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Social Technology & the Origins of Popular Philanthropy

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SOCIAL TECHNOLOGY & THE ORIGINS OF POPULAR PHILANTHROPY

Brian L. Frye*

ABSTRACT

The prevailing theory of charity law holds that the charitable contribution deduction is justified because it solves market and government failures in charitable goods by compensating for free riding on charitable contributions. This Article argues that many market and government failures in charitable goods are actually caused by transaction costs, and that social technology can solve those market and government failures by reducing transaction costs. Specifically, it shows that in the early twentieth century, the social technology of charity chain letters solved market and government failures in charitable contributions and facilitated the emergence of popular philanthropy.

INTRODUCTION

On September 6, 1901, Leon Czolgosz assassinated President William McKinley.¹ Later that month, a group of McKinley's friends formed the McKinley National Memorial Association and launched an international fundraising campaign to build a monument to McKinley.² The campaign soon raised more than \$500,000 and

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1. *This Day in History, Sep. 06, 1901: President William McKinley is Shot*, HISTORY.COM, <http://www.history.com/this-day-in-history/president-william-mckinley-is-shot> (last visited Feb. 5, 2016).

2. *McKinley Memorial (Canton, Ohio)*, WILLIAM MCKINLEY PRESIDENTIAL LIBR. & MUSEUM, <http://mckinleymuseum.org/mckinley-memorial/> (last visited Feb. 5, 2016).

enabled the Association to build the McKinley National Memorial in Canton, Ohio, which was dedicated in 1907.³

At the same time, an unknown number of people used charity chain letters to launch their own independent fundraising campaigns for the McKinley Memorial.⁴ The chain letters asked recipients to send a few cents to the McKinley National Memorial Association and to continue the chain.⁵ They were remarkably successful, raising money from hundreds of thousands of donors.⁶

Popular or “mass” philanthropy is public participation in national charitable activity.⁷ The prevailing view of popular philanthropy holds that it emerged in the early twentieth century in response to a new “culture of giving” created by national fundraising campaigns.⁸ This Article shows that members of the general public simultaneously created independent fundraising campaigns using charity chain letters and suggests that social technology, rather than ideology, may have provided the catalyst for the emergence of popular philanthropy. It argues that national fundraising campaigns and charity chain letters were social technologies that enabled the public to solve “charity failures” and engage in public philanthropy by reducing transaction costs. Finally, the Article also observes that modern social technologies like crowdfunding use similar methods to accomplish the same goal.

3. *McKinley Fund Now \$500,000: Memorial Association Will Ask Department Stores to Aid in the Collection of \$100,000 More*, N.Y. TIMES, Feb. 15, 1903, at 14.

4. Letter from F. P. Cooper to T. G. Tueken, PAPER CHAIN LETTER ARCHIVE (Dec. 15, 1901), http://www.silcom.com/~barnowl/chain-letter/archive/ce1901-12-15_mckinley_sdq3.htm.

5. *Id.*

6. See Letter from William R. Day to Alexander H. Revell (Jan. 14, 1905) (on file with author), for an example of a chain letter used to raise money for the McKinley National Memorial Association.

7. See OLIVIER ZUNZ, PHILANTHROPY IN AMERICA: A HISTORY 44–46 (2012) [hereinafter ZUNZ, PHILANTHROPY IN AMERICA]; see also Olivier Zunz, *Mass Philanthropy as Public Thrift for an Age of Consumption*, in THRIFT AND THRIVING IN AMERICA: CAPITALISM AND MORAL ORDER FROM THE PURITANS TO THE PRESENT 335, 337 (Joshua Yates & James Davison Hunter eds., 2011) [hereinafter Zunz, *Mass Philanthropy*].

8. ZUNZ, PHILANTHROPY IN AMERICA, *supra* note 7, at 44 (“One requirement for effective mass giving was the creation of a culture of giving, where making contributions in response to mass appeals would become routine.”).

I. CHARITY LAW, CHARITY FAILURES & SOCIAL TECHNOLOGY

The prevailing theory of charity law is the economic subsidy theory, which holds that charitable contribution deduction is justified because it solves market and government failures in charitable goods.⁹ “Market failures” are inefficiencies in the market’s allocation of a good, and “government failures” are inefficiencies in the government’s allocation of a good.¹⁰

“Public goods” are goods that are non-rivalrous and non-excludable.¹¹ In other words, consumption does not reduce supply and cannot be prevented.¹² Public goods are vulnerable to market failures caused by “free riding,” or consumption for less than the marginal cost of production.¹³ Producers tend to undersupply public goods because they cannot recover the marginal cost of production.¹⁴

“Charitable goods” are goods that are provided altruistically by individuals or organizations.¹⁵ Some charitable goods are literally public goods. For example, public art is essentially non-rivalrous and non-excludable.¹⁶ Other charitable goods resemble public goods because they are ideally available to anyone in need.¹⁷ For example, food banks ideally provide an adequate quantity of food to all comers.¹⁸ Moreover, consumers of charitable goods generally do not pay or cannot pay the marginal cost of production.¹⁹ As a consequence, charitable goods often resemble public goods, and are typically also vulnerable to market failures caused by free riding.

9. Brian Galle, *Keep Charity Charitable*, 88 TEX. L. REV. 1213, 1215 (2010) (“Modern commentators view the deduction for charitable contributions as a federal subsidy to the recipient firms and argue that the subsidy is justified as a tool for encouraging the production of goods that would otherwise be underproduced by the private market.”).

10. CLIFFORD WINSTON, *GOVERNMENT FAILURE VERSUS MARKET FAILURE: MICROECONOMICS POLICY RESEARCH AND GOVERNMENT PERFORMANCE* 2–3 (2006).

11. *Id.* at 61.

12. *Id.*

13. See Brian L. Frye, *Solving Charity Failures*, 93 OR. L. REV. 155, 164 (2014).

14. See WINSTON, *supra* note 10, at 61.

15. See Frye, *supra* note 13, at 168.

16. *Id.* at 165.

17. *Id.*

18. See *id.*

19. *Id.* at 164.

Government can solve market failures in charitable goods by directly subsidizing them.²⁰ However, direct subsidies are vulnerable to government failures caused by politics and other transaction costs.²¹ For example, governments tend to directly subsidize charitable goods demanded by political majorities, but tend not to directly subsidize charitable goods demanded by political minorities.²² This is essentially a form of information cost, as politics is a means by which the government gathers information about public demand.²³ Governments may also incur other information costs in determining which charitable goods to directly subsidize.²⁴ For example, governments may find it difficult to determine which subsidies will produce the largest public benefit.²⁵

The public can solve market and government failures in charitable goods by providing charitable contributions.²⁶ However, altruism is vulnerable to market failures caused by free riding and transaction costs.²⁷ Altruism is vulnerable to free riding on charitable contributions because donors cannot consume the public benefit created by their donation.²⁸ But altruism is also vulnerable to transaction costs because donors must internalize both the cost of a charitable contribution and any transaction costs associated with that contribution.²⁹

The economic subsidy theory of charity law provides that the charitable contribution deduction is justified because it solves market and government failures in charitable goods by indirectly subsidizing charitable contributions.³⁰ The charitable contribution deduction

20. *Id.*

21. *See* Frye, *supra* note 13, at 167.

22. *Id.* at 165.

23. *See id.*

24. *Id.* at 166.

25. Thomas Kelley, *Rediscovering Vulgar Charity: A Historical Analysis of America's Tangled Nonprofit Law*, 73 *FORDHAM L. REV.* 2437, 2488 (2005).

26. *See* Frye, *supra* note 13, at 162, 166.

27. *Id.* at 158.

28. *Id.* at 166.

29. *Id.* at 182.

30. JOHN D. COLOMBO & MARK A. HALL, *THE CHARITABLE TAX EXEMPTION* 109 (1995). "Government failure combined with private market failure provides the most rigorous case for explaining why donative nonprofits exist and what function they serve." *Id.* at 104. The authors go on to

allows donors to deduct charitable contributions from their income tax base under certain circumstances, thereby providing an indirect subsidy.³¹ According to the economic subsidy theory, this indirect subsidy provides an incentive to marginal donors and thereby solves market and government failures in charitable goods by compensating for free riding on charitable contributions.³²

The economic subsidy theory of charity law implicitly predicts “charity failures,” or inefficiencies in charity law’s allocation of charitable goods caused by the charitable contribution deduction.³³ The charitable contribution deduction is vulnerable to charity failures because the subsidy it provides is determined by an endogenous variable and because it cannot provide a salient incentive to most donors.³⁴ The indirect subsidy provided by the charitable contribution deduction is determined by the marginal income tax rate of the donor, which is unrelated to the amount of free riding on the charitable good it subsidizes.³⁵ In addition, it cannot provide a salient incentive to the overwhelming majority of donors who do not itemize their taxes and therefore cannot claim the deduction.³⁶ As a result, the charitable contribution deduction should cause charity failures in charitable contributions from low-income donors, who receive little or no subsidy because they have a low marginal income tax rate and rarely itemize.³⁷

Social technology can solve charity failures by reducing transaction costs on charitable contributions, rather than subsidizing

discuss the economic subsidy theory of the charitable contribution deduction in greater depth. *Id.* at 109–13.

31. *See* Frye, *supra* note 13, at 159.

32. *Id.* at 171.

33. *Id.*

34. *Id.* at 172–74.

35. Nancy J. Knauer, *The Paradox of Corporate Giving: Tax Expenditures, the Nature of the Corporation, and the Social Construction of Charity*, 44 DEPAUL L. REV. 1, 89 (1994) (“The tax expenditure theory identifies this lost revenue as an indirect federal subsidy to the charitable recipient administered through the Internal Revenue Code.”).

36. Frye, *supra* note 13, at 174.

37. *Id.* at 172 (“[C]harity failures are more likely to affect low-income taxpayers than high-income taxpayers because high-income taxpayers receive a much larger subsidy from the charitable contribution deduction.”).

them.³⁸ Social technology is the use of knowledge of the facts and laws of social life to achieve social goals.³⁹ For example, crowdfunding is a social technology that uses the Internet to enable people to raise money by asking the public for small contributions.⁴⁰ Crowdfunding is successful because it reduces transaction costs on charitable contributions, solving market failures in charitable contributions by making charity more efficient.⁴¹ Among other things, crowdfunding reduces information costs by making it easier for marginal donors to identify worthy recipients, reduces bargaining costs by making it easier to determine the efficient donation, and reduces enforcement costs by making it easier for donors to monitor compliance.⁴²

II. A POTTED HISTORY OF THE CHARITABLE SECTOR

A. *Charity in Colonial & Antebellum America*

In antebellum America, charity and charitable organizations were common, but almost exclusively local.⁴³ Colonial Americans “shared the traditional Protestant emphasis on the individual’s responsibility for the spiritual and material welfare of the community” and formed innumerable voluntary organizations in order to provide for community needs.⁴⁴ As Alexis de Tocqueville observed in 1835:

Americans of all ages, all conditions, and all dispositions,
constantly form associations. They have not only

38. *Id.* at 182.

39. See Albion W. Small, Seminar Notes, *The Methodology of the Social Problem. Division I. The Sources and Uses of Material.*, 4 AM. J. SOC. 113, 131 (1898).

40. Frye, *supra* note 13, at 178 (“Crowdfunding is a way of using the Internet to ask the public for contributions to fund a project.”).

41. *Id.* at 183 (“[T]he donation model of crowdsourcing may mitigate some charity failures by reducing transaction costs.”).

42. *Id.* at 190–91. “By greatly reducing transaction costs, crowdfunding enables anyone to inexpensively and efficiently seek small contributions to a project.” *Id.* at 157.

43. FRANK DEKKER WATSON, *THE CHARITY ORGANIZATION MOVEMENT IN THE UNITED STATES: A STUDY IN AMERICAN PHILANTHROPY* 64–65 (1922).

44. HOWARD S. MILLER, *THE LEGAL FOUNDATIONS OF AMERICAN PHILANTHROPY 1776–1844*, at x (1961); RUSSEL SAGE FOUNDATION, *REPORT OF THE PRINCETON CONFERENCE ON THE HISTORY OF PHILANTHROPY IN THE UNITED STATES* 12 (1956).

commercial and manufacturing companies, in which all take part, but associations of a thousand other kinds—religious, moral, serious, futile, general or restricted, enormous or diminutive. The Americans make associations to give entertainments, to found seminaries, to build inns, to construct churches, to diffuse books, to send missionaries to the antipodes; and they found in this manner hospitals, prisons, and schools. If it be proposed to inculcate some truth, or to foster some feeling by the encouragement of a great example, they form a society.⁴⁵

Early American voluntary organizations took a variety of forms and were intended to address practical problems.⁴⁶ Some were charities intended to provide a public benefit, like churches, schools, and poorhouses.⁴⁷ Others were clubs intended to benefit their members⁴⁸ like Benjamin Franklin's Junto.⁴⁹

Early Americans were suspicious of charitable trusts and corporations, which many saw as a threat to republican values, because they could exist in perpetuity.⁵⁰ For example, in 1819, New Hampshire famously tried to change Dartmouth College from a private organization to a public organization by changing its corporate charter but was prevented by the Supreme Court.⁵¹ As a result, national fundraising campaigns were rare and rarely successful.⁵² Charitable organizations tended to address a limited number of social issues in a limited geographical area, especially poor relief.⁵³

45. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 198 (Richard D. Heffner ed. 1956).

46. MILLER, *supra* note 44, at x.

47. *Id.*

48. Paul Arnsberger, Melissa Ludlum, Margaret Riley, & Mark Stanton, *A History of the Tax-Exempt Sector: An SOI Perspective*, INTERNAL REVENUE SERV. (STATISTICS OF INCOME DIV.) 105 (2008), <http://www.irs.gov/pub/irs-soi/tehistory.pdf>.

49. Kelley, *supra* note 25, at 2453.

50. MILLER, *supra* note 44, at 41–43.

51. *See generally* Trs. of Dartmouth Coll. v. Woodward, 17 U.S. (4 Wheat.) 518 (1819).

52. *See* ZUNZ, *PHILANTHROPY IN AMERICA*, *supra* note 7, at 44–46.

53. WATSON, *supra* note 43, at 64–85.

B. *The Birth of National Philanthropy*

In the nineteenth century the concept of philanthropy gradually began to emerge as distinct from charity.⁵⁴ Where the pre-revolutionary concept of charity focused on service to the community, the new concept of philanthropy embraced service to mankind and found early expression in the missionary, temperance, and abolitionist movements.⁵⁵ The concept of philanthropy encouraged Americans to conceive of social welfare more broadly and to consider addressing social issues on a national scale.⁵⁶ However, the development of national philanthropic efforts was slow and halting.⁵⁷

During the Civil War, the federal and state governments created new social welfare programs, some of which relied on national fundraising campaigns.⁵⁸ For example, the United States Sanitary Commission organized a national campaign to collect funds for wounded veterans, opening temporary offices in towns across the country.⁵⁹ After the Civil War, ethnic groups organized occasional national campaigns in support of international relief efforts typically addressed at crises in their countries of origin.⁶⁰ These national fundraising campaigns were unusual exceptions to the rule.⁶¹

54. Robert A. Gross, *Giving in America: From Charity to Philanthropy*, in CHARITY, PHILANTHROPY, AND CIVILITY IN AMERICAN HISTORY 19, 30 (Lawrence J. Friedman & Mark D. McGarvie eds., 2003).

55. *Id.* See generally Barry D. Karl & Stanley N. Katz, *The American Private Philanthropic Foundation and the Public Sphere: 1890–1930*, 19 MINERVA 236, 236–70 (1981); Bruce A. Kimball, *Charity, Philanthropy and Law School Fundraising: The Emergence and the Failure, 1880–1930*, 63 J. LEGAL EDUC. 247, 257 (2013).

56. Gross, *supra* note 54, at 30.

57. Karl & Katz, *supra* note 55, at 241.

58. Kelley, *supra* note 25, at 2454.

59. H. Thompson, *The Sanitary Commission and Other Relief Agencies*, SOC. WELFARE HIST. PROJECT (2013), <http://www.socialwelfarehistory.com/programs/health-nutrition/u-s-sanitary-commission-1861/>.

60. ZUNZ, PHILANTHROPY IN AMERICA, *supra* note 7, at 44–46 (2012).

61. *Id.*

C. *Scientific Philanthropy & the Private Foundations*

In the late nineteenth century, wealthy individuals began to form private foundations to pursue national philanthropic causes, including the relief of poverty and higher education.⁶² This new form of charitable enterprise focused on investing in social innovation to increase public welfare and became known as “scientific philanthropy.”⁶³ As Andrew Carnegie explained:

[T]he best means of benefiting the community is to place within its reach the ladders upon which the aspiring can rise—free *libraries*, parks, and means of recreation, by which men are helped in body and mind; works of art, certain to give pleasure and improve the public taste; and public institutions of various kinds, which will improve the general condition of the people; in this manner returning their surplus wealth to the mass of their fellows in the forms best calculated to do them lasting good.⁶⁴

D. *The Emergence of Popular Philanthropy*

Popular philanthropy first began to emerge in the early twentieth century as private foundations began to reach out to the general public for support.⁶⁵ In 1908, Emily Bissell convinced the Red Cross to sell postal seals at Christmas to benefit the National Association for the Study and Prevention of Tuberculosis.⁶⁶ The Red Cross seals were available in post offices across America, promoted with the slogan, “[t]hese stamps do not carry any kind of mail, but any kind of mail will carry them.”⁶⁷ The campaign was wildly successful, raising \$165,000 in 1908, and inspiring renewed annual sales.⁶⁸ The Red

62. Kelley, *supra* note 25, at 2454–55.

63. *Id.*; ZUNZ, PHILANTHROPY IN AMERICA *supra* note 7, at 8–11 (2012).

64. Andrew Carnegie, *The Gospel of Wealth*, N. AM. REV., June 1889, at 16.

65. See Zunz, *Mass Philanthropy*, *supra* note 7.

66. *Id.* at 338–39.

67. *Id.* at 338.

68. *Id.* at 339.

Cross seals were a form of social technology that effectively used the postal service to raise both money and awareness of the campaign.

The introduction of the federal income tax in 1913 indirectly resulted in the massive expansion of both private foundations and popular philanthropy.⁶⁹ The income tax exempted charitable organizations from taxation, which made them an attractive means of engaging in philanthropic enterprise.⁷⁰ Congress made individual charitable contributions deductible in 1917, and made corporate charitable contributions deductible in 1936, creating an additional incentive to contribute to national charitable organizations, as well as providing an incentive and a tool to solicit additional donations from the public.⁷¹ As Congress broadened the income tax base, the charitable contribution deduction provided an incentive for an increasing number of Americans to contribute to charitable organizations, and an additional incentive for charities to reach out to a broader range of donors on a national scale.⁷² The indirect result was the spread of popular philanthropy, and the creation of innumerable national and regional charitable organizations soliciting charitable contributions from the public.⁷³

E. The Prehistory of Popular Philanthropy

Although popular philanthropy did not rise to prominence until the early twentieth century, there were scattered attempts to encourage popular philanthropy in the nineteenth century that met with varying degrees of success.⁷⁴ The most common method of pursuing popular philanthropy in the nineteenth century was to form a national committee to receive subscriptions from the public.⁷⁵ For example, in 1833, a group of prominent Americans formed the Washington

69. See Kelley, *supra* note 25, at 2468.

70. See Arnsberger, *supra* note 48, at 107.

71. *Id.*

72. *Id.*

73. See Peter Dobkin Hall, *Philanthropy, the Welfare State, and the Transformation of American Public and Private Institutions, 1945–2000*, 13 (Harv. U. Hauser Ctr. for Nonprofit Orgs., Working Paper No. 5, 2000), http://papers.ssrn.com/paper.taf?abstract_id=262652.

74. See Zunz, *Mass Philanthropy*, *supra* note 7, at 335.

75. See ZUNZ, PHILANTHROPY IN AMERICA, *supra* note 7, at 44–45.

National Monument Society in order to raise funds to construct a monument to George Washington.⁷⁶ Despite some initial success, the Society eventually ran out of funds, and the monument was not completed until well after 1876 when Congress appropriated funds.⁷⁷

These private committees continued to be formed during the era of scientific philanthropy with increasing success. For example, in 1885, Joseph Pulitzer, the publisher of the *World*, formed the American Committee of the Statue of Liberty to raise funds to build a pedestal for the statute.⁷⁸ The committee offered a six-inch model of the statue in exchange for a donation of \$1, and a one-foot model in exchange for a donation of \$5.⁷⁹ Pulitzer published advertisements for the Committee in the *World*, and more than 120,000 people from around the world eventually contributed \$102,006.⁸⁰

The McKinley National Memorial Association launched a similar campaign to raise funds for construction of a monument to William McKinley.⁸¹ The campaign eventually raised more than \$600,000 in donations of various sizes.⁸²

However, these national associations appealed primarily to members of the upper middle class with substantial disposable income.⁸³ The real price of a \$1 donation to the Statue of Liberty fund would be equal to \$25 today, but its equivalent for a laborer would be \$140.⁸⁴ The relative value of a \$1 contribution in 1901 is about the same.⁸⁵

76. GEORGE J. OLSZEWSKI, *A HISTORY OF THE WASHINGTON MONUMENT 1844–1968*, WASHINGTON, D.C. 2 (1971).

77. *Washington National Monument Society*, HISTS. OF THE NAT'L MALL, <http://mallhistory.org/items/show/148> (last visited Feb. 8, 2016).

78. *Collectibles*, STATUE OF LIBERTY CLUB, <http://www.statueoflibertyclub.com/statue-history/> (last visited Feb. 9, 2016).

79. Jason Kazmark, *Kickstarter Before Kickstarter*, KICKSTARTER BLOG (July 18, 2013), <https://www.kickstarter.com/blog/kickstarter-before-kickstarter>; *Collectibles*, *supra* note 78.

80. *Id.*

81. *McKinley Memorial (Canton, Ohio)*, *supra* note 2.

82. *Id.*

83. See Paul Glad, *William McKinley*, ENCYCLOPEDIA.COM, http://www.encyclopedia.com/topic/William_McKinley.aspx (last visited Oct. 6, 2015) (explaining how William McKinley used economic policies to win support among the upper and middle classes); see also Letter from F. P. Cooper to T. G. Tueken, *supra* note 4 (nominating a local judge as president of a movement to raise funds for monuments to McKinley after his death).

84. *Seven Ways to Compute the Relative Value of a U.S. Dollar Amount – 1774 to Present*,

Notably, these subscription-based national philanthropic campaigns closely resemble the reward-based crowdfunding campaigns that have emerged in the last decade.⁸⁶ In exchange for a fixed donation, the donor receives a particular reward, which provides an incentive for marginal donors to contribute. The primary difference is the social technology used to reduce transaction costs on contributions. The subscription-based campaigns of the nineteenth century relied on print advertisements and the mail, which reduced transaction costs on fundraising relative to personal solicitation, enabling the social entrepreneurs to efficiently pursue national philanthropic campaigns. By contrast, reward-based crowdfunding relies on the Internet and social media, which virtually eliminates many transaction costs on fundraising.

But the McKinley National Memorial Association also received hundreds of thousands of dollars in small contributions from a source it did not expect.⁸⁷ Almost immediately after the formation of the Association, private individuals began circulating chain letters on their own initiative, soliciting small contributions to the Association.⁸⁸ These chain letters ultimately generated more than \$50,000 in contributions of dimes and 2 cent stamps.⁸⁹

The McKinley memorial chain letters are one of the earliest examples of spontaneous popular philanthropy.⁹⁰ Private citizens saw a need for philanthropy on a national scale and organized their own independent effort to contribute to that philanthropic cause using a new social technology, the charity chain letter.⁹¹

MEASURINGWORTH.COM, <http://www.measuringworth.com/uscompare/> (last visited Feb. 9, 2016).

85. *Id.*

86. Kazmark, *supra* note 79.

87. *McKinley Memorial (Canton, Ohio)*, *supra* note 2; Letter from F. P. Cooper to T. G. Tueken, *supra* note 4 (soliciting 10 cent contributions).

88. Letter from Otto E. Evans to E.N. Merrill Esq., PAPER CHAIN LETTER ARCHIVE (Oct. 26, 1905), http://www.silcom.com/~barnowl/chain-letter/archive/ce1905-10-26_mckinley_sdq3.htm.

89. *See* sources cited *supra* note 87.

90. Daniel W. VanArsdale, CHAIN LETTER EVOLUTION (2014), <http://www.silcom.com/~barnowl/chain-letter/evolution.html>.

91. Letter from F.P. Cooper to T.G. Tueken, *supra* note 4 (“In no way is it possible to raise an amount of money for such a movement so quickly as by chain system.”).

Unlike subscription donors, chain letter donors received no reward in exchange for their contribution, and their contributions were motivated only by altruism. In other words, the charity chain letter was a social technology that was successful because it reduced transaction costs on charitable contributions and thereby solved certain charity failures that limited the scope of popular philanthropy.

III. CHAIN LETTERS AS SOCIAL TECHNOLOGY

A chain letter is a message that asks its recipient to distribute copies of itself.⁹² “The true chain letter is an attempt to form a human chain of communication that increases in a geometric progression as each individual recopies the single chain letter he has received and sends the five to twenty copies on to individuals he knows.”⁹³

Chain letters typically include three elements: a request, a promise, and a threat.⁹⁴ The request asks the recipient to distribute copies of the letter; the promise explains how satisfying the request will benefit the recipient; and the threat explains how ignoring the request will injure the recipient.⁹⁵

Dundes and Pagter identify a four-part structure common to many chain letters in their mature form:

First, a statement indicates that the letter is in fact a chain letter. This statement is analogous to the opening formula in fairy tales or games, for instance, “[o]nce upon a time”

92. VanArsdale, *supra* note 90. With the notable exception of the late Ronald Dworkin, legal scholars have largely ignored chain letters. In 1982, Dworkin introduced a “chain letter” theory of jurisprudence, in which he analogized judging to a storytelling game in which authors collaborate on a novel by writing chapters in turn: “Each judge must regard himself, in deciding the new case before him, as a partner in a complex chain enterprise of which these innumerable decisions, structures, conventions, and practices are the history; it is his job to continue that history into the future through what he does on the day.” Ronald Dworkin, *Law as Interpretation*, 60 TEX. L. REV. 527, 543 (1982). While Dworkin’s theory may provide a helpful explanation of jurisprudence, it has nothing to do with chain letters, which are not intended to facilitate the evolution of ideas, but rather to disseminate them more efficiently.

93. ALAN DUNDES & CARL R. PAGTER, *WORK HARD AND YOU SHALL BE REWARDED: URBAN FOLKLORE FROM THE PAPERWORK EMPIRE* 4 (1992).

94. VanArsdale, *supra* note 90.

95. *Id.*

or “[r]eady or not here I come.” The second structural element is an injunction, usually directing the reader to send a certain number of copies on to friends, often stipulating a fixed period of time for compliance. The third feature consists of a description of the reward: so many recipes or blue-chip stamps or dollars will be received. Sometimes a case history of a previous “winner” is cited. The fourth and final element is a warning informing the reader what might happen if he fails to follow the instructions, thereby breaking the chain. Frequently a negative case history is presented in which a foolish individual is depicted as disregarding the injunction and losing a fortune.⁹⁶

Chain letters are a form of social technology that enables individuals to distribute a message to a large number of recipients more efficiently.⁹⁷ Normally, an individual must send the message to each recipient.⁹⁸ Chain letters enable an individual to send a small number of messages but reach a large number of recipients by making each recipient a node in the distribution system.⁹⁹ As Dundes and Pagter observe, depending on the message it distributes, “an apparently trivial folklore form as the chain letter can suddenly become a dynamic force for social protest and political action.”¹⁰⁰

In theory, the distribution of a chain letter increases geometrically if every recipient obeys the request.¹⁰¹ For example, a chain letter that requests recipients to send ten copies will have ten recipients on the first cycle, a hundred recipients on the second cycle, and a thousand recipients on the third cycle.¹⁰² Recipients can ignore the

96. DUNDES & PAGTER, *supra* note 93, at 4.

97. *See id.*

98. *Id.*

99. VanArsdale, *supra* note 90.

100. DUNDES & PAGTER, *supra* note 93, at 9.

101. *Id.* at 4

102. *See id.*; VanArsdale, *supra* note 90.

request, but the promise and the threat are intended to increase the likelihood of compliance.¹⁰³

Of course, a chain letter cannot be sustained indefinitely. Assuming perfect compliance, a chain letter that requests recipients to send ten copies will have ten billion recipients on the tenth cycle,¹⁰⁴ exceeding the world population.¹⁰⁵

A. *A Taxonomy of Chain Letters*

Chain letters have existed since time immemorial.¹⁰⁶ They predate postal services, and some early chain letters may have circulated for thousands of years.¹⁰⁷

The earliest forms of chain letters were handwritten or printed and distributed by hand.¹⁰⁸ Presumably, they increased the distribution of religious messages, by providing religious pilgrims with a tool to enable and encourage people they met while traveling to further distribute the message.¹⁰⁹

The creation of postal services enabled an increase in the volume and geographical distribution of chain letters, both of which further increased as postal services became more efficient and less expensive.¹¹⁰ Before the Civil War, the United States Postal Service gradually decreased the nominal postal rates, which reflected a dramatic decrease in the real cost of postage over time.¹¹¹ After the Civil War, the United States Postal Service further decreased nominal postal rates, and eliminated pricing based on distance.¹¹²

103. DUNDES & PAGTER, *supra* note 93, at 4.

104. *See id.*

105. *2015 World Population Data Sheet*, POPULATION REFERENCE BUREAU (Aug. 2015), http://www.prb.org/pdf15/2015-world-population-data-sheet_eng.pdf.

106. *See generally* VanArsdale, *supra* note 90.

107. *Id.*

108. *Id.*

109. *Id.*

110. *See The Postal Role in U.S. Development*, U.S. POSTAL SERV., https://about.usps.com/publications/pub100/pub100_010.htm (last visited Feb. 9, 2016) (explaining the growth and development of the United States Postal Service during the nineteenth century).

111. *Rates for Domestic Letters, 1792–1863*, U.S. POSTAL SERV. (Aug. 2008), <https://about.usps.com/who-we-are/postal-history/domestic-letter-rates-1792-1863.pdf> [hereinafter *Rates for 1792–1863*].

112. *Rates for Domestic Letters Since 1863*, U.S. POSTAL SERV. (Mar. 2015),

This dramatic decrease in the real cost of postage after the Civil War made chain letters a viable social technology for the distribution of various messages.¹¹³ Before the Civil War, the real cost of postage remained relatively high.¹¹⁴ As a consequence, it was costly to distribute chain letters, and unlikely that recipients would continue the chain.¹¹⁵ After the Civil War, the real cost of postage was relatively low.¹¹⁶ As a consequence, it was inexpensive to distribute chain letters, and recipients were increasingly likely to continue the chain.¹¹⁷

Today, the overwhelming majority of chain letters are distributed via e-mail, which is effectively free.¹¹⁸ However, the volume of chain letters has dramatically decreased, as e-mail and social media have rendered chain letter social technology effectively obsolete.¹¹⁹ In other words, spam and viral posts are the chain letters of the twenty-first century.

There are eight categories of chain letters, which are defined by the purpose of the letter: religion, luck, advocacy, charity, money, exchange, world record, and joke.¹²⁰ Each category of chain letter is designed to distribute a different kind of message for a different purpose, and uses different kinds of requests, promises, and threats in different ways.¹²¹

1. Religion Chain Letters

Religion chain letters are intended to promote religious observance.¹²² The earliest chain letters were religion chain letters

<https://about.usps.com/who-we-are/postal-history/domestic-letter-rates-since-1863.pdf> [hereinafter *Rates Since 1863*].

113. *Id.*

114. *Rates for 1792–1863*, *supra* note 111.

115. *Id.*

116. *Rates Since 1863*, *supra* note 112.

117. *Id.*

118. VanArsdale, *supra* note 90.

119. *Id.*

120. *Id.*; DUNDES & PAGTER, *supra* note 93, at v–viii (collecting examples of joke and advocacy chain letters).

121. VanArsdale, *supra* note 90.

122. *Id.*

called “letters from heaven” or “celestial letters,” because they claimed to be written by God, or some other divine agent.¹²³ Hippolytos described a celestial letter in the third century, and they were common in Europe as early as the sixth century, when St. Boniface denounced an early version of a celestial letter that is still circulating today.¹²⁴ Early celestial letters were handwritten, but they were eventually printed and sold to the faithful.¹²⁵

Celestial letters generally ask recipients to observe the Sabbath and refrain from sin, promise protection to those who obey, and threaten catastrophe to those who do not.¹²⁶ Unlike other categories of chain letters, religion chain letters generally do not ask recipients to copy and distribute the letter, but they do ask recipients to publicize the contents of the letter, and promise special rewards to recipients who publish the letter or read it aloud.¹²⁷ Recipients of celestial letters often ask newspapers to publish them, in order to satisfy the letter’s request.¹²⁸

Celestial letters combine elements of orthodox Christianity and folk religion, in that they not only ask for religious observance, but also promise magical protection.¹²⁹ Recipients of celestial letters often carried them as talismans of protection, a practice that continues today.¹³⁰

123. Martyn Lyons, *Celestial Letters: Morals and Magic in Nineteenth-Century France*, 27 FRENCH HIST. 496, 497 (2013) (“I refer to the ‘miraculous letters’ written by divine hand, which fall to earth at crucial moments, occasionally carried by an angel, their messages often deciphered by a deaf-mute child or an extremely devout clergyman.”)

124. VanArsdale, *supra* note 90 (citing HIPPOLYTUS OF ROME, REFUTATION OF ALL HERESIES (250); ROBERT PRIEBSCH, LETTER FROM HEAVEN ON THE OBSERVANCE OF THE LORD’S DAY (1936)); *see also* Lyons, *supra* note 123, at 500; Elizabeth Watts Pope, *Jesus Wants You to Send This to 20 People*, PAST IS PRESENT (May 13, 2011), <http://pastispresent.org/2011/good-sources/jesus-wants-you-to-send-this-to-20-people/>.

125. Lyons, *supra* note 123, at 501.

126. *Id.* at 498; VanArsdale, *supra* note 90.

127. Lyons, *supra* note 123, at 498.

128. VanArsdale, *supra* note 90.

129. Lyons, *supra* note 123, at 498.

130. *Id.* at 514; VanArsdale, *supra* note 90.

2. *Luck Chain Letters*

Luck chain letters are intended to spread good luck.¹³¹ They generally ask recipients to copy and distribute the letter to a specific number of people, promise good luck to recipients who comply, and threaten bad luck to recipients who break the chain.¹³²

Luck chain letters resemble religion chain letters, and probably reflect the gradual secularization of celestial letters.¹³³ Although they often begin with a prayer or quotation from the Bible, they generally do not request religious observance.¹³⁴ Luck chain letters also tend to incorporate features designed to encourage recipients to copy and distribute the letter, including lists of previous recipients and testimonials of good luck.¹³⁵

3. *Advocacy Chain Letters*

Advocacy chain letters are intended to support a political cause.¹³⁶ Many advocacy chain letters ask recipients to send a petition to the government.¹³⁷ For example, an 1898 chain letter advocating the retention of the Philippines asked recipients to send a petition to President McKinley and distribute copies of the letter and petition.¹³⁸ Similarly, a 1914 chain letter advocating a 5% increase in railroad freight rates asked recipients to send a petition to the Interstate Commerce Commission and distribute ten copies of the letter and petition, “thus forming an endless chain.”¹³⁹

Advocacy chain letters typically ask recipients to distribute a particular number of copies of the letter.¹⁴⁰ For example, a 1940 chain letter advocating the election of Wendell Willkie as President

131. VanArsdale, *supra* note 90.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. VanArsdale, *supra* note 90.

138. *President's Chain Letter: A Chicago Man Starts Endless Epistolary Appeal that the Philippines be Retained*, N.Y. TIMES, Sept. 2, 1898, at 2.

139. 51 CONG. REC. 7994 (1914).

140. VanArsdale, *supra* note 90.

asked recipients to distribute ten copies of the letter.¹⁴¹ Some advocacy chain letters also ask recipients to add their name to a list.¹⁴² For example, a 1903 chain letter advocating a federal law prohibiting the sale of cigarettes to minors asked recipients to send their name and address to the “U.S. Moral Society Philadelphia Pa.” and to distribute four copies of the letter.¹⁴³ Similarly, a 1927 chain letter advocating the election of Calvin Coolidge asked recipients to sign a list and collect ten more signatures.¹⁴⁴

Advocacy chain letters were a popular form of resistance to American involvement in World War I.¹⁴⁵ One anonymous 1917 chain letter advocated conscientious objection to conscription and asked recipients to distribute ten copies of the letter.¹⁴⁶ Another chain letter objecting to American involvement in World War I led to a federal criminal prosecution.¹⁴⁷ In 1917, Perley B. Doe mailed a series of anonymous chain letters arguing that the United States lacked a legitimate cause for war with Germany and asking recipients to distribute copies of the letters: “We are forced to the endless chain to get the truth before the people. Will you help Truth, Free Speech, and Peace by writing and circulating one or many copies of this? Secret League of Patriots for Free Speech or Blood.”¹⁴⁸ Doe was arrested and convicted of violating the Espionage Act of 1917 by obstructing the draft and was sentenced to eighteen months in prison.¹⁴⁹

141. *Id.* (citing chain letter from W. A. Scott, PAPER CHAIN LETTER ARCHIVE (Aug. 15, 1940), http://www.silcom.com/~barnowl/chain-letter/archive/ae1940-08-15_willkie_q10.htm).

142. *Id.*

143. *Id.* (citing chain letter to Mrs. E. Bennett, PAPER CHAIN LETTER ARCHIVE (Sept. 4, 1903), http://www.silcom.com/~barnowl/chain-letter/archive/ae1903-09-04_anti-smoking_q4.htm).

144. *Id.* (citing *Draft Coolidge Petition*, PAPER CHAIN LETTER ARCHIVE, http://www.silcom.com/~barnowl/chain-letter/archive/ae1927-11-23p_coolidge_q10.htm (last visited Feb. 9, 2016)).

145. *Doe v. United States*, 253 F. 903, 905 (8th Cir. 1918); VanArsdale, *supra* note 90.

146. VanArsdale, *supra* note 90.

147. *Doe*, 253 F. at 905.

148. *Id.*

149. *Id.* at 904. Notably, Doe was the son of the Chief Justice of the New Hampshire Supreme Court. 65 CONG. REC. 8079 (1924); *see also* Geoffrey R. Stone, *Judge Learned Hand and the Espionage Act of 1917: A Mystery Unraveled*, 70 U. CHI. L. REV. 335, 339 (2003).

4. Charity Chain Letters

Charity chain letters are intended to support a charitable cause.¹⁵⁰ These letters typically ask recipients to send a small monetary donation to a particular charitable institution, or person in need, and to distribute a specific number of copies of the letter.¹⁵¹ Charity chain letters resemble luck chain letters.¹⁵² Many charity chain letters threaten that the charitable cause will be harmed if the chain is broken.¹⁵³ Some also promise good luck or spiritual rewards to recipients who send a donation and continue the chain.¹⁵⁴

Most early charity chain letters were self-terminating.¹⁵⁵ Each copy of a self-terminating charity chain letter included a number representing the generation of the letter.¹⁵⁶ Charity chain letters instructed recipients to increase the generation count by one in their copies until it reached a preset maximum, at which point the letter instructed the recipient to send a donation to the charity and to refrain from distributing any additional copies of the letter.¹⁵⁷ Chain letters that did not include a termination number were “endless” chains.¹⁵⁸

Charity chain letters were common by the end of the nineteenth century, and some were remarkably successful.¹⁵⁹ For example, in 1887 the *Topeka Daily Capital* described a charity chain letter intended to endow a hospital that raised \$17,412 from 6,144 people.¹⁶⁰ The *New York Times* described a 1917 charity chain letter that asked recipients to send twenty-four cents in support of the war effort to The New York Eye and Ear Infirmary and distribute four copies of the letter, which raised about \$28,000 in two years.¹⁶¹

150. VanArsdale, *supra* note 90.

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. Daniel W. VanArsdale, *Annotated Bibliography on Chain Letters and Pyramid Schemes*, CHAIN LETTER EVOLUTION (2014), <http://www.silcom.com/~barnowl/chain-letter/bibliography.htm> [hereinafter VanArsdale, *Bibliography*].

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.* (citing *A Grand Undertaking*, TOPEKA DAILY CAP., June 19, 1887, at 4).

161. *Id.* (citing *War Endless Chain Overwhelms Nurse*, N.Y. TIMES, June 3, 1917 at 12:1; *Endless*

Many early charity chain letters were intended to support education. For example, an 1888 charity chain letter asked its recipient to send a dime in order to help “educate the poor whites in the region of the Cumberlands” and distribute four copies of the letter.¹⁶² The letter also promised, “[i]f you will do this you will receive the blessing of Him who was ready to die for us.”¹⁶³ Some innovative individuals even started charity chain letters to fund their own education.¹⁶⁴ An 1889 charity chain letter, started by a college sophomore, asked recipients to send a dime to the student so he could finish school.¹⁶⁵ The letter also asked the recipient to distribute ten copies of the letter.¹⁶⁶

Later charity chain letters often included an advocacy element.¹⁶⁷ For example, a 1964 chain letter explained: “This concerns the death of Medgar Evers in Mississippi. There are several needs that follow his shooting: (1) his family needs help; (2) a large group of Americans need to express their position on this matter; (3) we need to say something to the governor and people of Mississippi.”¹⁶⁸ It asked recipients to send a \$1 check to Governor Barnett of Mississippi, made out to “Ross Barnett, Trustee of Memorial Fund of Family of Medgar Evers” and to distribute ten copies of the letter.¹⁶⁹

5. Money Chain Letters

Money chain letters are intended to produce income through a pyramid scheme.¹⁷⁰ They typically ask recipients to send a specific amount of money to the person at the top of a list of names and

Chain Binds Her, N.Y. TIMES, Feb. 9, 1917, at 20:4; and *The British Red Cross*, N.Y. TIMES, Apr. 1, 1917, at 3:3).

162. VanArsdale, *supra* note 90.

163. Letter from Geo. O. Haman to Helen E. Wood, PAPER CHAIN LETTER ARCHIVE (Dec. 4, 1888), http://www.silcom.com/~barnowl/chain-letter/archive/ce1888-12_cumberlands_sdq4.htm (enclosing chain letter written by Mrs. Geo. O. Haman).

164. VanArsdale, *Bibliography*, *supra* note 156 (citing *Easier than Working*, DENTON J., June 18, 1892, at 1:4).

165. *Id.*

166. *Id.*

167. *Id.*

168. DUNDES & PAGTER, *supra* note 93, at 9.

169. *Id.*

170. JOHN L. THOMAS, LOTTERIES, FRAUDS AND OBSCENITY IN THE MAILS 121 (1900).

addresses, remove that person from the list, and distribute a specific number of copies of the letter with their name at the bottom of the list.¹⁷¹ Money chain letters promise that recipients will eventually receive a much larger amount of money from future recipients of the letter.¹⁷²

Money chain letters resemble both luck and charity chain letters and emerged in the late nineteenth century.¹⁷³ As explained in 1900:

In the last few years a scheme known as the “Chain Letter Scheme” has become quite popular and has been resorted to by the gamblers and by those who did not scruple to perpetrate a fraud upon a confiding and unsuspecting public. The scheme is this: The promoter writes a letter to someone and states that he desires to raise money for a certain purpose and requests the addressee to send him ten cents or some small amount and to write a similar letter to a certain number of his friends, the number varying in the different schemes, being three in some, ten in others, etc., all the addressees being requested to forward the required sum to the promoter. Each correspondent, it states, would become the starter or originator of a series and a prize is offered to each of these upon condition that the series, he originates or starts, would continue, without a break, till 10,000 or some other number named, is reached. For instance, A starts a series by writing letters to ten of his friends and thus starts a series and *if* all of his ten friends, *all* of the hundred, that his friends write to and *all* of the ten thousand this thousand write letters to write similar letters to their friends and send the required sum each to the promoter the starter or originator is to receive a prize but if anyone of the ten, hundred, thousand or ten thousand fails

171. *Chain Letters*, U.S. POSTAL INSPECTION SERV., <https://postalinspectors.uspis.gov/investigations/MailFraud/fraud schemes/sweepstakesfraud/ChainLetters.aspx> (last visited Feb. 8, 2016); VanArsdale, *supra* note 90.

172. VanArsdale, *Bibliography*, *supra* note 156; *Chain Letters*, *supra* note 171.

173. THOMAS, *supra* note 170.

to do this the prize is lost. It is very readily seen that the chances of winning such a prize is remote indeed.¹⁷⁴

Like luck chain letters, money chain letters often threaten bad luck to recipients who break the chain.¹⁷⁵ Similar to charity chain letters, money chain letters instruct recipients to send money.¹⁷⁶ The key innovation in money chain letters is the promise that recipients will eventually receive, via a pyramid scheme, more money than they send.¹⁷⁷

Few people distribute money chain letters in good faith.¹⁷⁸ Most people who distribute money chain letters distribute far more copies than the letter instructs.¹⁷⁹ Many people list aliases and false addresses, rather than previous recipients.¹⁸⁰ In any case, money chain letters rarely generate substantial income.¹⁸¹ This is because many recipients ignore the letter,¹⁸² and many recipients who do distribute copies of the letter do not send any money.¹⁸³

6. Exchange Chain Letters

Exchange chain letters are a version of money chain letters, intended to facilitate the distribution of low-value goods.¹⁸⁴ They typically instruct recipients to send a particular low-value item to one or more people, distribute a specific number of copies of the letter, and promise that recipients will eventually receive many more of that item from future recipients of the letter.¹⁸⁵

For example, an exchange chain letter sent in 1936 instructs the recipient to:

174. *Id.*

175. VanArsdale, *Bibliography*, *supra* note 156.

176. *Chain Letters*, *supra* note 171.

177. *Id.*; VanArsdale, *Bibliography*, *supra* note 156.

178. See JOHN SCARNE, SCARNE'S NEW COMPLETE GUIDE TO GAMBLING 803 (1974).

179. See, e.g., *id.* at 804.

180. *Id.*

181. See *id.*

182. *Id.*

183. *Id.*

184. VanArsdale, *supra* note 90.

185. *Id.*

[M]ake out 5 copies of this letter leaving off the top name and address[,] and adding your own at the bottom. Mail the 5 copies to five of your stamp collecting friends. [W]hen you omit the name at the top send that person 10 used stamps (Commemoratives pictorials or air mail preferred) from your duplicates. In turn as your name will reach the top you will receive 15625 letters containing 156 250 stamps.¹⁸⁶

7. World Record Chain Letters

World record chain letters are a relatively recent version of exchange change letters intended to establish a world record for the number of recipients.¹⁸⁷ They typically instruct recipients to distribute a specific number of copies of the letter in a specific amount of time.¹⁸⁸ They promise that recipients will eventually receive many more letters and help establish a world record.¹⁸⁹

For example, a world record chain letter sent in 1985 claimed that it was started by German children in 1975, and “if it goes on till 1985 it will be in the guiness [sic] book of records.”¹⁹⁰ It instructs the recipient to “copy this letter out six times and send it to six different people (Not the people below) and send a postcard to the first person on the list.”¹⁹¹ It promises: “[i]n 24 days you will recive [sic] 30 postcards from all over the world” and claims that “[t]he chain has been approved by the U.S Mail.”¹⁹²

186. Letter from Gerh. Spring to R.W. Wettlaufer, PAPER CHAIN LETTER ARCHIVE (Nov. 4, 1936), http://www.silcom.com/~barnowl/chain-letter/archive/xe1936-11z1_stamps_s10n6q5.htm.

187. VanArsdale, *supra* note 90.

188. *Id.*

189. *Id.*

190. Letter from Natalia & Katie H*** to Kathy, PAPER CHAIN LETTER ARCHIVE (1985), http://www.silcom.com/~barnowl/chain-letter/archive/xe1985-09_pc_kids_s1n6q6.htm.

191. *Id.*

192. *Id.*

8. *Joke Chain Letters*

Joke chain letters are intended to disseminate a joke.¹⁹³ They typically mimic the form of one of the other categories of chain letters in order to mock it.¹⁹⁴

B. *The Function & Legality of Chain Letters*

Federal law prohibits chain letters that request an investment in exchange for a financial return.¹⁹⁵ Under 18 U.S.C. § 1302,

Whoever knowingly deposits in the mail, or sends or delivers by mail . . . [a]ny letter, package, postal card, or circular concerning any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance . . . [s]hall be fined under this title or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than five years.¹⁹⁶

In other words, federal law prohibits money chain letters, which promise a financial reward.

However, federal law permits the mailing of chain letters that do not request money or goods of substantial value.¹⁹⁷ Accordingly, religion chain letters, luck chain letters, advocacy chain letters, charity chain letters, world record chain letters, joke chain letters, and most exchange chain letters are legal, but money chain letters are not.

C. *A Theory of Chain Letters*

Charity law identifies three categories of organizations: public charitable organizations, mutual benefit organizations, and private

193. VanArsdale, *supra* note 90.

194. VanArsdale, *supra* note 90; *see also* DUNDES & PAGTER, *supra* note 93 (collecting examples of chain letters, primarily joke chain letters).

195. 18 U.S.C. § 1302 (2012).

196. *Id.*

197. *Chain Letters*, *supra* note 171.

foundations.¹⁹⁸ Each category of organizations benefits a different class of people. Public benefit organizations are primarily intended to benefit the public, mutual benefit organizations are intended to primarily benefit the members of the organization, and private benefit organizations are intended to primarily benefit the owners of the organization.¹⁹⁹ For example, charities are typically public benefit organizations, because they are intended to benefit the public, clubs are typically mutual benefit organizations, because they are intended to benefit their members, and businesses are typically private benefit organizations, because they are intended to benefit their owners.²⁰⁰

Likewise, there are three categories of chain letter: public benefit, mutual benefit, and private benefit. Public benefit chain letters are primarily intended to benefit the public, mutual benefit chain letters are primarily intended to benefit the participants in the chain, and private benefit chain letters are primarily intended to benefit the creator of the chain.

Religion, advocacy, and charity chain letters are typically public benefit chain letters because they are primarily intended to benefit the public. Religion chain letters spread a religious message, which is a traditionally charitable purpose. Advocacy chain letters spread a political message, which is intended to benefit the public. Charity chain letters spread a charitable message, which is typically intended to benefit third parties.

Luck, exchange, and joke chain letters are typically mutual benefit chain letters because they are primarily intended to benefit participants in the chain. Luck chain letters purport to spread good luck, which is intended to benefit participants in the chain. Exchange chain letters spread letters, which participants in the chain presumably wish to receive. Joke chain letters spread jokes, which participants in the chain presumably find amusing.

Money and world record chain letters are typically private benefit chain letters because they are primarily intended to benefit the creator

198. *IRS Category of Organization*, NPO CENT., <http://www.startnonprofitorganization.com/irs-category-of-organization> (last visited Feb. 9, 2016).

199. *Id.*

200. *Id.*

of the chain. Money chain letters spread a commercial message, which is intended to benefit the creator of the chain by encouraging recipients to send money and promising that they will eventually receive more money, if they start their own chain. World record chain letters spread a public relations message, which is intended to benefit the creator of the chain by encouraging recipients to contribute to making the creator of the chain a celebrity.

As previously explained, chain letters are a form of social technology that enables individuals to distribute a message more efficiently.²⁰¹ The effectiveness of each category of chain letter as a form of social technology depends on the circumstances surrounding its use.²⁰² The different categories of chain letters developed in order to solve different social problems. Public benefit chain letters like religion, advocacy, and charity chain letters developed in order to solve problems relating to public welfare, by facilitating political and charitable speech. Mutual benefit chain letters like luck, exchange, and joke chain letters developed in order to solve problems relating to group welfare, by facilitating social interactions. Private benefit chain letters, like money and world record chain letters, developed in order to solve problems relating to individual welfare, by facilitating the dissemination of criminal and self-promotional speech.

In particular, charity chain letters appear to have been very effective in the late nineteenth and early twentieth century because they enabled individuals to efficiently distribute a charitable message to a large number of people.²⁰³ The McKinley Memorial chain letters are an example of that phenomenon because they show how individuals used charity chain letters as a social technology that enabled them to effectively participate in popular philanthropy.

201. *See supra* Part III.B.

202. *Id.*

203. *Id.*

IV. THE MCKINLEY NATIONAL MEMORIAL

A. *The Assassination of President McKinley*

On the afternoon of September 6, 1901, President McKinley visited the Pan-American Exhibition in Buffalo, New York to greet the public.²⁰⁴ His secretary, George B. Cortelyou, thought the visit was unsafe and suggested canceling it.²⁰⁵ McKinley responded, “Why should I? Who would want to hurt me?”²⁰⁶

Thousands of people lined up to meet the President, including Leon Frank Czolgosz.²⁰⁷ In his right hand, Czolgosz held a .32 caliber revolver, wrapped in a white handkerchief.²⁰⁸ When he reached the head of the line, he fired twice.²⁰⁹ A button on McKinley’s jacket deflected the first bullet.²¹⁰ But the second bullet hit McKinley in the belly, passing through his stomach, kidney, and pancreas, and lodging in his back.²¹¹ Bystanders and Secret Service members tackled and disarmed Czolgosz.²¹²

The Secret Service secured the scene and rushed McKinley to the Exhibition’s emergency hospital.²¹³ The doctor cut into McKinley’s belly and probed his abdominal cavity, but could not find the second bullet.²¹⁴ Fearing for his life, they closed the incision, hoping he would recover.²¹⁵

At first, McKinley’s condition seemed to improve.²¹⁶ On September 10, the *New York Times* reported, “The crisis has passed.

204. See *supra* note 1 and accompanying text.

205. Wyatt Kingseed, *President William McKinley: Assassinated by an Anarchist*, HISTORYNET (Oct. 1, 2001), www.historynet.com/president-william-mckinley-assassinated-by-an-anarchist.htm.

206. *Id.*

207. Glad, *supra* note 83.

208. *Id.*

209. *Id.*

210. *Presidential Key Events: William McKinley*, MILLER CENTER, www.millercenter.org/president/mckinley/key-events (last visited Feb. 9, 2016).

211. *How the Deed Was Done: Assassin Came with the Crowd to Greet the President and Shot When Two Feet from Him*, N.Y. TIMES, Sept. 7, 1901, at 1.

212. *Id.*

213. *Id.*

214. See *Presidential Key Events: William McKinley*, *supra* note 210.

215. *The President Died of Gangrene Poison: Autopsy Shows Entire Track of Bullet Contaminated*, N.Y. TIMES, Sept. 15, 1901, at 2.

216. *Confidence and Joy at the Milburn Residence*, N.Y. TIMES, Sept. 10, 1901, at 1.

The strain on the heartstrings of the Nation has been relieved. It can to-night be stated with all but the assurance of absolute certainty that President McKinley will fully and speedily recover from the wounds inflicted upon him by the Anarchist Czolgosz.”²¹⁷

In fact, McKinley was doomed.²¹⁸ His wound was infected and gangrenous.²¹⁹ In the wee hours of September 13, his condition rapidly declined.²²⁰ Clearly, the end was near. McKinley’s host sent for Vice President Theodore Roosevelt, who was vacationing in the Adirondacks.²²¹ On September 14, at 2:15 AM, McKinley died and Roosevelt became President.²²²

B. The McKinley National Memorial Association

The nation went into mourning for its martyred president.²²³ On September 15, after the McKinley family held a brief private funeral, McKinley’s body lay in state at the Buffalo City Hall, where an estimated 100,000 people paid their respects.²²⁴ The next morning, McKinley’s body was sent by train to Washington, D.C., and on September 17, a funeral procession marched down Pennsylvania Avenue to the Capitol, where McKinley lay in state and more than 65,000 people paid their respects.²²⁵ That evening, McKinley’s body was sent to Canton by train.²²⁶ All along the 420-mile journey from Buffalo to Canton, throngs of mourners wept and sang hymns.²²⁷ On September 19, more than 100,000 people attended McKinley’s funeral in Canton.²²⁸

217. *Id.*

218. *The President Died of Gangrene Poison, supra* note 215, at 2.

219. *Id.*

220. *Mr. McKinley’s Last Day of Suffering*, N.Y. TIMES, Sept. 14, 1901, at 1.

221. *Hunt Over Mountains for Mr. Roosevelt: The Vice President is Found on Mount Marcy*, N.Y. TIMES, Sept. 14, 1901, at 1.

222. *Mr. Roosevelt is Now the President*, N.Y. TIMES, Sept. 15, 1901, at 1.

223. *Presidential Key Events: William McKinley, supra* note 210.

224. CHRISTOPHER KENNEY, *THE MCKINLEY MONUMENT: A TRIBUTE TO A FALLEN PRESIDENT* 24 (2006).

225. *Id.* at 27.

226. *Id.*

227. *Id.*

228. *Id.* at 28, 30.

Soon after the funeral, a group of McKinley's friends and advisers met to discuss the construction of a memorial.²²⁹ They unanimously agreed that the memorial should be located on the hill in Canton that McKinley himself proposed as the site of a memorial to the soldiers and sailors of Stark County.²³⁰

On September 26, 1901, the McKinley National Memorial Association (the Association) was organized under Ohio law, "for the purpose of erecting and maintaining at Canton, Ohio, a suitable memorial to William McKinley; and for the raising of the necessary funds."²³¹ The officers of the Association were named by President Roosevelt and included many prominent Republicans.²³² The president of the Association was McKinley's closest political advisor, Judge William R. Day of the United States Court of Appeals for the Sixth Circuit.²³³ The vice president was McKinley's political patron, Senator Marcus A. Hanna of Ohio.²³⁴ The treasurer was Colonel Myron T. Herrick, Hanna's protégé.²³⁵

The Association held its first meeting on November 6, 1901, in Cleveland, Ohio.²³⁶ Where it determined that it needed to raise \$600,000 in order to "construct and endow the memorial,"²³⁷ and issued a public appeal for donations: "It is the purpose to have the offerings of the people voluntary, with a full opportunity to all to contribute."²³⁸ It also promised to "prepare and distribute to all donors to the fund a souvenir certificate which will be worthy of preservation, as evidence of the holder's participation in the work."²³⁹

229. *Id.* at 31.

230. KENNEY, *supra* note 224, at 31–32.

231. *Id.* at 31; FREDERIC S. HARTZELL, *THE NATION'S MEMORIAL TO WILLIAM MCKINLEY* 66 (1913).

232. KENNEY, *supra* note 224, at 31.

233. *Id.*; *McKinley Memorial (Canton, Ohio)*, *supra* note 2.

234. KENNEY, *supra* note 224, at 31.

235. *Id.*; HARTZELL, *supra* note 231, at 66.

236. KENNEY, *supra* note 224, at 31–33.

237. *Id.* at 31.

238. Cornelius N. Bliss, *McKinley Memorial Association*, 18 *BANKING L.J.* 877, 877 (1901).

239. *Id.*

On October 28, 1901, the Association formed an executive committee to manage the fundraising effort, and on November 6, 1901, the executive committee authorized the creation of a headquarters in Canton, Ohio and a business office in Cleveland, Ohio.²⁴⁰ The executive committee also apportioned the \$600,000 needed among the several states by population and authorized appropriate persons in each state to create subsidiary associations.²⁴¹ The American Bankers Association authorized all member banks to accept donations, and the United States Postal Service authorized all postal carriers to accept donations.²⁴²

Donations poured in.²⁴³ On February 14, 1903, the Association announced that it had collected more than \$500,000, and that it needed to collect an additional \$100,000 before it began construction of the McKinley monument.²⁴⁴ On June 22, 1903, the Association invited the submission of designs for the memorial.²⁴⁵ By May 1904, the Association had raised \$550,000 and formed an advisory commission of experts to recommend an architect.²⁴⁶

On November 22, 1904, the Association met in New York and selected a design submitted by Harold Van Buren Magonigle, a New York architect.²⁴⁷ Construction began on June 6, 1905, and the monument was completed in 1907, at a cost of \$586,848.92.²⁴⁸ The McKinley National Memorial was dedicated on September 30, 1907, in the presence of more than 50,000 people.²⁴⁹ President Roosevelt was the primary speaker at the dedication, and William R. Day, the master of ceremonies, announced that the McKinley National

240. HARTZELL, *supra* note 231, at 67.

241. *Id.*; *see, e.g., Homestead's McKinley Fund*, N.Y. TIMES, Jan. 13, 1902, at 7; *Illinois McKinley Fund \$20,919*, N.Y. TIMES, Dec. 29, 1901, at 3; *New Jersey's McKinley Fund*, N.Y. TIMES, Nov. 22, 1901, at 5; *The Paris McKinley Fund*, N.Y. TIMES, Feb. 3, 1902, at 1.

242. KENNEY, *supra* note 224, at 33.

243. *Id.*

244. *McKinley Fund Now \$500,000*, N.Y. TIMES, Feb. 15, 1903, at 14.

245. *Invite Designs for McKinley Monument*, N.Y. TIMES, June 23, 1903, at 3.

246. *\$550,000 for McKinley Fund*, N.Y. TIMES, May 10, 1904, at 16.

247. KENNEY, *supra* note 224, at 34–35; HARTZELL, *supra* note 231, at 68.

248. KENNEY, *supra* note 224, at 70; HARTZELL, *supra* note 231, at 69.

249. *Roosevelt Speaks at M'Kinley Tomb*, N.Y. TIMES, Oct. 1, 1907, at 1.

Memorial Association had raised more than \$578,000 from more than one million contributors.²⁵⁰

C. The McKinley Memorial Chain Letter

Notably, the better part of those contributors were not responding to a solicitation from the McKinley National Memorial Association, but rather to one or more chain letters started by people unrelated to the Association.²⁵¹ Almost immediately after McKinley's funeral, chain letters began to appear, asking people to send a dime to Judge Day of Canton, Ohio and circulate copies of the letter.²⁵² For example, a letter dated December 15, 1901 made the following appeal:

No. 14.

Dear Sir:-It has been suggested that a subscription be started with a view of accumulating a fund for the purpose of erecting a monument to our late martyred President William McKinley, in his cemetery lot at Canton, Ohio. Judge Day of that City has been spoken of as president of such a movement. In no way is it possible to raise an amount of money for such a movement so quickly as by the chain system.

Will you therefore kindly send 10¢ with this letter to Judge William Day at Canton, Ohio., [sic] writing three extra copies of this letter, signing your name, numbering each one of them just one higher than this, which is number fourteen, sending same to three of your friends requesting them to interest themselves in this worthy movement. Do not break the chain.

250. KENNEY, *supra* note 224, at 86-87.

251. *See generally* Letter from Otto E. Evans to E.N. Merrill Esq., *supra* note 88; *see also* Letter from F.P. Copper to T.G. Tueken, *supra* note 4.

252. Letter from F.P. Copper to T.G. Tueken, *supra* note 4.

If you have already received one of these letters return this one to me.

Yours resp'yly,
F. P. Copper²⁵³

The McKinley Memorial chain letter was remarkably successful. Contributions began as a trickle and soon became a flood.²⁵⁴ Within a few months, Day was drowning in chain letters:

I have your letter of the 6th inst. The money order for ten cents does not seem to have reached me. Many thousand of letters enclosing dimes and small contributions, have been sent here, and it is our practice to express them in bulk to Col. Herrick, Treasurer of the Association, at Cleveland, Ohio. I have just shipped five thousand such letters today, and it may be your money order is among them. If not, I suggest you send a duplicate.²⁵⁵

While several versions of the McKinley Memorial chain letter circulated over the course of several decades, they may all have had a common origin. On February 17, 1902, Day received the following letter:

I have noticed the attached clipping in several of the Pittsburgh papers, and now that the chain has proven a success, I – the originator of same – now write to inform

253. *Id.* Tueken returned the letter to Copper, appending the following handwritten note:

R.R. to Mr. F. P. Copper, Newark, Ohio.
Please Kindly count me out on this chain and very much oblige[.]
Yours always,
T. G. Tueken

Sandusky, Dec. 17th 1901.

Id.; see also Letter from Otto E. Evans to E.N. Merrill Esq. *supra* note 88.

254. KENNEY, *supra* note 224, at 33–34; see, e.g., Letter from William R. Day to J. McDonald Lee (Feb. 17, 1902) (on file with author).

255. Letter from William R. Day to A.E. Wulfing (Aug. 13, 1902) (on file with author).

you in regard to the matter.

The day after our President's funeral, there was a note in the papers that there was a movement on foot in Canton to incorporate a National Memorial Association. Knowing the value of a chain letter system in raising a large sum quickly, I started the chain that day. My first three letters were sent to Mr. W.R. Corbett (to whom you sent an acknowledgment of his remittance), to Prof. J.B. McConahey, and to W.D. Murray, with the request that they each send three letters, numbering them one higher than the number of the one I sent them. At that time, I did not know your initials, so asked them to 'Send this letter and remittance to Judge Day, Canton, Ohio.' After thinking the plan over, I decided that it should be spread all over the United States, so the next day I made a number of Hektograph copies of the same letter, and sent a copy to each of the following persons: City Clerk, New York; City Clerk, Cincinnati; City Clerk, Chicago; City Clerk, Pittsburgh; City Clerk, Philadelphia; City Clerk, New Orleans; City Clerk, St. Louis; City Clerk, Detroit; City Clerk, Boston; City Clerk, Milwaukee; City Clerk, Baltimore; City Clerk, Washington, D.C.; City Clerk, Cleveland; City Clerk, Dallas, Texas; City Clerk, Buffalo; City Clerk, Harrisburg, Pa.; City Clerk, San Francisco; City Clerk, Portland, Ore.; City Clerk, Memphis, Tenn.; City Clerk, Atlanta, Ga.; City Clerk, Spokane, Washington; City Clerk, Denver, Col.; Washington Post; Braddock, Pa., Herald.

With these letters, I also sent a short note, asking that in case of publication, my name be not mentioned, as I was not seeking notoriety, but endeavoring to start a system which would result in a monument from a fund composed of the ten cent pieces received through the chain letter.

Up until the 18th of this month, I had not heard a word as to how the chain was progressing, but now that it is a success, I feel in justice to you and your Colleagues – you should know how and why same was started, and to show you that it was not my intention that it be an anonymous movement.

I do regret, however, if it has caused you any inconvenience, but I thought at the time I started it, and still think, that there is no way in the world by which a large sum of money could be raised, or a sum which is would be as representative of the people as these contributions will be.

Before starting the system, I called up the Post Office authorities in this city (Phoenix), and inquired if it was legal to use the mails in this manner, and stated the object. The said that although the Post Office Department deplored the chain letter system, yet there was no law against using the mails for a legitimate plan, and that this movement was certainly so.

Should you desire the chain broken, a short note by you to the newspapers, through the “Associated Press”, would quickly do so, but I trust that you will allow it to continue as long as it is in your power to handle the returns.

I would greatly appreciate a short note letting me know if the system mentioned in this clipping is the one identified by the foregoing explanation – it may be that it is some other system, and that mine has fallen through. I also trust that my name be not mentioned in the matter, for I am not desirous of notoriety

I beg your pardon if I have caused you any trouble, worry or inconvenience, but the love and respect I bore our beloved President is the only excuse I have to offer for my

act. Could I have a better one?²⁵⁶

Day responded:

I have your favor of the 15 inst. enclosing newspaper clipping regarding the endless chain letter system in aid of the McKinley memorial fund. They are arriving here in large quantities and we are doing the best we can to take care of them. I have no doubt that the crop has all grown from the small seed planted by you. I have received a number of communications asking if the association authorized the plan, and have said that while we did not start the system all contributions from whatever source are gratefully received. Your motive in starting the letters is appreciated, and we will take care of the product as long as we can do so.²⁵⁷

The McKinley Memorial chain letter spread rapidly and seems to have reached an enormous number of people within only a few weeks.²⁵⁸ By the end of February, a large number of letters had already been circulated:

I have received one of the chain letters started for the McKinley monument fund. Now before I contribute I would like to understand more about it. Will you kindly inform me how much you wish to raise, also how will you stop the money coming when you have enough? As the

256. Letter from J. McDonald Lee to Judge Wm. R. Day (Feb. 15, 1902) (on file with author). The attached clipping reads:

Endless Chain Gorges the Mail. Cleveland, O., Feb. 13. – An endless chain letter scheme started by some person unknown to the officials of the McKinley National Memorial association is giving serious work to clerks of the organization, both at Cleveland and Canton. Already \$1,000 has been received through the chain letters, each of which contain ten cents. The last shipment contained 3,000 letters.

Id.

257. Letter from William R. Day to J. McDonald Lee, *supra* note 254.

258. *Id.*

letter reads, “under any circumstances please do not break the chain.” It bothers me to know how it is to be broken at last. If no link in the chain has yet been broken, there must be an immense sum piled up somewhere for the McKinley monument. By the No. of the letter I received I find it to be a surprising sum already.²⁵⁹

As chain letter contributions poured in, the McKinley National Memorial Association was obliged to create a system for recording and recognizing them:

Referring to your suggestion that we furnish you with a statement of the amounts which you have transmitted to us from time to time, I will say that we do not have at hand a classification of the contributions in this particular form. The items which you have forwarded from time, as you know, have been acknowledged to you by letter, and then have been distributed. Some items have come to us without accompanying letter of explanation from you, and have been properly credited. Others have come to us included among the endless chain letters, and these items it would be difficult at this time to trace as from you. Endless chain letters, as you may know, have been handled and regarded not as separate contributions, but as ‘lists’, for credit in bulk, and the letters sorted and filed, - as for instance, ‘Endless Chain F’, and the like. We will refer back to the correspondence had with you and prepare a statement in alphabetical form with dates and amounts of each subscription received from you and the Canton office, so far as we can trace them at this time, and we will carry forward these items in a separate book, for your information, if this meets with your wishes. Any suggestions that you may have with respect to this, or as to the form which such a statement should take, or the details

259. Letter from Lizzie Young to Judge Wm. R. Day (Feb. 27, 1902) (on file with author).

of the information which it should contain, will be followed, and the statement prepared at once.²⁶⁰

On January 29, 1903, Roosevelt announced he was nominating Day to replace Justice Shiras as an Associate Justice of the United States Supreme Court, and Day was sworn in on March 2, 1903.²⁶¹ But Day remained the president of the McKinley National Memorial Association, and continued to receive contributions to the Association, forwarded to him from Canton.²⁶² And the number of chain letter contributions only continued to grow:

I have your favor of the 12th inst. enclosing endless chain letter which I return herewith. You are right in saying that this is one of many. When the endless chain movement was first brought before our executive committee at one of its earliest meetings, it was decided that we should not assist any such scheme, but that if parties saw fit to send in their dimes in that way, we should take them. We have already received about forty thousand of such letters. It has been a great burden but nevertheless the contribution received in this way has been considerable.”²⁶³

Day received many letters inquiring whether the McKinley National Memorial Association had started the McKinley Memorial chain letter, to which he uniformly responded in the negative:

The ‘Endless Chain System’ did not originate with the McKinley Memorial Association though a considerable sum has been received from that source. Such contributions

260. Letter from Myron T. Herrick to Hon. William R. Day (June 18, 1902) (on file with author).

261. THE SUPREME COURT HISTORICAL SOC’Y, THE SUPREME COURT JUSTICES: ILLUSTRATED BIOGRAPHIES, 1789–1995, at 294 (Clare Cushman ed., 2d ed. 1995).

262. Letter from William R. Day to J.W. Evans (June 17, 1907) (on file with author).

263. Letter from William R. Day to Alexander H. Revell (Jan. 14, 1905) (on file with author).

are gratefully accepted.²⁶⁴

Day also received many letters asking whether the McKinley Memorial chain letters were legal:

Will you kindly advise me if the Postoffice [sic] Department has decided that the chain system for raising money is not admissible in the mails. We are endeavoring to raise money here in this manner to create a hospital fund and this question has been raised. But knowing that the same method was used in securing funds for the McKinley Monument I am writing to you for this information. I enclose herewith addressed, stamped envelope for reply.²⁶⁵

I have in my hand a letter, part of an endless chain system, for providing a fund for a monument to President McKinley. This letter indicates that the movement has reached the 176th step, and if it has been successful so far it requires eighty-three figures to express the number of dollars now in your hands for the purpose of building this monument. Therefore it is about time to stop it, as that would build monuments greater than the Washington Monument for all the descendants of Adam, past, present and future beyond the time which the imagination of man can contemplate.

Of course I know your name has been used in this connection without your knowledge or consent, and I therefore write that you may take steps to stop it.²⁶⁶

I am in receipt of a "chain" letter asking for a contribution of 10 cents towards a fund to erect a monument to the late

264. Letter from William R. Day to J.W. Evans (June 17, 1907) (on file with author).

265. Letter from Jas. P. Brown to William R. Day (Aug. 22, 1905) (on file with author).

266. Letter from A.B. Clements to William R. Day (May 24, 1905) (on file with author).

President McKinley, said contribution to be sent to you. Also asking for the writing of three other letters in order to perpetuate the chain. I write to inquire if this system of raising funds has the endorsement of yourself and others in charge of the erection of said monument. I had supposed that such a system of raising funds for any purpose had been denounced by the Post Office department, and I have a fear that the whole thing is a fraud. I have already contributed, in my small way, to the same purpose. I want to see the effort succeed, but I do not like to encourage the "chain" system; still, I do not like to be the one to break the chain. Will you kindly advise me if the system has your sanction. [sic]²⁶⁷

Day uniformly responded that the chain letters were legal saying: "I have your favor of the 15th inst. making inquiry as to the endless chain letters. I am not aware of any law making it illegal to circulate endless chain letters for the purpose stated in the letter you received."²⁶⁸ In other letters, Day responded:

I have your favor of the 31st ult. While the endless chain system was not started by the McKinley National Memorial Association, a large number of such letters have been received by us and a considerable amount of money realized in that way. My understanding is that such schemes when used for the purpose of selling goods have been held to be lotteries and fraudulent, but I know of no law or decision making it illegal to circulate such letters for such purposes as the McKinley memorial fund.²⁶⁹

I have your favor of recent date in reference to the endless chain letter system. While this movement was not started

267. Letter from Fuller C. Smith to William R. Day (Jan. 30, 1903) (on file with author).

268. Letter from William R. Day to G.C. Earle (Mar. 31, 1905) (on file with author).

269. Letter from William R. Day to the Detrick Milling Co. (Apr. 11, 1905) (on file with author).

by the McKinley Memorial Association, a large number of such letters have been received by us and a considerable amount realized in that way. Any contribution, large or small, is gratefully received. I know of no law which makes schemes of this character when used for such purposes as the McKinley memorial fund illegal; my understanding is that such schemes when used for the purpose of selling goods etc. are held to be lotteries and fraudulent.²⁷⁰

Others asked whether the McKinley memorial chain letters were part of a fraudulent scheme, which Day vehemently denied:

I have your favor of the 24th., inst., enclosing clippings concerning alleged fictitious subscriptions to the “endless chain plan” of the McKinley Memorial fund. There is absolutely no foundation for the statement that swindlers obtained such mail from the Canton post-office.

The facts are simply these – without the cooperation of the Association – and entirely upon their own motion, some persons have started endless chain movements in aid of the monument fund. These letters have been addressed to me as President of the Association, and have been received in large numbers at the Canton Post-office. By arrangement with the Post-master at Canton these letters are forwarded to the Treasurer of the Association, Honorable Myron T. Herrick, Cleveland, Ohio, and the money has been paid into the treasury. About \$10,000 has been received from this source, and while the Association did not originate the plan, it has not declined to receive the money, and you can rest assured there is no fraudulent scheme in the matter.²⁷¹

Occasionally, Day expressed frustration with the chain letters:

270. Letter from William R. Day to F.A. Hovey (Apr. 12, 1905) (on file with author).

271. Letter from William R. Day to A.W. Wills (Sept. 26, 1907) (on file with author).

I have your letter of the 14th inst., enclosing copies of letters from the Assistant Attorney-General of the Postoffice [sic] Department, Washington, D.C., together with a copy of your reply thereto.

Your reply states the situation as I understand it, and is substantially the reply which I have made to many letters of inquiry. When the matter of the disposition of these endless chain schemes was brought to the attention of the Trustee of the Memorial Association it was voted to have nothing to do with the promotion of such schemes, but to receive the contribution and apply them to the building fund, and, since the completion of the memorial, to the endowment fund.

When Mr. Cortelyou was Postmaster-General someone called his attention to the alleged illegality of such schemes, and the then attorney-general of the Department reported that the fund thus raised, being devoted to such a good purpose, was not within the inhibition of any law. One of these schemes seems to contemplate the building of a monument by the Masons of the Country. I have had many inquiries from Masons, and have uniformly answered them – stating the disposition of the letters by the application of the remittances contained therein to the building of the Memorial, and latterly to the endowment fund. I have never received any expression of dissatisfaction with this course.

It would simply be impracticable to return the letters. Indeed, many of them contain only a two-cent stamp, and I do not see why, when stating our position fully and frankly when asked so to do, we may not make the application of such contributions in the same manner as in the past. I take it – if anyone wishes his money back, we would send it to

him.

My own experience has been that no one has objected to the application which we make of the proceeds of these letters after being advised of the situation.²⁷²

Versions of the McKinley Memorial chain letter circulated for at least fourteen years after the construction of the McKinley National Memorial was completed.²⁷³ Day continued to receive inquiries about the chain letter as late as 1915.²⁷⁴ Many later versions of the McKinley Memorial chain letter falsely attributed it to the Masonic Order:

I beg to thank you for calling my attention to the newspaper item, concerning the endless chain contributions, which, as you say, seem to go on forever. As you remember, one of the schemes was apparently under Masonic sanction, and this seems to be the only one which has survived through the years. Indeed, all of them fell off to practically nothing until within a few months the Masonic scheme seems to have revived for some reason. I have sent out a good many circular letters like the one I inclose [sic], calling attention to the facts of the situation, and have also given to the press a statement of just what the situation is. It seems impossible, however, to stop some person in some remote part, from renewing the activity of this project. I have written to the party mentioned in the clipping sent to me, that I should be pleased to answer his letter if it should be forwarded to me.

I had not seen it, and presumably it had been lost in the endless chain system at some point. Possibly it is in the

272. Letter from William R. Day to Hon. Myron T. Herrick (Dec. 16, 1910) (on file with author).

273. Letter from William R. Day to Ryerson Ritchie (Nov. 5, 1915) (on file with author).

274. *See, e.g., id.*

batch of letters in the Canton post office to be sent to Treasurer Herrick.²⁷⁵

CONCLUSION

The McKinley Memorial chain letter was successful because it used the new social technology to efficiently tap the latent potential for popular philanthropy. In the late nineteenth and early twentieth century, foundations and private associations began to launch effective national fundraising campaigns by appealing directly to relatively high-income Americans.²⁷⁶ They did not, however, have an effective means of reaching lower-income Americans.²⁷⁷

The success and longevity of the McKinley Memorial chain letter reflected the extent to which lower-income Americans had already embraced the ideology of philanthropy, but did not have an efficient means of making charitable contributions.²⁷⁸ In other words, charity failures caused by transaction costs prevented the efficient exercise of altruism in the form of charitable contributions.

The McKinley Memorial chain letter used the new social technology to reduce transaction costs and thereby solve those charity failures.²⁷⁹ Charity chain letters were an efficient method of using the modern and relatively inexpensive postal service to distribute charitable appeals to a large number of people and enable them to make small donations efficiently. By reducing transaction costs, the McKinley Memorial chain letter enabled low-income Americans to exercise their altruistic desires and engage in the practice of popular philanthropy.²⁸⁰

Charity chain letters, like the McKinley Memorial chain letter, were the late nineteenth century equivalent of crowdfunding.²⁸¹ They enabled low-income Americans to overcome transaction costs

275. *Id.*

276. *See* Frye, *supra* note 13, at 172.

277. *Id.*

278. *Id.*

279. *Id.* at 182.

280. *Id.* at 178.

281. *Id.*

associated with other forms of popular philanthropy and efficiently engage in altruistic enterprises.²⁸² Chain letters reflect the long-standing but largely ignored role of social technology in facilitating popular philanthropy. The effect of social technologies like charity chain letters and crowdfunding confirms that the economic subsidy theory of charity law accurately describes the effect of market and government failures on the exercise of altruism, but also shows that the charitable contribution deduction causes charity failures.²⁸³ While those charity failures probably cannot be efficiently addressed through the tax system, they can be mitigated or solved by social technology.

282. See Frye, *supra* note 13, at 172.

283. *Id.* at 162, 166.