, and sports heroes.

These two steps should provoke discussions to clarify the appropriate level of charitable giving and social pressure for public figures to conform. In the long run, however, the big money for charity is in the middle class, which is numerous. To solve this problem, my third step is for the Internal Revenue Service to place an optional box on the tax form. If the box is checked, the IRS automatically transmits to the donation registry the taxpayer’s name and percentage donation (the ratio of deductible cash contributions to adjusted gross income). Once the information is in the donation registry, anyone could look at in. In this way we could start a discussion that would encompass all of us and bring social pressure on everyone who itemizes to be more generous. (Note that such a check box would solve the problem of verifying that public figures disclose accurate information.)

I will enumerate several of the donation registry’s advantages without discussing them. First, it should cause substantially more contributions to charity. Second, it will accomplish more redistribution by less coercive means than taxation. The donation

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<sup>10</sup> For two possible hosts of the donation registry, see <http://www.guidestar.org/> and <http://www.independentsector.org/>.

registry is less coercive than taxation because social pressure is less coercive than imprisonment. Also the state decides how to spend tax revenues, whereas the individual decides who should receive donations. With less coercion, the donation registry will avoid worsening the effects of high marginal tax rates on economic growth and employment. Third, charitable redistribution is almost certainly more efficient in its use of funds than state redistribution. Greater efficiency comes especially from the watchful scrutiny of donors, who withhold donations from inefficient charities.<sup>11</sup> (This fact suggests another attractive proposal: shifting redistributive effort from the state to non-governmental organizations by partially replacing the charitable deduction with a charitable tax credit.)

Besides these advantages, the donation registry has some disadvantage that I will mention without discussing. First, the welfare state makes poor people feel they have a right to redistributive benefits. Replacing state aid with charity might undermine the beneficiary's sense having a right to receive benefits. Some people will find this change undesirable, but I welcome it. Second, anonymous charity, which cannot produce any advantage for the donor, is the purest benevolence, so publicizing charity undermines its purity. I dismiss this objection because, compared to anonymous donors, public donors benefit society twice – directly through the use of the money and indirectly by setting an example. The demonstration that they did their fair share challenges the rest of us to do our share. Third, the donation registry publicizes facts that many people would prefer to keep private and stimulates social sanctions like gossip. While I believe that charity is a civic duty and publicizing the level of individual compliance is appropriate, many people will find my approach too aggressive and intrusive. For example, Europeans are much less aggressive than Americans about soliciting or publicizing charitable giving. In

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<sup>11</sup> A related but difficult question is whether a greater percentage of expenditures by charities go to redistribution, or whether a greater percentage of government expenditures go to redistribution. The government and charitable sectors both undertake many forms of expenditure that are not redistributive, or at least not redistributive to the poor. Much of the federal government's expenditures are on the military, its direct purpose has to do with the protection of the state and not redistribution. In addition many of the regulatory activities in the state benefit the rich and other undeserving groups. In this respect, private charities have a great advantage. The advantage arises from the fact that people have to pay their taxes, even when the taxes are redistributed to the rich, but no one donates to charities that take from the poor and give to the rich.

general, charitable giving has a much larger role in the United States than in other countries. In my view, disclosure of violations is essential to the effectiveness of any social norm, so this objection to the donation registry applies equally to any state action that triggers social sanctions. For example, the defendant who loses at trial would often prefer to keep the outcome quiet. Judges, however, do not hesitate to publicize the outcome of trials, and judges often provoke social sanctions by castigating the wrongdoer at the trial's end.

My proposal for a donation registry suffers from the usual weaknesses of bold proposals for social change: Without trial, error, and adjustment, we cannot be confident that it will have its intended effects. In order to arrive at the best mechanism to stimulate charity, different proposals must be tried and adjusted by experience. In this spirit, I mention some variations or alternatives to the donations registry that should be articulated and considered.

A mechanism that could supplement the donation registry has been proposed by Ayres and Nalebuff.<sup>12</sup> They propose that taxpayers who itemize their deductions should be required to compute the ratio of their charitable contributions to their income and enter the number on the tax form. The tax form would invite the taxpayer to compare the ratio of his or her charitable giving to averages provided by the Internal Revenue Service.

The Ayres and Nalebuff proposal could be strengthened further by having the Internal Revenue Service automatically send a private letter to each taxpayer comparing his donation to the donations of others.<sup>13</sup> The letter's aim is to challenge the taxpayer to commit to meeting the prevailing social norm. When used as a supplement to the donation registry, the challenge letter might be sent to everyone who did *not* check the box on his or her tax form and thus did *not* disclose his or her donation to the registry. A modified form of the challenge letter that simply describes social norms of charity could also be sent to taxpayers who do not itemize their deductions.

Another variation on the donation registry could apply to lawyers. The obligation of law firms and individual lawyers to provide pro bono services is widely recognized

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<sup>12</sup> Ayres, I. and B. Nalebuff (2003). Charity Begin At Schedule A. New York Times: 21.

<sup>13</sup> Seana Shiffrin suggested to me that the IRS might send a private letter to each taxpayer to encourage charitable donations.

and enforced in the United States through social pressure. Pro bono services by lawyers in the United States effectively substitute for legal aid provided by the state in other countries without the tradition of pro bono service. Pro bono services have advantages and disadvantages relative to state legal aid programs that I will not discuss here. My point, however, is that a centralized donation registry could be established for pro bono legal services. The registry would list the level of pro bono services provided by law firms and individual lawyers. Public access to the registry would stimulate discussions to define more clearly the charitable obligations of lawyers and enforce them.

Pro bono legal work is an example of a non-cash donation often referred to as “volunteering.” Beside cash contributions, the Internal Revenue Service allows the deduction of some non-cash donations to charities. The pro-bono registry is thus a non-cash donation registry, with values recorded in hours donated rather than dollars. We might call this variant the “volunteer registry.” Presumably there are many other possibilities for volunteer registries. For example, a volunteer registry might be created for doctors, teachers, therapists, etc.

Another potential problem with my proposals that needs attention concerns the definition of “charity.” In the United States, a non-profit organization can satisfy some easily met conditions and register as a charity for tax purposes. Registration as a charity permits contributors to deduct their donations from their taxable income. Consequently, the term “charity” in the United States tends to cover a heterogeneous class of organizations that satisfy the IRS criteria. Some people, however, will regard some charities as more relevant than others for social support. People who feel this way might want to make some adjustments in what counts as a donation for the donation registry. Indeed, people who disagree about this matter might want to establish separate registries with somewhat different criteria for a donation.

A useful distinction in the purpose of non-profit organizations is between cultural or religious purposes and income redistribution or relief of poverty.. Economists sometimes use the term “merit goods” to describe goods like opera, liberal education, basic scientific research, and various forms of artistic expression. Many people regard merit goods as undersupplied by the market and worthy of a subsidy by the state or private donations. Merit goods, however, are different from income redistribution. The

usual purpose of income redistribution is to increase equality and relieve poverty. Donations to increase equality and relieve poverty are what moralists usually mean by “charity.”

Some people will favor distinguishing donations for religion, merit goods, and redistribution in the donation registration. They will want the IRS to distinguish between non-profit organizations according to their general purposes. I would prefer to postpone the debate about such distinctions. My hope is that the donation registry will first be implemented in its simple form and later people can debate about refinements.

In his magisterial book Theory of Justice, Rawls advocated the difference principle, according to which the basic institutions in a just society maximize the material well being of its worst-off members. Our society, like every society, is unjust by this standard. Constructing a just political order does not simply involve calls for more and higher progressive taxation. Other mechanisms are required to circumvent the resistance of voters to high tax rates. I have discussed some possibilities – the donation registry, the challenge letter, and the volunteer’s registry.

A lot more intellectual work needs to be done on implementing redistributive measures. The general aim is to find mechanisms that increase the extent and efficiency of redistribution. The idea of efficient redistribution is usually measured by the ratio of the amount paid to recipients divided by the amount collected from contributors. Thus a charity that distributes 90 cents of every dollar contributed is more efficient than a charity that distributes 80 cents on every dollar contributed. Economists are experts on two policy values: efficiency and distribution. Consequently, economists are centrally placed to develop mechanisms of efficient redistribution.

Charities are probably more efficient redistributors than the state because donors monitor them. The fact that donors take an interest in how their money is spent causes charities to be careful about spending money. For this reason, the state is much more likely to waste money and effort. Against this advantage of charity stands an advantage of the state. Since charities collect donations, they have to spend a lot of time and effort soliciting them. Since government agencies receive taxes that are compulsory, they do not have to invest so much effort in obtaining funds. Thus expenditures favor the relative efficiency of charities and collection favor the relative efficiency of the state. Just as

much intellectual work has gone into finding ways to collect taxes with less distortion of economic behavior, so effort is needed to find more efficient ways for charities to collect contributions.

I have advocated creating a donation registry in order to reduce inequality and poverty. Philosophers may wonder whether such a mechanism pertains to political justice. The donation registry could be regarded as a requirement of justice or as unconcerned with justice. For example, justice presumably requires giving each person his due, whereas generosity concerns giving people more than their due. Although generosity is admirable, justice does not require it. Perhaps the donation registry implements generosity rather than justice.

In my opinion, the donation should be regarded as implementing justice while providing scope for generosity. In Rawls' view, political justice is a requirement of fairness. The purpose of the donation registry is to ensure that people know what is fair with respect to their redistributive effort and social pressures are brought to bear so that people do their fair share. Doing your fair share is a requirement of justice. Having done your fair share, you may wish to be generous and do more. So the donation registry implements justice while providing scope for generosity.

An important fact to note about the donation registry is that it does not rely on the state's coercive power to achieve fairness. Fairness may justify the use of the state's coercive powers, as in a civil trial, but fairness does not *require* the use of state power. When a superior means than coercion is available to achieve the ends of justice, it should be used. In my opinion, the invention and development of less coercive means of redistribution are essential to solving problems of distributive justice in a modern economy.

If the donation registry is necessary to implement an ideal of political justice such as the maximin or difference principle, then failure to implement it is an injustice. The potential beneficiaries of such a system could rightly complain about such an injustice. Once a donation registry is implemented, everyone can complain about those who do not do their fair share. However, these facts do not imply that the beneficiaries of charitable redistribution have a right to what they receive. Rather than having a right to what they receive, they have a right to live in a just society.

By the cash register in Moe's Bookstore in Berkeley there is a pile of books called Rules of Thumb. One of these rules of thumb is, "Up to 20 percent of your dinner guests can be economists without ruining the conversation." Most of the speakers at this conference are distinguished by their accomplishments, but I am distinguished by being the only economist. When philosophers in the tradition of Rawls choose a partner for a real conversation or hypothetical debate in writing, they often select a utilitarian. I wish that philosophers in law schools would notice that many of their colleagues are economists and few identify themselves as utilitarians. If philosophers would choose an economist instead of a utilitarian for dialogue, the conversation would be equally unpleasant and more productive.