

## CORPORATE AUTHORITY TO CONTRIBUTE TO CHARITY

By EMILIANO R. NAVARRO \*

All systems of law, like ours, recognize the right or capacity of a natural person to give away his property by way of donation. Whether this be based on his *jus disponendi* or the union in his case of juridical capacity and capacity to act<sup>1</sup> are questions hardly material. The right, as a question of policy, exists and is supported by unchallenged premises. True, the law sees fit to limit the exercise of this right, but such limitations as are imposed are based on the recognition of the right itself. Our law imposes limitations<sup>2</sup> founded on the social solicitude that the donor and his dependents be not impoverished or reduced to public charges and that his heirs should not, in effect, be disinherited. In trying to reconcile then the claims of competing interests, our law recognized the right but imposed limitations upon its exercise.

The unique relationships of the business corporation, however, forced the law to take a different course in this field, though, I must say, not necessarily the only course, nor, perhaps, the wisest. That the corporation is the owner of corporate assets, as much as the natural person is the owner of his property, is plain. But the claims of shareholders and creditors upon the corporate assets—in the one case, proprietary, and in the other, security—establish differences in kind, not simply in degree, from the claims of heirs, dependents, and society upon the property of the natural person. But that the business corporation is a profit-making institution, an idea not at all repulsive for it is the cornerstone of our present day capitalistic society, and this for the benefit of shareholders, seems to have had a great deal more to do with the shaping of the law than the bare proprietary claims of shareholders or the security of creditors.

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<sup>1</sup> Art. 37, Civil Code of the Philippines. See also 2 Sanchez Roman, pp. 112-113; 1 Navarro, *Persons and Family Relations*, 1949, pp. 14-15.

<sup>2</sup> The Civil Code of the Philippines provides as follows:

"Art. 750. The donation may comprehend all the present property of the donor, or part thereof, provided he reserves, in full ownership or in usufruct, sufficient means for the support of himself, and of all relatives who, at the time of the acceptance of the donation, are by law entitled to be supported by the donor. Without such reservation, the donation shall be reduced on petition of any persons affected.

"Art. 751. Donations cannot comprehend future property.

"By future property is understood anything which the donor cannot dispse of at the time of the donation.

"Art. 752. The provisions of article 750 notwithstanding, no person may give or receive, by way of donation, more than he may give or receive by will.

"The donation shall be inofficious in all that it may exceed this limitation."

The case law on corporations at this point, therefore, has developed around the central idea that a business corporation may do charity if it also trades at the same time or receives something in return. Consequently, the judicial treatment of corporations is completely different from the legal treatment of natural persons. For while in the case of the latter, the law starts by granting or recognizing the right, in the case of the former, the law begins by denying it. Let us examine the law to prove this observation.

The law is settled that without an enabling statute, a business corporation is without power to make pure gifts or donations of corporate assets.<sup>3</sup> The oft-quoted classic formulation of the doctrine was announced by Bowen, L. J., in *Hutton v. West Cork Ry. Co.*,<sup>4</sup> when he said: "Charity has no business to sit at boards of directors qua charity." This case involved the legality of setting aside a sum of money to compensate the managing director and other salaried officers of the West Cork Railway for the loss of their employment and in remuneration for the past services of the directors. The Company was in the winding-up process and the sum was taken from the purchase price of the corporate assets. The payment would thus redound to no benefit at all to the enterprise, which would have been different if it were still a going concern. As Bowen said in the same case: "The law does not say that there are to be no cakes and ale, but there are to be no cakes and ale except such are required for the benefit of the company." This has colored judicial thinking to the present day. If a natural person were involved, the law would allow him to donate up to a limit, varying, no doubt, with each individual, beyond which the law calls a halt. But in the case of a business corporation, the law sets no area of freedom, for no amount of donation to charity is allowable unless corporate advantage be gained. In effect, the law says to the corporation: "If you like to give to charity, then take care that you exact some flesh, though not necessarily a pound." Charity, in this sense, has no meaning. The reason for this attitude is most strongly expressed by Ostrander, Ch. J., in the Michigan case of *Dodge v. Ford Motor Co.*,<sup>5</sup> as follows: "A business corporation is organ-

<sup>3</sup> 6 Fletcher, *Cyclopedia of Corporations*, Permanent edition, sec. 2939, p. 1012; Ballantine on Corporations, 1946, sec. 85, p. 228; Stevens on Corporations, 1949, pp. 251-254. Davies, however, says: "Recently, however, there has been a growing tendency to regard such contributions as *intra vires*, even in the absence of statutory authorization and of direct pecuniary benefit to the corporation." 1 *Ohio Corporation Law*, 1942, p. 1117. The law is better stated by Stevens as follows: "When such contributions cannot be said to be proximately connected with the corporation's business, even as a method of attracting good will, they have been regarded as gifts and *ultra vires*." At p. 252.

<sup>4</sup> 23 Ch. D. 654, 673 (1883).

<sup>5</sup> 204 Mich. 459, 507. The case was for the purpose of compelling the Ford Motor Co. to declare dividends. The Company had at the time of suit an enormous amount of accumulated profits. Henry Ford, who dominated the Company, refused to declare more dividends than the Company was then giving on the ground of plans which were underway for expansion and thus distribute the benefits of the enterprise to a great number of people. The court frowned at this motive and insisted that the

ized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end and does not extend to a change in the end itself, to the reduction of or to the nondistribution of profits among stockholders in order to devote them to other purposes." That this view was shared by others not on the bench is demonstrable. In discussing various phases of corporate powers, Berle advanced the thesis that "all powers granted to a corporation or to the management of a corporation or to any group within the corporation, whether derived from statute or charter or both, are necessarily and at all times exercisable only for the ratable benefit of all the shareholders as their interest appears."<sup>6</sup> If we commit ourselves to the ancient doctrine that a corporation has neither soul nor conscience, we cannot be any more consistent. While it is, indeed, true that donations to charities by business corporations have been upheld by various courts, they were sustained on the basis of some benefits accruing to the corporations.<sup>7</sup> Various phrases were used to determine the benefits to the corporations as that they must be "direct and proximate"<sup>8</sup> or that they be "reasonably tributary" to the promotion of corporate ends.<sup>9</sup> It is likewise true that from the very strict view of *Davies v. Old Colony Railroad*,<sup>10</sup> courts have gravitated to a liberal view now tending, more and more, to uphold corporate donations to charities. It is this trend which *Davies* noted, but warrants no conclusion that donations without some corresponding corporate advantage are valid.<sup>11</sup> Corporate benefit, not simple char-

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"difference between an incidental humanitarian expenditure of corporate funds for the benefit of the employees, like the building of a hospital for their use and the employment of agencies for the betterment of their condition, and a general purpose and plan to benefit mankind at the expense of others, is obvious." At pp. 506-507. See *Dodd, "For Whom Are Corporate Managers Trustees?"* 45 *Harvard Law Review*, 1145, 1146, note 3, indirectly criticizing this case.

<sup>6</sup> "Corporate Powers As Powers In Trust," 44 *Harvard Law Review*, 1049.

<sup>7</sup> 6 *Fletcher, supra*, sec. 2938, pp. 1010-1011; *Ballantine on Corporations*, p. 229; annotations in 3 A. L. R. 443; notes in 31 *Columbia Law Review*, 136; 34 *Harvard Law Review*, 555.

<sup>8</sup> *Vandall v. South San Francisco Dock Co.*, 40 Cal. 83, 91.

<sup>9</sup> *Steinway v. Steinway & Sons*, 17 Misc. 43, 47, 40 N. Y. Supp. 718, 720.

<sup>10</sup> 131 Mass. 258. The court refused to enforce the undertaking of the Old Colony Railroad to answer, with others, for the deficit of the World's Peace Jubilee and International Musical Festival. The Railroad was motivated by the idea of profiting from the Jubilee by the increase of passengers. The undertaking was declared *ultra vires*. That this case represents the strict view, see 34 *Harvard Law Review, supra*, p. 556. It is said that this case may now be decided otherwise, 31 *Columbia Law Review, supra*, p. 142.

<sup>11</sup> *Derr v. Fisher*, 22 Okla. 126; *Heinz v. National Bank of Commerce*, 237 Fed. 942. See also 6 *Fletcher, supra*, sec. 2938, pp. 1010-1011; *Ballantine on Corporations*, p. 229; *Stevens on Corporations*, pp. 251-252. "The present tendency is to take a liberal view of what gifts may reasonably be thought by the directors to be for the financial benefit of the corporation." *Dodd, supra*, p. 1158, note 33. "The field of corporate action in respect to the exercise of incidental powers is thus, I think, an expanding one. As industrial conditions change, business methods must change with

ity, is still the yardstick by which the exercise of power is measured. The test remains, although the very subjectivism of the phrases used to determine its existence allow for expanding judicial application.<sup>12</sup> And no case seems to have countenanced a purely charitable gift by a business corporation, i. e., without expectation of corporate advantage. While the case of *State ex rel. Sorensen v. Chicago, B. & Q. R. Co.*<sup>13</sup> has been cited<sup>14</sup> as holding to this effect, the facts of the case do not warrant this conclusion. It involved the constitutionality of a law that permitted free passes or reduced transportation fare to ministers of the gospel and persons engaged in eleemosynary and charitable work. The court did use words which on their face justify the conclusion, but the setting of the case, the fact that the practice was permitted by statute which was upheld, and that no shareholder or creditor intervened to complain against the corporate practice, all show the observation to be rather extravagant.<sup>15</sup> There are also cases, especially dealing on taxation, wherein courts sustained unqualifiedly what clearly appeared to be pure donations. But they will, on examination, be found to have involved facts where the stockholders, one way or the other, had authorized the donations and no one, except the tax collectors, complained.<sup>16</sup>

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them, and acts become permissible which, at an earlier period, would not have been considered to be within corporate power." *Steinway v. Steinway & Sons, supra*, p. 720. A collection of cases are found in 3 A. L. R. 443; 31 *Columbia Law Review*, 136; 1 *Dodd and Baker, Cases on Business Associations*, 1940, pp. 369-370. See also notes in 34 *Harvard Law Review*, 555; 52 *Harvard Law Review*, 538.

<sup>12</sup> What is "proximate and direct" or "reasonably tributary" must, of course, depend upon the circumstances of each case. It is idle to cite instances of specific applications of the rule. "I am aware that, in some cases, it may be difficult to define accurately the point at which the benefit to be derived from a proposed work would cease to be direct and proximate, and would become so remote as not to fall within the rule. But it is impossible to lay down an inflexible rule to govern such cases, and each case must be determined on its own circumstances." *Vandall case, supra*, at p. 91.

<sup>13</sup> 112 Neb. 249.

<sup>14</sup> 52 *Harvard Law Review*, 538, 539. See also 1 *Davies, Ohio Corporation Law*, 1942, p. 1117.

<sup>15</sup> "Again, we see no reason why if a railroad company desires to foster, encourage and contribute to a charitable enterprise, or to one designed for the public weal and welfare, it may not do so . . . We see no reason why a railroad corporation may not, to a reasonable extent, donate funds or services to aid in good works." At pp. 255-256.

<sup>16</sup> "Undoubtedly, the fund from which the money received by the plaintiff came belonged to the stockholders of the corporation, and undoubtedly, also, the directors of the corporation are not the agents of the stockholders for the purpose of divesting the corporation of any of its property, except in the ordinary course of the business of the corporation, and therefore an appropriation of the funds of the company as a gift, by act of the directors without the consent of the stockholders, would ordinarily be a misappropriation—certainly an act beyond the corporate powers of the directors, and for which in most cases they would be personally liable at the suit of the corporation or a stockholder of the corporation.

Corporate obligation to the welfare of society or the conception of the corporation as an economic and social institution, now coming to be generally recognized,<sup>17</sup> has not yet been translated into judicial action so as to recognize the validity of purely corporate charitable gifts against the attacks of shareholders or creditors. This idea of public responsibility was expressed in 1932 by Professor Dodd as follows:

“...public opinion, which ultimately makes law, has made and is today making substantial strides in the direction of a view of the business corporation as an economic institution which has a social service as well as a profit-making function, that this view has already had some effect upon legal theory, and that it is likely to have a greatly increased effect upon the latter in the future.”<sup>18</sup>

Many business men have advocated social responsibility of business corporations.<sup>19</sup> This is important if business corporations and capitalistic society are to survive. Selfishness may be a basic human trait, but it must at least be enlightened, or it destroys itself. This orientation developed during the depression of the thirties and is today becoming established, if not by judicial decisions, by legislation. The inability of business corporations to contribute to purely charitable purposes may not only impair their public patronage, but may create an unfavorable reaction against private enterprise. In

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“On the other hand, it is undoubtedly true that the stockholders of a private corporation may, by unanimous agreement, where the rights of creditors are not involved, and where the proposed act will not impair their obligations to the state of their creation, dispose of the corporate assets without restriction, and an appropriation by them, with or without consideration, would neither be outside the powers of the corporation itself nor forbidden by positive law or public policy.” Parrott v. Noel, 8 Fed. (2d) 368, 371.

<sup>17</sup> See Dodd, “For Whom Are Corporate Managers Trustees?” 45 *Harvard Law Review*, 1145; Husband and Dockeray, *Modern Corporation Finance*, 1948, pp. 662-667; Drucker, *Concept of the Corporation*, 1946, pp. 1-19. “In the ideal society even a Simon Legree, whatever the blackness of his heart, cannot but help to promote social ends either because it is to his interest to do so or because he is so integrated into society as to be able to act only in the interest of society.” Drucker, *supra*, p. 17. Speaking of modern legislation, Stevens said: “There has been a growing appreciation of society’s interest in business enterprises and an increasing insistence upon the obligations which those who conduct those enterprises owe to society. This tendency has been dramatically emphasized by the federal and state legislation of 1933. As business is chiefly conducted through the medium of corporations, it is the corporation, its shareholders, directors, and officers, who are being made to realize their social obligations to employees and customers. Consistent with this development is the changing attitude toward corporate contributions to charities . . . In times when so much wealth is concentrated in the hands of incorporated associations, it is clearly in the public interest to permit such associations to make contributions to charity.” Stevens on Corporations, 1949, p. 252.

<sup>18</sup> *Ibid.*, p. 1148.

<sup>19</sup> T.N.E.C. Monograph No. 11, *Bureaucracy and Trusteeship in Large Corporation*, Washington: Government Printing Office, 1940, p. 120. Many Filipino businessmen have expressed the same view.

the last analysis, corporate donations, unless amounting to piracy of the corporate treasury, rebound to the benefit of the corporation, the shareholder, the creditor, and the public. And since courts are notoriously conservative and show a tenacious resistance to revise completely their obsolete views of public policy, it has become necessary to legislate on the subject and thus vest the corporation with unquestioned authority.<sup>20</sup>

<sup>20</sup> The American state laws are hereunder reproduced:

California.—Among the powers of a corporation granted by the law is to "(g) Make donations for the public welfare or for charitable, scientific, or educational purposes." Sec. 802, Corporations Code, as amended by ch. 997, L. 1949, effective Nov. 1, 1949.

Colorado.—"Sec. 1. It is hereby declared to be the public policy of the State of Colorado that contributions to community funds and to charitable, philanthropic, benevolent, religious, scientific or educational instrumentalities, are valid and constitute a proper use of corporate funds. It is further declared that the making of such contributions by corporations is within their powers and inures to the benefit of such corporations.

"Sec. 2. It shall be lawful for any corporation created or existing under the laws of this state to contribute to community funds or to charitable, philanthropic, benevolent, religious, scientific or educational instrumentalities such sums as its Board of Directors or Trustees may deem proper.

"Sec. 3. The provisions of the next preceding Section 2 shall not be construed as invalidating any such contribution heretofore made by any corporation of this state, and all such contributions made by corporations of this state prior to the enactment hereof shall be valid as if made after the effective date hereof.

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"Sec. 5. The General Assembly hereby finds, determines, and declares that this Act is necessary for the immediate preservation of the public peace, health and safety." S.B. 523, ch. 161, L. 1947, effective Feb. 24, 1947.

Delaware.—"9. To cooperate with other corporations and with natural persons in the creation and maintenance of community funds or of charitable, philanthropic, benevolent or patriotic instrumentalities conducive to public welfare, and its directors or trustees may appropriate and expend for those purposes such sum or sums as they deem expedient and as in their judgment will benefit or contribute to the protection of the corporate interests." Sec. 2, Revised Code of Delaware, 1935, ch. 65.

Illinois.—"(m) To make donations for the public welfare or for charitable, scientific, religious or educational purposes; and in time of war to lend money to the State or Federal Government for war purposes, transact any lawful business in aid of the United States in the prosecution of war, and make donations to associations and organizations aiding in war activities." Sec. 5. The Business Corporation Act, as amended by H. B. 652, L. 1949.

Maryland.—"(6) . . . and, unless otherwise provided in its charter or by-laws, to make reasonable gifts or contributions out of profits, when authorized by its board of directors so to do, to or for the use of (1) this State, its institutions and agencies, or any political subdivision of this State, or (2) any corporation, or trust, or community fund, or foundation, or society or organization for religious, charitable, scientific, civic, literary or educational purposes . . ." Sec. 8, General Corporation Law, The Annotated Code of the Public General Laws of Maryland, 1939, L. 1945.

Massachusetts.—"Every corporation may, by vote of its directors, or of its officers having the powers of directors, contribute such sum or sums of money as said directors or officers may determine to be reasonable to any general fund being raised by a relief

committee or agency approved by the commissioner of public welfare, as evidenced by a writing filed in his office, and formed for the purpose of raising money to be used for the betterment of social and economic conditions in any community in which such corporation is doing business. Nothing in this section shall be construed as directly or indirectly restricting or otherwise affecting, except as herein provided, the rights and powers of any corporation with reference to payments of the nature above specified." Sec. 124, as enacted by ch. 164, L. 1938, General Corporation Law.

Michigan.—Among the powers granted to a corporation is "k. to make contributions for public welfare." Sec. 150.10, General Corporation Act, Public Acts, 1931, No. 327.

Missouri.—"(o) To make contributions to any corporation organized for civic, charitable or benevolent purposes, or to any incorporated or unincorporated association, community chest or community fund, operated for the purpose of raising funds for and of distributing funds to other civic, charitable or benevolent organizations or agencies." Sec. 4, General and Business Corporation Act, 1943.

New Jersey.—"Any corporation, organized under any laws of this State whatsoever, may cooperate with other corporations and with natural persons in the creation and maintenance of community funds or of charitable, philanthropic or benevolent instrumentalities conducive to public welfare, and its directors or trustees may appropriate and expend for those purposes such sum or sums as they deem expedient and as in their judgment will contribute to the protection of the corporate interests.

"When, however, in case of a corporation having capital stock, the expenditures for those purposes in any calendar year shall in the aggregate amount to one *per centum* of the capital and surplus as of the end of the preceding year, then before any further expenditure is made during the year for those purposes by the corporation, ten days' notice shall be given to the stockholders in the manner the directors or trustees direct, of the intention to make the further expenditure, specifying the amount thereof, and if written objections be made by the stockholders holding twenty-five *per centum* or more of the stock of the corporation the further expenditure shall not be made until it has been authorized at a stockholders' meeting." Sec. 14: 5-13, General Corporation Law, Revised Statutes, 1937, as amended by ch. 171, P. L. 1949.

New York.—"Every corporation organized under the laws of this state and doing business or operating in this state shall have power to cooperate with other corporations and with natural persons in the creation and maintenance of instrumentalities conducive to, or to subscribe to and make payments as a proper part of the expense of its business of funds for, the betterment of the social and economic conditions in any community or communities in which such corporation may in their discretion expend such reasonable sums as they may deem expedient, provided, however, that the provisions of this section shall not be construed as directly or indirectly minimizing or interpreting the rights and powers of corporations, as heretofore existing, with reference to subscriptions and payments of the nature above specified. However, no part of any funds hereafter subscribed or paid by any public utility company subject to the jurisdiction of the department of public service for any of the purposes of or pursuant to the authorization of this section shall be deemed a part of the expenses of the operation of the business of such company or properly chargeable to such expense and no such company shall charge any such funds to or credit the same against its operating expenses account or any other account which is directly or indirectly considered for rate-making purposes." Sec. 34, General Corporation Law, as enacted by ch. 343, Laws of 1941.

North Carolina.—"12. To make contributions or gifts to corporations, trusts, community chests, funds, foundations, or associations organized and operated exclu-

sively for religious, charitable, literary, scientific, or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, when such contributions or gifts are authorized or approved by its board of directors; Provided, that such contributions or gifts during any income year of the corporation do not exceed five per centum of its net income as computed under Article four, Schedule D, of Chapter one hundred five, of the General Statutes, disregarding for such purpose the aggregate amount of such contributions or gifts; Provided further, that the assets of the corporation exceed its liabilities immediately after any such contribution or gift is made." Sec. 55-26, General Corporation Law, North Carolina Code, 1943, as amended by L. 1945.

Ohio.—"Any corporation may cooperate with other corporations and with natural persons in the creation and maintenance of funds or credits for aiding community growth or development or for aiding charitable, philanthropic or benevolent instrumentalities, conducive to public welfare, and its directors may appropriate and expend or obligate the corporation to pay or pledge its credit for such purpose or purposes, such sum or sums as they may deem expedient and as, in their judgment, will contribute to the protection or advancement of the corporate interests, provided that whenever the expenditures for such purposes in any calendar year shall be equal in aggregate amount to one per centum of the capital and surplus of the corporation, then, before any further expenditure is made or obligation is incurred during such year for such purposes by the corporation, ten days' notice shall be given to the shareholders in such manner as the directors may specify of the intention to make such further expenditure or to incur such further obligation, specifying the amount thereof, and if written objection be made by shareholders holding twenty-five per centum or more of the total number of voting shares of the corporation, such further expenditure shall not be made nor shall such further obligation be incurred until it shall have been authorized at a shareholders' meeting." Sec. 8623-119, General Corporation Act, 1927, as amended by S. B. 179, L. 1945, effective July 20, 1945.

Oklahoma.—"(11) And, notwithstanding any other provisions of this Act, to cooperate with other corporations and organizations and with natural persons in the creation and maintenance of community funds or of charitable, philanthropic, benevolent, educational, patriotic or civic instrumentalities conducive to public welfare; or of boards of trade, chambers of commerce, and commercial clubs . . ." Sec. 19, Business Corporation Act, 1947, as amended by H. B. 368, L. 1949, effective May 31, 1949.

Pennsylvania.—"(16) To make contributions to or for the use or benefit of

"(a) The United States, any state, territory, or any political subdivision thereof, or the District of Columbia or any possession of the United States for exclusively public purposes, or

"(b) A corporation, trust or community chest fund, or foundation created or organized in the United States or in any possession thereof, or under the laws of the United States or of any State or territory, of the District of Columbia, or of any possession of the United States and organized and operated exclusively for religious, charitable, scientific, veteran rehabilitation service, literary or educational purposes, or for the prevention of cruelty to children, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation to the extent authorized, approved or ratified by action of the board of directors of the corporation except as otherwise specifically provided or limited by its articles of incorporation or its by-laws or by resolution duly adopted by its shareholders. All

The statutes quoted in the footnote have, indeed, gone a long way to change the law on this point. They have placed corporate law on the same basis as the law affecting natural persons. They

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contributions made heretofore by authority of the board of directors of the corporation for the purposes prescribed by this act are hereby ratified and confirmed." Sec. 302, Business Corporation Law, Act No. 106, L. 1933, as amended by Act No. 124, L. 1947, effective May 23, 1947.

Tennessee.—"Any corporation organized or created under the laws of this State is empowered in the discretion of its board of directors to make gifts, donations or contributions for charitable purposes or to charitable enterprises and undertakings; provided, however, that such gifts or contributions shall be made out of the earnings of such corporations, and shall be charged to operating expenses. This Section shall apply to corporations chartered by special legislative action prior to the Constitution of 1870 except in the case of a corporation with special legislative charter which contains provisions forbidding or limiting the exercise of power hereby granted." Sec. 4085, General Corporation Law, Annotated Code, 1934, as amended by ch. 88, P. A. 1943, effective Feb. 10, 1943.

Texas.—"No corporation, domestic, or foreign, doing business in this State, shall employ or use its stock, means, assets or other property, directly or indirectly, for any purpose whatever other than to accomplish the legitimate business of its creation, or those purposes otherwise permitted by law; provided that nothing in this Article shall be held to inhibit corporations from contributing to any bona fide association, incorporated, organized for purely religious, charitable or eleemosynary activities, or to commercial or industrial clubs or associations or other civic enterprises or organizations not in any manner nor to any extent directly or indirectly engaged in furthering the cause of any political party, or aiding in the election or defeat of any candidate for office, or aiding in defraying the expenses of any candidate for office, or defraying or aiding in defraying the expenses of any political campaign, or political headquarters, or aiding or assisting to success or defeat of any question to be voted upon by the qualified voters of this State or any subdivision thereof." Art. 1349, General Corporation Law, Revised Civil Statutes, 1925, as amended by H. B. 410, L. 1943, effective May 10, 1943.

West Virginia.—"Any corporation created or existing under the laws of the State is hereby authorized by action of its board of directors to make contributions to or for the benefit of: The United States, any state, territory, or any political subdivision thereof or the District of Columbia, or any possession of the United States, for exclusively public purposes; or a corporation, trust, or community chest, fund, or foundation, created or organized in the United States, or in any possession thereof, or under the laws of the United States, or of any state or territory or of the District of Columbia or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, veterans rehabilitation service, literary or educational purposes, or for the prevention of cruelty to children, no part of the earnings of which inures to the benefit of any private shareholders or individuals, and no substantial part of the activities of which is carrying on propaganda, or otherwise, attempting to influence legislation; or posts or organizations of war veterans, or auxiliary units of, or trusts or foundations for any such posts or organizations, if each posts, organizations, units, trusts, or foundations are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual. All contributions made heretofore by authority of the board of directors of the corporation for the purposes prescribed by this act are hereby ratified and confirmed." Sec. 3015, par. 2, General Corporation Law, West Virginia Code, 1943, as amended by H. B. 209, L. 1949.

recognized unqualifiedly the right of a business corporation to be charitable, without requiring corresponding corporate advantage. The limitations established by some of the statutes upon the exercise of the right are justified by the composite relationships of the business corporation and are, moreover, a recognition of the right itself. It is true that some of the statutes, as those of Delaware, New Jersey, and Ohio, still mention benefit to or protection of corporate interests. But it seems unquestionable that, as in Colorado, charitable contributions shall be considered as conducing to the benefit of the corporation. The business corporation is so identified with the social and economic life of capitalistic society that what affects public welfare affects it as much as the individual. Indeed, it may be seriously asked whether the failure of the business corporation to answer insistent public needs may not have been one of the most important causes of our modern swing to government regulations. If business enterprise shirks its public obligation, the government must step in to fill the need. But the government can do this only by imposing crushing burdens of taxation and the whittling away of traditional individual freedom. The recognition of corporate authority to do charity is a force that tends the other way.<sup>21</sup>

It is interesting to note that we are not behind in this legal development. Our income tax law,<sup>22</sup> modelled after the United States Revenue Act of 1938,<sup>23</sup> impliedly recognizes<sup>24</sup> the power of Philippine business corporations to contribute to charity. This is a newly conferred power, only as of 1939, when the National Internal Revenue Code became effective. Section 30 (h) of the law allows deductions of:

"Contributions or gifts actually paid or made within the taxable year to or for the use of the Government of the Philippines or any political subdivision thereof for exclusively public purposes, or to domestic corporations or associations organized and operated exclusively for religious, charitable, scientific, athletic, cultural or educational purposes, or to societies for the prevention of cruelty to children or animals, no part of the net income of which is distributed to any private stockholder or individual to an amount not in excess of six per centum in the

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<sup>21</sup> "In times when so much wealth is concentrated in the hands of incorporated associations, it is clearly in the public interest to permit such associations to make contributions to charity. Many states have kept pace with the changing view by enacting statutory provisions, the effect of which is to make charitable gifts within the scope of corporate authority." Stevens on Corporations, 1949, pp. 252-253.

<sup>22</sup> Title II, C. A. No. 466.

<sup>23</sup> Sec. 23 (q), 26 U. S. C. A., Sec. 23 (q), Supp. 1938, as amended by Act of June 29, 1939, c. 247, 53 Stat. 867. See 1 Dalupan, *National Internal Revenue Code Annotated*, 1946, p. 25.

<sup>24</sup> It is a fair inference and opinion to this effect is advanced in the case of the United States Revenue Act of 1938. "Congress' recent extension to corporations of the right to deduct charitable contributions from gross income seems to be a tacit recognition of the growing tendency to regard such donations as *intra vires*." 52 *Harvard Law Review*, 538.

case of an individual, and three per centum in the case of a corporation, of the taxpayer's taxable net income as computed without the benefit of this paragraph. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Secretary of Finance."<sup>25</sup>

Some perplexing problems of interpretation are bound to arise under above statutory provision. For instance, are contributions beyond the limit fixed by the statute *intra vires* or not? Are corporations authorized to make contributions out of capital although the remaining assets exceed the amount of total indebtedness? Does the statute limit valid charitable contributions to net income? These are, perhaps, only the most obvious questions that may crop up and there may certainly be others of equal importance that may be raised. The uncertainty results from there being no corresponding provision in the Corporation Law, vesting the power and defining its limits. The clear-cut provisions of the American state laws are much to be desired under our law. The enactment of such a law is not now difficult since we have already impliedly recognized the authority in the National Internal Revenue Code.

In enacting such a provision, a few points should be considered. The grant of unlimited authority to the corporation to contribute to charity may be used as a screen by scheming directors and officers to plunder the corporate treasury. A distribution of corporate assets may be effected under the guise of contributing to charity. The general provision prohibiting this act, usually found in statutes and embodied in our law,<sup>26</sup> may afford remedial action to aggrieved shareholders and creditors. But the remedy thus afforded may be less effectual than if the statute itself prescribed the limitations on the exercise of power. And although the officers and directors may have been inspired by honest motives in making charitable contri-

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<sup>25</sup> This provision is quite identical with sec. 23(q) of the United States Revenue Act of 1938. It provides: "In the case of a corporation, contributions or gifts payment of which is made within the taxable year to or for the use of a corporation, trust, or community chest, fund, or foundation, created or organized in the United States or in any possession thereof or under the law of the United States, or of any State or Territory, or of the District of Columbia, or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children (but in the case of contributions or gifts to a trust, chest, fund, or foundation, only if such contributions or gifts are to be used within the United States or any of its possessions exclusively for such purposes), no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; to an amount which does not exceed 5 per centum of the taxpayer's net income as computed without the benefit of this subsection. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary."

<sup>26</sup> "No corporation shall . . . divide or distribute its capital stock or property other than actual profits among its members or stockholders until after the payment of its debts and the termination of its existence by limitation or lawful dissolution . . ." Sec. 16, par. 3, Act No. 1459.

butions, it is perhaps best that the statute prescribe checks upon a possible excess of generous feelings that may seriously affect the interests of shareholders and creditors. Thus it may be seen that the limitation found in our income tax law, the United States Revenue Act of 1938, the laws of North Carolina, Pennsylvania, and West Virginia, that the organization to which contribution is made should be one in which no part of its earnings inures to the benefit of any private shareholder or individual, is a wise provision. A similarly good provision would be one prescribing the source and the amount of the contribution. So the North Carolina law provides that the contribution must not exceed five per centum of the net income for any one year, provided that the remaining assets, after the contribution, exceed the liabilities immediately after making the contribution. The New Jersey and Ohio laws leave the amount to management, provided that if the amount exceeds one per centum of the capital and surplus, no further contribution shall be made until after the shareholders are given the opportunity to object and, if needed, to vote on the proposed action. The Tennessee law leaves the amount to the discretion of the board of directors, provided taken from corporate earnings and charged to operating expenses. It is submitted that a general grant of power, without more, as is the case with some of the statutes, is less appropriate.

Aug. 31, 1951.