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JDR, Jr.

* read at meeting 4/3/40

in connection with retirement as Chairman of Rf

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from Miss Hewitt's draft of the history
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JUL 17 1940

THE CHARTER

Application to Congress

On March 2nd, 1910, a bill was presented in the United States Senate proposing the incorporation of an organization to be known as The Rockefeller Foundation, whose purpose should be "to promote the well-being and to advance the civilization of the peoples of the United States and its Territories and possessions and of foreign lands in the acquisition and dissemination of knowledge; in the prevention and relief of suffering; and in the promotion of any and all of the elements of human progress."

It was to be John D. Rockefeller's consummate gift to the people of the nation and through them to the world at large.

Mr. Rockefeller had not announced what sum of money he intended to turn over to the proposed foundation, but inasmuch as the function of the organization was to coordinate and bring together under one head all of his charitable activities, it was assumed that he had in mind a considerable sum.

There was nothing experimental in the principle which lay behind the proposal. Mr. Rockefeller had already successfully carried on large-scale philanthropy through the General Education Board, a similar institution created by act of Congress some seven years before. The charter of the new Foundation proposed merely to extend those proven principles to include the broadest possible field of philanthropic endeavor and to create an organization which would be in a position to meet any pertinent human need as it arose.

Value of a Flexible Charter

Mr. Starr G. Murphy, in the hearing on the bill, had testified that the experience of the General Education Board had demonstrated the value of a broad and flexible charter. Its work had embraced every possible field of education in the United States. On one hand, it had assisted in the establishment of a postgraduate department at Harvard University, representing perhaps the highest walk of educational activity; and on the other hand it had cooperated with the Federal Government in sending demonstrators to the farms of the South to teach the farmers on their own lands how to increase the yield on cotton and other crops. The charter was of such scope that the Board was able to meet whatever need arose in the United States in the field of education.

In his desire, now, to extend that principle further, Mr. Rockefeller asked Congress for a charter that would give him the same freedom of activity in all fields anywhere in the world - and this organization was to be The Rockefeller Foundation.

Objectives of the Proposed Foundation

Based on the experience with the Board, the objects of the new foundation were stated in as general and comprehensive terms as possible: "to promote the well-being and to advance the civilization of the peoples of the United States and its Territories and possessions and of foreign lands...." At the same time, however broad the field, it was not the purpose of the foundation to supplant any existing agency. Mr. Rockefeller's practice had always been to work by means of the institutions at hand rather than in competition with them. For this reason certain definite powers were enumerated

in the charter, principal among which was the right "to establish, maintain, and endow, or to aid others, whether individuals, associations, or corporations, to establish, maintain, and endow institutions and other agencies for carrying on said objects...." The charter conferred also the power to purchase real estate, erect buildings, publish books, etc., and "in general to do and perform all things necessary or convenient for the promotion of the object of the corporation." And to assure an elastic interpretation of these rights, it was stated further that "the enumeration of special powers in this act shall be deemed to be by way of amplification and not by way of limitation of the general powers hereby granted."

In order to give Congress a definite precedent in their consideration of the bill, the new charter was drafted, with a few exceptions, almost word for word the same as the charter which had been granted to the General Education Board. The principal difference lay in the unlimited field in which the Foundation proposed to operate. And there were, of course, different incorporators. The Board had a minimum of nine members; the Foundation proposed five: Mr. Rockefeller, Sr., Mr. Rockefeller, Jr., Frederick Gates, Starr J. Murphy and Charles O. Heydt. But in both cases, they were granted the same three-year tenure of office and the same power of self-perpetuation in the election by the members of their own successors.

The remaining provisions of the proposed charter were (1) that no limitation should be placed upon the amount of funds which the corporation might hold; (2) that personal property and funds applied to the uses of the trust should be exempt from taxation, although real estate was not specifically exempted; (3) that no officer, trustee, member, or employee should receive any pecuniary benefit from the operations of the corporation, except

reasonable compensation for services; (4) that the transactions of the corporation should be annually reported to the Secretary of the Interior; and (5) that the charter should be subject to alteration, amendment or repeal at the pleasure of the Congress of the United States.

Precedents - 1893-1906

There were abundant precedents for the incorporation of benevolent and philanthropic institutions both as national corporations, the Carnegie Institution of Washington, for example, or the American University, and as corporations of the District of Columbia, among which might be mentioned, in addition to the General Education Board, The National Education Association of the United States, The Carnegie Foundation for the Advancement of Teaching, the American Historical Association, etc. These were all institutions which were national in scope, and in no instance had any of their members abused any of the rights or privileges which Congress had seen fit to confer upon them.

Reasons for a Special Charter

The reason given for seeking a special charter for The Rockefeller Foundation instead of seeking incorporation under the District Code, was the fact that, the scope of operations being limited to no single State, or even country, it seemed inappropriate to have the charter subject to regulations designed chiefly, if not exclusively, for local organizations of the District.

"The Founder," Mr. Greene wrote, "wisely proposes to have the objects of the corporation defined and controlled in accordance with the best contemporary wisdom from generation to generation as long as the Foundation endures. He desires that the control thus exercised shall represent the public opinion of the country, rather than that of any single State or section. Otherwise,

as between the philanthropic interests of a single locality and those of the whole country, the corporation, if under local control, might wrongly prefer the former."

The Carnegie Institution of Washington tried the experiment of incorporation under the District Code, but very early was embarrassed by doubts as to the propriety of carrying on work on a large scale in all parts of the world under a form of incorporation the wording of which was very evidently meant to apply to a local educational institution. The Rockefeller Foundation would probably have come under a different section of the Code, but it was felt that the general objections would be the same - "to say nothing of the practically prohibitive effect of the requirement that a majority of the incorporators should be residents of the District of Columbia - a requirement inconsistent with a proper freedom to select the best men from all parts of the country."

As a matter of fact, for the general purposes which Mr. Rockefeller had in mind, he need not have gone to Congress at all; and he was fully aware of this. As a private citizen he still had the right to direct the use of his funds as he personally saw fit, and after his death, a simple deed of trust could have created a foundation for charitable purposes in which the trustees had power to perpetuate themselves and to maintain the fund intact in perpetuity. Such deeds of trust were already in existence. The opinion had been given that "a charitable use, where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well-doing and well-being of social man." And the Court had sustained as a valid charitable use any gift to trustees "to be by them applied in their best judgment and discretion to such charitable and benevolent associations and institutions of learning for the general uses and purposes of

such associations and institutions as said executors may elect and in such sums respectively as they may deem proper." Such a trust would not have been in any way subject to the control of either the State or Federal Government except as it was responsible to the Attorney General, who had the right as the representative of the public beneficiaries to see that the funds were not misused.

Mr. Murphy pointed out that Mr. Rockefeller was not trying to escape government control. On the contrary, he was courting it. The function of the proposed charter was first and foremost to meet the changing and unpredictable needs of the future. As it was so eloquently said at the time, the charities of the fourteenth century were not the charities of the twentieth. The charities of the twentieth century likewise would not be the charities of the twenty-first. And it was for this reason that it seemed desirable to Mr. Rockefeller above everything else that the philanthropies of the future should be protected from the control of the "dead hand." The future, he felt, should be in the lap of those concerned with it, who could judge best of their needs, and whose hands should not be tied by the will of a man who was long since dead. If at such future time, the administration of a fund for public uses be vested in any one group, Mr. Rockefeller desired it to be vested in the legislative body which was the chosen representative of the whole American people. Government supervision represented, therefore, a protection both of the fund and of the people. If at any time the fund should be diverted to improper purposes, Mr. Rockefeller wanted Congress to have the authority to bring it back again to the use for which it had been intended.

Introduction of Bill in Senate, March 2, 1910

The bill was introduced in the Senate by Jacob Gallinger of New Hampshire. It was immediately referred to the Committee on the District of Columbia, and on March 11th a hearing was held at which Starr J. Murphy was invited, as spokesman for Mr. Rockefeller and as one of the incorporators of the Foundation, to make a statement regarding the plans and purposes of the proposed organization.

The Hearing, Mr. Murphy's Statement

At the hearing, Mr. Murphy was on his feet before the Committee for more than an hour. He had had the clerk present each member with a copy of the charter of the General Education Board, and he based his address on the similarity of the proposed bill to that charter. He pointed out such differences as existed, explaining carefully the purposes that had prompted them, and by means of the history of the Board he tried to indicate something of what Mr. Rockefeller had in mind for the function of the new organization, and something of what he proposed to do in the nature of endowment.

"I am not authorized, of course," he said, "to make any statement with regard to the amount which the donor has in mind. I doubt if he himself would be able to answer that question."

In the past, Mr. Rockefeller's practice had been to start in a moderate way and then increase the resources as demands arose. In the case of the General Education Board, his first endowment had been \$1,000,000 to be used particularly for the promotion of education in the Southern States. He provided that not only interest but the entire principal should ultimately be used. The members of the Board had been authorized to draw upon him from time to time for such sums as the work should require, the general understanding being that the fund would probably last ten years.

The work of the Board proved to be so successful and so gratifying that Mr. Rockefeller decided to extend the scope of its activities. Accordingly in 1905 he added \$10,000,000 to the fund with the provision that the income only was to be applied and the principal held (as permanent endowment). But before the work had progressed very far, the trustees realized that the income, even with the increased endowment, was wholly inadequate to meet the current demands. The gifts which the Board was making necessarily represented large and substantial amounts because, without exception, they were made not to current expenses or individual projects but toward the endowment of institutions or the expansion of permanent plants. As a result of these needs, therefore, Mr. Rockefeller made a further gift of \$32,000,000, one-third of which was absolutely unrestricted. It was simply turned over to the Board to be used in its discretion for any of its corporate purposes. Of the other two-thirds, Mr. Rockefeller reserved the right for himself and his son to specify the particular purposes within the scope of the Board's activities for which those funds could be applied, with the provision that if no such designation should be made, the funds were to pass to the general purposes of the Board. And in 1909, he added another \$10,000,000, bringing the total to \$53,000,000.

It was a large sum. But the scope and possibility of the work were so great - even within the limits of the educational field - that the Board was still obliged to defer action on many worthy applications because it was without resources to comply with the requests.

Such a precedent had also been followed in connection with the Rockefeller Institute for Medical Research. Mr. Rockefeller's first gift had been \$200,000 "to see if there was anything in the idea." And as soon

as a demonstration had been made, he increased the amount by a million dollars. When the Institute needed laboratories, he built them. In time, he provided an additional partial endowment of two and a half million dollars more; and now, in 1910, he was building a new hospital.

"It may be that it would seem wise to him," Mr. Murphy offered, "if this charter is granted, to proceed in some such way as that. It may, on the other hand, seem wise to him with a charter so broad as this, that can never become obsolete, to place at once in the hands of the board a substantial sum of money. No one can speak authoritatively on that point except himself."

Mr. Murphy answered some of the criticisms which had already been made, and then turned his attention to such questions as the members of the Committee saw fit to ask. When it was over, they thanked him for coming - because the matter was "of great public concern" - and he replied that he would place himself at the call of the Committee at any time.

Bill Approved by Committee, March 16, 1910

Less than a week later the bill was reported back to the Senate. Only one amendment had been made. In the clause on taxation exemption, after the provision "that all personal property and funds of the corporation held, used or invested for its purposes as aforesaid, or to produce income to be used for such purposes, shall be exempt from taxation," the words were added, for convenience in interpretation, "by the United States or any territory or district thereof." In all other respects, the Committee was of the opinion that the bill deserved the favorable consideration of Congress, and strongly recommended its passage.

"The proposed legislation," the report read, "is along the lines of the statutes incorporating the General Education Board and the Carnegie Foundation, but it is wider in scope and designed to give the donor a broader opportunity to dispense his benefactions. The beneficent purposes of the bill are so clearly set forth in the argument by Mr. Starr J. Murphy before the Committee that it seems unnecessary to do more than call attention to Mr. Murphy's statement."

Public Discussion

With the publication of the bill, there was widespread newspaper comment. People were frightened at the rumored magnitude of the proposed Foundation, and the liberal nature of its charter. Much of the criticism was based on ignorance or prejudice. A great deal, also, was politically motivated. It was a time of "trust busting", of democracy in an extreme form. As the Chicago Inter-Ocean stated editorially on April 17, 1912, "It can be conservatively stated, that at this season of inflamed patriotism it would be foolish for Mr. Rockefeller to approach Congress even with a request to be permitted to donate his whole fortune to the government, to be used as Congress might see fit for the alleviation of the ills of the country as a whole.

"It is also safe to say that if Mr. Rockefeller should presume at the present time to ask Congress to sanction in some way his retirement to a monastery, or a trip to the Holy Land, or a gift of several millions to the famine sufferers in China, or a resolution to devote the rest of his life to good works in behalf of humanity, or anything else that might be mentioned, he would only be wasting his breath.

"At the mere suggestion of such an unheard of and outrageous proceeding the patriots would rise with one voice and demand that the insidious, undemocratic, dangerous and unpatriotic proposal be thrown into the waste-basket and that Mr. Rockefeller be duly warned that such attempts to subvert the very foundations of republican government would never deceive the statesmen of America."

Mr. Rockefeller, in the face of the abuse and misrepresentation with which his offer had been greeted, might very well have pocketed his gift and let the world go by. It was said, at least, that a "less broad-minded man" would have done so. But Mr. Rockefeller was not particularly moved by calumny, nor had he any intentions of withdrawing. On the contrary, he was proceeding quietly on his way "deaf to accusations of all kinds, ignoring slander easily refuted, insistent only upon the plan which has engrossed his later years."

Constructive Criticism

Not all the criticism, of course, was hostile. There were some who considered the proposal the wisest and greatest project ever instigated for the uplift of mankind. They saw in his plan a force for good "as dazzling to contemplate as the fortune itself." It promised to be a great philanthropic trust organized by the same genius that had created the Standard Oil Company and guided by men who had been chosen by Mr. Rockefeller because they were experts in the philanthropic and educational fields. "The greatest aggregate of money directed by the highest intelligence, working with the most complete and perfect system - what may it not do to combat ignorance, disease and suffering?"

what class

Most important in this class was the group of sociologists led by Dr. Edward T. Devine. Dr. Devine was at that time Secretary of the Charity Organizations Association of New York and associate editor of the Survey. He and his group had made a conscientious and scientific study of the proposed bill and through the columns of Survey they launched an attack based on the belief that while the plan was abreast of previous and contemporary endowments, there were grounds on which it might be brought in accord with sounder economic theories and more progressive social policies. As it stood, they believed there was still too much danger of the "mortmain" and not enough "social control." The criticism was directed in particular toward giving the government a voice in the selection of trustees, either by election of Congress or by appointment of the President, limiting the size of the endowment by preventing the accumulation of income, and providing for a definite date of termination as against the holding of any funds in perpetuity.

Mr. Murphy's Reply

The proponents of the bill, of course, appreciated the spirit of sound and constructive criticism in which the suggestions had been offered; and while at first they were not persuaded by them, Mr. Murphy, as Mr. Rockefeller's representative before Congress, recognized the importance of the opinion by refuting it at considerable length in his argument to the Committee. *Senate* *when?* *McK...*

"The bill before you," he said, "provides for a self-perpetuating board of trustees. It is our judgment, based upon a very wide experience - for I think it is quite within the bounds of propriety to say that the experience of Mr. Rockefeller and his advisers in matters of this kind is probably as extensive as that of any man living - that the best form of organization is a self-perpetuating board of trustees."

The criticism had been that new elements must be brought into any board from time to time to prevent the inbreeding of ideas and to keep the corporation in touch with current opinion. Self-perpetuating boards were decried for their tendency toward "lofty isolation, pharisaical self-sufficiency, and imperviousness to new ideas;" and the election of new members by an outside authority was hailed as a safeguard against the development of such a situation as would require the intervention of Congress or the courts.

Mr. Murphy on the other hand maintained that the great universities were all organized on a self-perpetuating basis. Wherever there was control from outside authority, he claimed it was considered an embarrassment from which most of the institutes were seeking to free themselves. Harvard, for example, had been in existence on the basis of a self-perpetuating board for nearly 300 years, and the present board was certainly a stronger one than had originally been created.

"I have no question whatever that the present board of that great institution is just as efficient and just as much interested in conserving the public welfare as if it were appointed by the legislature of Massachusetts."

As far as Mr. Rockefeller and his associates were concerned, Mr. Murphy maintained that experience had confirmed the opinion that self-perpetuating boards secured the best results. Successors were appointed by those who were most familiar with the activities of the board, who knew its needs and the qualities of character and mind that the position required better than any outside agency could. The men on Mr. Rockefeller's present boards had been appointed for no other reason than their ability to contribute something of substance to the work of the organization concerned.

"There is not one stick of dead wood among them," Mr. Murphy remarked, "and not one piece of ornamental timber."

They were all men of vision, experience and wisdom - men who were enthusiastic in the work which was before them and who were willing to give freely of their time and strength to public service. Many of them came thousands of miles to attend meetings, and none of them received a dollar's compensation for his work.

"That is all we wish to preserve," he said simply.

In addition, it was obvious that embarrassments ensued where public officials were appointed or where appointments were made by them. A gentleman who had constituents back of him whom he naturally desired to please would be in a position for pressure to be exerted that might prove awkward.

"It is surprising," Mr. Murphy added, "how many people there are in the United States who seem to think that an application to Mr. Rockefeller which is fortified by a letter of recommendation from the Governor of a State or from a Member of Congress, or the mayor of a city, or any other public official of that kind, will insure its special consideration. Their efforts in that direction are entirely wasted. Those considerations are never for a moment permitted to enter into the deliberations of his committee. On the other hand, they act almost as a deterrent."

The chairman at the hearing, Senator Gallinger, himself offered the information that since he had introduced the bill, he had received personally more than 100 such letters starting with an appeal for \$25 and increasing gradually to \$500,000. Mr. Murphy's own experience had ranged from a request for a pair of false teeth to \$100,000,000. "The only reason, it seems to me,"

he went on, "for inserting any such power as outside appointment of trustees is that the Government may have the power to control in case it is necessary; but as I have pointed out to you....that power is there. It can always be exercised if it is necessary. And it seems to us in the interest of freeing this corporation from the influence of the dead hand, it should be freed from the influences of a dead Congress just as much as it should be freed from the influences of dead donors, and that the control of this corporation at every stage on the side of the corporation itself, on the one hand, and on the side of the representatives of the public, on the other hand, should be left in the hands of contemporaries, and not in the hands of those who are long dead."

Accumulation of Interest

Dr. Devine's second suggestion was that the annual income be actually expended during the year it was earned and that an increase of endowment by the accumulation of compound interest be prohibited. It was prompted, of course, by fear of the power of great wealth - that Congress might be creating something which it could not control. An indefinitely increasing endowment was thought of in terms of the proverbial giant snowball running down a steep hill, and increasing rapidly as it rolled. But to Mr. Rockefeller and his associates, the suggestion appeared humorous. Had not the General Education Board, with its endowment of \$53,000,000 found itself obliged to turn down many worthy appeals because of its inability to meet the demands? And if the General Education Board which was limited to education in the United States found itself embarrassed by a lack of funds, was it likely that there would be any danger of embarrassment from an accumulating surplus as far as the Foundation was

concerned - whose field would embrace the whole scope of philanthropy anywhere in the world?

Between four and five hundred letters were received every day at Mr. Rockefeller's private offices, most of them requesting contributions for some charitable purpose. Mr. Murphy had once asked the mail clerk to save some foreign stamps for him to take home to his children, and in one morning's mail he had received stamps from 22 foreign countries representing every continent on the globe. It was far from likely that any surplus would ever accumulate in that office.

"I cannot conceive of any board of trustees who would desire it," Mr. Murphy said, "but suppose they did? Think what it would mean to say to this board of trustees, 'On or before the 1st day of January you must have expended so many dollars, wisely or unwisely....You must get rid of it or we will be down on you.'"

Perpetuity

This same fear of the power of great wealth lay also at the root of Dr. Devine's third suggestion - that within a specified period, say a hundred years, any given endowment should be entirely expended, both principal and income. No statement, of course, had been made to indicate that the proposed foundation would be anything but a permanent endowment. It was possible that Mr. Rockefeller had it in mind to insert some provision to that effect in his letter of gift. Neither he nor his associates, however, had shown in the past any disposition to prohibit the expenditure of the principal funds of endowments. On the contrary, there was a growing tendency on his part toward removing all possible restrictions. In the case of the General Education Board, the whole of that great fund could be distributed to

institutions, within the scope of charity, if at any time in the future it should seem necessary. Mr. Rockefeller merely provided that before that was done there should be a meeting of the Board, and that notice should be given that such was the purpose of the meeting, so that with a full attendance, action could be taken by not less than two-thirds of the Board.

"But there again," Mr. Murphy queried, "why should we attempt now to say that this principal must be distributed at a fixed period, even though it be a hundred years? Are great institutions of learning imperiled by reason of the fact that they have had endowments which have been fruitful for three hundred years? Or, if you go over on the other side of the water, you will find universities that have been in continuous existence for a thousand years, and their endowments always remain fertile. Why should we attempt now to put a definite time limit on this? Again I say leave that to the hand of the living Congresses of the future, and let them determine when, if ever, it shall be necessary to decree that this corporation must come to an end...."

by Mr. Gallinger
original Senate bill.
Withdrawal of Bill, March 22, 1910 (S. 6888, March 2, 1910)

Mr. Rockefeller had indicated a willingness to meet any reasonable suggestion and to accept any constructive criticism. It was decided to withdraw the bill for revision.

to the Senate (March 16th)
 "When the bill was reported from the Committee," Mr. Gallinger addressed to the house, "I hoped there would be no objection to it, but I am informed by one Senator, at least, that he desires to speak at considerable length on the bill, and I certainly do not want to have the bill remain on the calendar...to the detriment of other bills. Therefore, I move that it go over...and I will take the liberty of suggesting that at some early day,

if I can get the opportunity, I will move the Senate proceed to its consideration."

Why over a year?

A Revised Bill, June ⁸ 7, 1911 (S. 2675)

Needless to say, that motion was never made. Mr. Rockefeller and his associates were already at work conforming their proposal to public opinion, in part accepting, in part rejecting, but always with the thought of improving both on the original bill and on the criticism which had been offered. As a result, in June of the following year, the bill was re-introduced into the Senate with five significant changes:

(1) Congress might, at any time, impose such limitations upon the objects of the corporation as the public interest might demand; and all gifts or property received by the corporation were to be held subject to this provision. The total amount of property was specifically limited to \$100,000,000, exclusive of increases in the value of property subsequent to its receipt.

(2) The income of the corporation was not to be accumulated or added to the principal, but was to be currently applied to the purposes for which the corporation was created, subject only to such reasonable delay as might be necessary in the wise administration of the fund.

(3) After the expiration of 50 years from the receipt of any property the corporation might distribute, for the general purposes of the foundation, the principal, as well as the income, with the consent of two-thirds of the members of the corporation, such distribution to take place after 100 years from the time the property was received, if Congress should so direct.

(4) The self-perpetuating clause was modified by the provision that the election of new members of the corporation should be subject to disapproval within 60 days by a majority of the following persons: the President of the United States, the Chief Justice of the Supreme Court, the President of the Senate, the Speaker of the House of Representatives, and the presidents of Harvard University, Yale, Columbia, Johns Hopkins and the University of Chicago.

(5) To make it clear that the charter did not attempt to exempt from taxation property that would otherwise be taxable under the laws of any State in which it might be held, a clause was added clearly limiting to the United States or any Territory or District thereof the provisions of the exempting clause.

Bill Fails to Pass Senate

But the Senate did not pass the bill even as it was amended. The remark appeared in the press later that Mr. Gallinger, who had fostered the proposal thus far on its uncertain course, referred it to the House of Representatives with the understanding that if the House acted upon it, he would see that it was passed by the Senate. In any event, the bill was introduced into the House on February 1st, 1912. (H.R. 19227)

Two years had gone by since its first appearance, and to all practical purposes, the struggle was just beginning.

A New Bill is Presented in the House

In the House, the new bill was referred to the Committee on the Judiciary, a subcommittee of which made three minor amendments. ^{*} First, the membership was increased from five to nine, and in the event of the number

* contained in H.R. 21532, March 8, 1912

falling below nine, the corporation was forbidden to make any gifts until the vacancies were filled. Secondly, in accordance with the first provision four names were added to the original list of incorporators: Harry Pratt Judson, President of the University of Chicago; Wickliffe Rose, Director of the newly formed Rockefeller Sanitary Commission; Simon Flexner, Director of The Rockefeller Institute for Medical Research; and Edwin A. Alderman, President of the University of Virginia. Thirdly, in the statement of objectives, the phrase, "in the promotion of any and all of the elements of human progress," was altered to read "in the promotion, by eleemosynary and philanthropic means, of any and all of the elements of human progress."

In such form the bill was favorably reported to the House with the recommendation that it pass.

Mr. Jerome Green's Statement

Accompanying the report of the Committee was a statement, prepared for Mr. Rockefeller by Jerome Greene (at that time Manager of the Rockefeller Institute), drawing attention to the changes which had been made since the bill was first introduced into the Senate in 1910. The adoption of these amendments, he pointed out, had seemed to remove all reasonable opposition to the incorporation. No one, he said, who had read carefully the terms of the charter or who had observed the spirit in which suggestions and criticisms had been received, could fail to understand the three controlling motives in the mind of the founder: the desire to maintain, for as long a period in the future as the trustees or Congress thought wise, the method of careful philanthropic investment which had characterized Mr. Rockefeller's benefactions (during his lifetime); the desire to prevent the "dead hand", or as someone

aptly observed, "a dead legislature," from hampering the use of the fund which would most nearly accord with the contemporary wisdom of future generations; and the desire to make this gift directly to the whole American people, and forever subject to the control of their elected representatives.

He pointed out also that Mr. Rockefeller's benefactions in the past had been a means of stimulating rather than replacing self-help and self-reliance. The promotion of improved methods of corn and cotton growing in the South by the General Education Board had not been accomplished by flooding the agricultural communities with money they had not earned - as a substitute for local enterprise. It had been effected by demonstrating through a few farms here and there, with a moderate expenditure for instruction, how a hundred neighboring farms could, with their own labor, double or quadruple their products. Even in the endowment of schools, colleges, and universities, the sense of local responsibility had been stimulated rather than destroyed. Of the seven and a half million dollars contributed conditionally through the General Education Board to institutions in all parts of the country since 1905, more than five times that amount had been raised by those institutions in fulfillment of the Board's conditions.

The most important question, and of course the most legitimate one for the public to ask before the charter was granted, was how The Rockefeller Foundation was going to spend its money. Mr. Greene recognized the fear which had been expressed that a large sum of money might seek the protection of a charter for private rather than public ends. But he maintained that the question was answered by the unequivocal language of the charter, pledging the use of the money exclusively for charitable and humanitarian purposes and subjecting the organization to the direct and final control of Congress.

And he promised that the first attention of the trustees would be to "far-reaching measures for the promotion of public health along both educational and medical lines."

At the end of his statement, Mr. Greene quoted several opinions from those who had been critics of the original bill, and he included one paragraph from the Survey that had particular significance:

"To be afraid of large gifts like these," it read, "would be to confess civic incompetence... If we cannot count confidently on the ultimate integrity and good faith of our judges and lawmakers, then there may be some excuse for stubbornly opposing the creation of great institutions of learning and of social reform; for such institutions cannot be carried on without great financial resources; and the possession of great resources implies always the possibility of turning them against the public interest. But if we do have full confidence in our political institutions, in our power to inflict condign punishment on faithless officials, in our ability to modify by peaceful and lawful means the customs which we have inherited as new needs and conditions arise, in the ultimate soundness and efficacy of the government to which we have entrusted the protection of the public interests, then we may look with appreciation and equanimity on the planting of new institutions which are avowedly consecrated to education, philanthropy, and social reform."

There was also included in the report a summary of the contributions which The Rockefeller Institute for Medical Research had made since its creation ten years before. It was given as an earnest of what might be expected from the proposed Foundation. It described briefly the investigations, whose results, fully tested in both laboratory and clinic, had since

become the general property of the medical profession: antimenigitis serum, intraspinal injections of magnesium for lockjaw, intratracheal insufflation for giving anaesthetics in a safe and convenient form to patients with weak hearts, and the blood-vessel suture for transfusions. The summary also listed the current work which was being carried on in the laboratory, including cancer research, organ transplantation, the diagnosis and prevention of infantile paralysis, and the study of syphilis in the course of which the organism of the disease had been isolated in culture, thereby permitting the establishment of a new procedure for diagnosis.

Bill is Stricken from House Calendar - April 11, 1912

returned by dated Apr. 11
The report ^{of} the Committee placed the bill on the Calendar of

Unanimous Consent; and there was reason for a feeling of optimism when the proposal came up before the House on April 15th. It was something of a surprise, then, that as soon as the clerk had finished reading the bill, a half a dozen Democrats jumped to their feet and shouted, "I reserve the right to object!"

Representative Shackelford had the floor.

"I am opposed, on principle," he said, "to special charters being granted by Congress. I do not know precisely what the provisions of this bill are, but I fear that under the guise of an eleemosynary corporation, they will be permitted to transact business of all kinds and character in competition with the citizens of this country who have to make a living."

"I think there is a provision in the bill," he added, "to the effect that the money they have invested for the purpose of producing funds necessary to carry out the purposes of this corporation shall be exempt from

taxation. There are various other provisions that I think are contrary to good public policy if they go as far as the language seems to indicate. Without reading the provisions more carefully than I have had the opportunity to do, I would not say that I would object to it if I had time to consider it, but I suggest to the gentleman from Massachusetts [Mr. Peters who had introduced the bill] that he let this go over until some other unanimous consent day. I shall have to object to it if it is pressed now."

Raker of California was also on his feet. "I want to reserve an objection," he said, "so that if the gentleman from Missouri withdraws I can make it when we get through."

Then Fowler of Illinois entered his objection, and the bill was stricken from the calendar. That action, of course, did not prevent it from coming up again. But the chances were slight of its being reconsidered during that session, and the action was considered to mean that there was very little likelihood of its ever being passed.

The Reversal of Opinion

It began to appear that the only reason the House had given for its opposition was that it was afraid. The press remarked with some contempt that there was not much danger of a little corporation like The Rockefeller Foundation with a capital of only one hundred millions of dollars seriously competing with the United States Government, a corporation that spent a billion dollars a year without turning a hair. The proposal had been treated as if the Foundation was going to represent the creation, in some mysterious way, of new and unheard of wealth. That wealth was already in existence - specifically in individual hands - and it was perfectly possible for it to

pass almost indefinitely by inheritance into other private hands, to be spent for selfish ends or to be held for further accumulation. It had been said that "colossal wealth in private hands is always a menace." If so, how much better in the interests of society was the voluntary submission of a large part of that wealth to legal limitation and supervision.

Indeed the Boston Advertiser, on January 18, 1913, declared, "Any congressman who dares to play peanut politics on a matter of such tremendous importance to the nation should be driven out of public life by the open and scathing contempt, not merely of his own constituents, but of all good citizens of this country. Any congressman so morally deficient that he can attempt to 'play politics' in a matter of such vital interest to the nation deserves to be pilloried by universal and lasting public contempt."

Further Opposition in the House

Representatives Schackleford of Missouri and Fowler of Illinois, who had been largely responsible for the removal of the bill from the Unanimous Consent Calendar eight months before, still professed to see "a nigger in the woodpile," and they announced that they would continue to oppose the measure if ever, and whenever, it came up again.

Representative Fowler's opposition was based on a deference to labor. He quoted all the damning statistics against big business and big banking - how, for example, Chairman George F. Baker of the First National Bank had admitted to the Pujo money investigating committee a short time before that in 50 years his bank had made an eighty-six million dollar profit on a capital of \$500,000; and how Judge Gary, president of the United States Steel Corporation, testified before the Ways and Means

Committee that his company, established in 1858 with a capital of \$4,800 was worth nearly a billion and a half dollars in 1910. Evidence given before the Stanley Investigating Committee had revealed that the 21 directors of that same concern held the majority of stock and hence the control on the directorate of thirty billion dollars worth of insurance, banking, industrial and franchise business - or one-fourth of all the wealth of America.

Representative Shackleford, on the other hand, represented the farmer, and the small land owner. To him the danger of the charter lay in the fact that there was nothing to prevent Mr. Rockefeller from investing his enormous endowment in real estate. One hundred million dollars worth of farm lands could easily grow to a billion, and "upon that billion dollars worth of real estate would be a tenantry as much subject to Rockefeller and his tribe as have been the unhappy citizens of old Ireland to the English landlords in days gone by."

There were some, too, who refused to support the bill on the ground that Congress was not invested with the power to make such a law.

"I am aware," it was suggested by Representative Bartlett of Georgia, "that we live in an age when, if it is urged that something be done because it is commendable, because it may aid humanity, because it may uplift somebody or something, we are asked to forget that we live in a Republic which is governed by a Constitution whose powers limit the authority and power of Congress."

Bill Passes House, Jan. 20, 1913

But the House as a whole had had time to think the proposition over. As the Washington Times commented, "good sense came to the top";

and on January 20th, the opposition notwithstanding, the bill passed the House by an overwhelming majority, 152 - 65.

Bill Returned to Senate, Jan. 21, 1913 - Feb. 13, 1913

The following day it was put once again in the hands of the Senate Judiciary Committee and a month later the Committee reported the bill back to the Senate without amendment.

Dissenting Minority in Senate

The decision of the Committee, however, had not been unanimous; and with the report went an opinion prepared by Senator Culberson representing the dissenting minority. It was in effect a summary of all the old objections: that Congress did not have the power to grant the charter; that the charter should be limited to a more reasonable term of years, putting the burden on the corporation to have the term extended rather than on Congress to terminate it; that there should be no exemption from state laws; that the concentration of so much money was unsound; and lastly that some limitation should be put on the character of the funds received.

"Will it not be in effect the protection and perpetuation...of the great monopolies in which Mr. Rockefeller is the dominating personality? And if this be true, what connection will this corporation bear to the combinations, the securities of which it holds and upon the success of which its existence depends?"

"It seems to me," the opinion concluded, "that the Congress should not thus encourage and foster the massing and holding together of such vast fortunes nor lend its authority to the perpetuation of the fruits of combinations and conspiracies against the public weal."

Senate Fails to Pass Bill

How much weight Mr. Culberson's opinion carried in the upper house, or how much prejudice, politics or sincere conviction against the bill already existed, does not appear in the congressional records. The fact remains only that the bill failed to pass the Senate that session, and in March the incorporators asked for a charter from the State of New York.

It may have been that Mr. Rockefeller and his associates were simply war-weary. Or they may have realized that if the Foundation was to come into existence at all, it would have to be without benefit of Congress.

Mr. Greene was reported to have stated to Senator Luke Lea in New York the winter before that "if the Peters bill was not passed by March 4th, the incorporators would abandon the attempt to get a Federal charter and would seek to obtain one from a State." However, when application for a State charter was finally made, he appeared reluctant to say that the Federal project had actually been abandoned.

"No such interpretation is to be placed on the introduction of The Rockefeller Foundation bill in the State Senate. We certainly shall not attempt to obtain a Federal charter in the present extra session of Congress. We made no preparation for introducing a bill into Congress in this session, because we were led to think that conditions were and would be unfavorable for general legislation, as there probably would be nothing but public law-making in the extra session.

"Whether we shall try to obtain a Federal charter in the regular session of Congress I cannot say at this time. But the State charter and the Federal charter would not be mutually exclusive, and the bill introduced

into the New York Senate, therefore, does not indicate that we have given up the idea of obtaining a Federal charter."

The State Charter

In any event, the bill was passed by the State legislature in April, signed by Governor Sulzer on May 14th; and two days later the press carried notice of Representative Peters' statement that the project to give the Foundation Federal sanction had definitely been abandoned.

As thus incorporated, the charter of the Foundation was virtually the same as that proposed to Congress three years before, without the limitations and safeguards which had been subsequently devised. It offered in effect an organization unrestricted in every sense except that its purpose should be "to promote the well-being of mankind throughout the world."

The following persons named in the act of incorporation became, by the formal acceptance of the Charter, May 22, 1913, the first Board of Trustees:

John D. Rockefeller, of New York
 John D. Rockefeller, Jr., of New York
 Frederick T. Gates, of Montclair, N. J.
 Harry Pratt Judson, of Chicago, Ill.
 Simon Flexner, of New York
 Starr J. Murphy, of Montclair, N. J.
 Jerome D. Greene, of New York
 Wickliffe Rose, of Washington, D.C.
 Charles O. Heydt, of Montclair, N. J.

To the foregoing number were added by election the following Trustees:

Charles W. Eliot, of Cambridge, Mass. (elected Jan. 21, 1914)
 A. Barton Hepburn, of New York (elected March 18, 1914)

February 26, 1940