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Donor Advised Funds in Canada, Australia and the US: Differing Regulatory Regimes, Differing Streams of Policy Drift

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Abstract: Donor Advised Funds (DAFs) are the fastest growing destination for charitable giving, and subject to vigorous debate over whether they should be more tightly regulated. Virtually all of the research on DAFs and the arguments for increased regulation emanate from the US. This article compares regulation in Canada and Australia with the US to demonstrate how different regimes lead to different uses of DAFs and different ‘market’ configurations. The conceptual framework presents three motivational scenarios for their use: as pseudo foundations, tax savings and protection of privacy. The differential effects of regulation on these donor scenarios explains why total DAF assets in Australia are proportionately much lower than its North American counterparts, mainly because its regime is not skewed as heavily toward the tax savings motivated donor. The findings raise serious questions as to whether DAFs have actually democratized philanthropy, as is so often claimed. In terms of policy change, all three countries have experienced policy drift, although for different reasons. However, COVID-19 pandemic may have created new windows of opportunity for regulatory reform.

Keywords: DAFs, donor advised funds, policy drift, regulation of philanthropy

1 Introduction

Donor Advised Funds (DAFs) are the fastest growing destination for philanthropy in the US and a rising force in other countries (CAF and UK Community Foundations 2018; National Philanthropic Trust 2020; Seibert 2019; Strategic Insight 2018).

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DAFs are personal charitable giving ‘accounts’ held by a charitable organization for which the donor receives a tax benefit upon making the gift and retains advisory privileges on disbursements, including recipients, amounts and timing. The sponsoring charity (501(c)(3) in the US) could be a community foundation, a foundation established by a financial institution, one linked with a specific cause, typically healthcare, religion or education, or one with the sole purpose of hosting DAF accounts. All regulatory and reporting obligations apply to the sponsor, not the individual account. Some DAF holders may use their funds as flow-through vehicles, disbursing them to charities quite quickly, while others may disburse little, if anything, for years. Given their dramatic growth and limited regulation, DAFs are the subject of vigorous debate over the extent to which they benefit charities, rather than their donors, sponsors and affiliated financial advisors (Andreoni and Madoff 2020). On one hand, DAFs have been extolled as flexible philanthropic vehicles that stimulate and democratize giving (Jackson and Canela 2017; Steuerle 1999). On the other hand, they are accused of “warehousing” wealth as billions accumulate in these accounts (Madoff 2014). This has prompted calls, mainly emanating from the US, for a wide array of regulatory reforms. As the COVID-19 pandemic exacerbated inequalities and heightened demands on non-profits, the pressure to ramp up philanthropic grantmaking, rather than saving funds for a future rainy day, intensified – as did pressures for DAF reforms (Initiative to Accelerate Charitable Giving 2020). In spite of their importance as philanthropic vehicles in many high-income countries, research on DAFs has been overwhelmingly focused on the US. There is little comparative research on the effects of regulatory regimes elsewhere (cf. Murray 2020), whether the reform options proposed in the US are relevant to other countries, or whether the features of DAF regimes elsewhere might inform US debates.

This article provides a comparative analysis of the use and regulation of DAFs in Canada and Australia, relative to the US, so as to advance conversations on the potential for regulatory reform.¹ Like the US, Canada and Australia have experienced a sharp rise in the popularity of DAFs held by a diversity of sponsor charities, and are attuned to developments in the US (Madoff 2018a). While Canada has tended to emulate the US approach to regulation, although with some important twists, Australia’s regime diverges in more significant ways. The analysis raises implications of the declining share of DAF assets held by community foundations

¹ DAFs have gained popularity in many countries, although none as significant as the US where they account for 12 percent of personal charitable giving, compared to nine percent in Canada and five percent in the UK (authors’ calculations). As an initial cross-country comparison, using both primary data sources and interview data, we restrict this analysis to Canada and Australia, benchmarked against the US.

versus sponsors affiliated with financial institutions, and points to some of the barriers to reform.

Our starting point is to recognize that the attractiveness of DAFs varies according to differing core motivations of donors. The first part of this article draws on existing literature and promotional material by DAF sponsors to conceptualize three different scenarios of why donors choose DAFs for their charitable giving: as pseudo foundations; as vehicles for tax savings, particularly in wealth liquidity events; and as means of protecting privacy. Certain features of DAFs matter more in each of these scenarios, and these differ across the three countries, which are reflected in the uptake of DAFs and in the obstacles for policy change. We then assess the relative size of assets held in DAFs in Canada and Australia, compared to the US. Total assets are proportionately much less in Australia which can be attributed to the supply side, the culture of philanthropy, and differing design features and regulations. The final section discusses the implications for reform and why it is so difficult to achieve – albeit for different reasons in each of the three countries.

2 DAFs as Personal Projects: Three Scenarios

Charitable giving takes two general forms: as direct donations (and bequests) to charities, or as ‘structured philanthropy’ in which intermediary vehicles (foundations, endowments, trusts, DAFs and limited liability companies where they exist) facilitate ongoing donor involvement in giving decisions and can establish a legacy (and structure) of giving beyond one’s lifetime (Scaife et al. 2012; Stanford PACS 2020). These vehicles are not mutually exclusive, and affluent philanthropists will often manage a ‘portfolio’ of different modes, causes and organizations (Stanford PACS 2020). In comparison to a one-time decision to make a direct gift to a charity, donors often describe structured giving as a “journey” (Breeze 2014). Such journeys are poorly understood, however. Research on prosocial behavior focuses on underlying motivations for giving per se (e.g. Bekkers and Wiepking 2011; Konrath and Handy 2018) and the socio-demographic factors that correlate with giving (e.g. Eagle, Keister, and Read 2018; Einolf 2017; Sargeant 1999), but does not illuminate choices among different means of structured giving. To assess the journeys and choices of the *how* of giving, it is helpful to consider philanthropy as a “personal project” (Little 1983): as personally salient actions in context that entail both the ends pursued and the means, and that leave footprints or create their own contexts (Little 2007). Project pursuit usually involves a trade-off between meaning (e.g. enjoyment, self-identify, sense of community) and manageability (e.g. time pressure, stress, efficacy) (Little 1983; McGregor and Little 1998).

How donors make this meaning-manageability trade-off produces three distinct, albeit stylized, scenarios in which different features of DAFs make them more attractive than other modes of giving.

2.1 DAFs as Pseudo Foundations

Some donors value both the meaning (the giving decisions) and ongoing management of their giving: they are prepared to be ‘hands-on’ in tending to their DAFs over time. In effect, the DAF serves as a ‘pseudo-foundation,’ particularly for affluent, but not ultra-wealthy households, whose assets do not justify the costs of establishing and managing a separate legal entity. Indeed, the efficiency benefits of DAFs over foundations are widely advertised by DAF sponsors (National Philanthropic Trust 2021). So, too, are the benefits of intergenerational learning and engagement in philanthropy via active involvement of younger family members (National Center for Family 2020). If donors are starting with modest contributions and disbursements, planning to grow the fund assets over time, low costs of entry and annual management fees and no mandatory requirements for annual payouts may matter.

As a donor prepared to be actively engaged in asset management, the ability to advise on investment strategies – another feature widely advertised by US sponsors associated with financial institutions – may be attractive. Such involvement may be particularly valued by the small but expanding segment of donors who want to pursue impact investing or oversee ethical, responsible investing (Baker, Barraket, and Elmes 2016). As a learning project, access to advice about giving choices may be valued, and when donors seek to ‘give where they live,’ DAFs are likely held at community foundations.

The potential risk in this scenario is that an “endowment effect” (Kahneman, Knetsch, and Thaler 1991) sets in: the donor may gain a strong sense of ongoing ownership which results in a reluctance to disburse funds, instead putting an emphasis on growing the asset. This possibility is implied in the finding by Heist and McMullen (2019) that payout rates at community foundations are lower than at other types of sponsors.

When DAFs function as pseudo-foundations several factors are likely to favor the use of DAFs over direct charitable giving or other means of structured philanthropy:

Proposition 1: *The availability of community foundations encourages the use of DAFs.*

Proposition 2: *Low entry and administration/management fees encourage the use of DAFs.*

Proposition 3: *The ability to advise on investment of assets encourages the use of DAFs.*

Proposition 4: *An absence of or low mandatory payouts on accounts or sponsor organizations encourages the use of DAFs.*

2.2 DAFs as Tax Savings

At moments of sudden acquisition of wealth through punctate events that produce significant capital gains, such as sale of a business or professional practice or liquidation of shares, DAFs are particularly convenient. At such times, tax minimizing concerns tend to be central (Colinvaux 2017; Gelles 2018). Indeed, Andreoni (2018) provides evidence that in the US saving on capital gains taxation is a key reason for using DAFs. The largest US holder of DAFs, Fidelity Charitable (2015), indicates that, among its own clients, 78 percent named this as the main motivation for starting a DAF.

In this scenario, the speed and ease of making the gift is important as the donor may be consumed with other business matters and may have little knowledge or time to reflect on which causes or charities to support. Thus, the donor wants to postpone specific giving decisions, while keeping options open. The donor likely relies on advice from an existing wealth advisor who, if affiliated with a financial services firm, steers the donor to its DAF arm (Strategic Insight 2018). With speed and efficiency as primary considerations, entry and management fees matter little, although this donor may later be concerned with mandatory annual payout requirements or the ability to make transfers from one DAF to another.

Proposition 5: *Capital gains exemptions on donations of a variety of asset types encourage the use of DAFs.*

A key public interest concern in this scenario is whether donors continue to be attentive to their accounts, directing payouts in a timely manner and in significant amounts. This has generated a flurry of attempts to measure annual payout rates, which reach differing conclusions. Heist and McMullen (2019) report that DAF payout rates – a median of 13 percent across multiple US sponsors – are higher than those of private foundations, although these vary significantly across different types of sponsors, with higher payout rates at the larger ones. As

Andreoni and Madoff (2020) demonstrate, however, how disbursement rates are measured makes a significant difference, and in 2017 a quarter of DAF sponsors distributed less than five percent of their assets.

2.3 DAFs as Privacy Protection

For what may be a small subset of donors, the main concern is with the ability to make gifts anonymously, which is permitted by DAFs. There are several reasons that anonymity might be valued, some more honorable than others. Religious or cultural considerations might discourage taking credit for giving. Particularly in small communities, families might not want their wealth to be widely known. Once known as generous, a donor may seek to avoid becoming the target of multiple, unwanted requests from other charities. Perhaps one is giving to a cause that the donor would rather keep confidential: the secret of giving to Planned Parenthood from one's Catholic mother, for instance. Or, a donor may want to avoid public scrutiny of funding for certain causes through more covert "identity laundering" (Cantor 2015: 114).

Proposition 6: *For this segment of donors, protection of anonymity encourages the use of DAFs.*

For a DAF holder who also has a foundation, one means of protecting privacy is to transfer funds from the foundation to a DAF and then gift from the DAF, or alternatively retain funds in the DAF in order to satisfy the foundations' disbursement quota. While it is difficult to accurately assess the degree of such transfers, a study by the *Economist* (2017) reported that in a sample of 4000 US foundations, 40 directed funds to the largest DAF providers and that 11 of these gave over 90 percent of their annual allocation to DAFs.

The choice of a DAF over another vehicle of structured philanthropy or direct giving is obviously more complicated than depicted in these three stylized scenarios. While the prevalence of the tax-savings scenario the US has been documented (Andreoni 2018; Colinviaux 2017), the absence of data at the account level makes more nuanced assessments of other motivating factors difficult. However, we are not claiming to accurately test the relative influence of each type of donor. Rather, our aim is to identify and consolidate from the existing literature the aspects of DAFs that would be affected through regulation, examine how each of these might affect DAF usage in the three countries, and consider the effects on the need for and potential of regulatory reform.

3 Methodology

The purpose of this study is twofold: to establish the relative size of assets held in DAFs in the three countries; and assess the influence of differing design features and regulations on their use, focussing on Canada and Australia where there has been little research. For the US, we rely on the substantial amount of existing research and reports by DAF foundations (e.g. National Philanthropic Trust) to indicate asset benchmarks. For Canada and Australia, we analyze data from the annual charity tax filings and provided by national associations (e.g. Australia Community Philanthropy) regarding DAF sponsor assets and gifts over the past five years; these data are reported only at the aggregate level of the DAF sponsor, not by individual funds, which limits the specificity of analysis possible.² To assess the share of assets held as DAFs by community foundations, the tax data are supplemented with information from annual reports, websites and financial statements (for the latest reporting year, 2018). This supplemental information is not always consistent, however, because community foundations do not report according to common standards or year ends, and often define what constitutes a donor advised (or directed) fund in different ways. Nevertheless, this combination of data provides a basis for comparative analysis and general trends.

To assess how DAF stakeholders view the effects of regulations on different types of DAF donors, we relied on 40 in-depth interviews (see the Online Appendix, available as Supplementary Material). In 2018 we conducted 22 in person and telephone interviews with a range of DAF stakeholders in Canada, including regulators, advisors, senior management of sponsoring foundations and high net worth (HNW) donors. In late 2018, a series of seven “convergent conversations” (Rao and Perry 2003) were held with a similar group of Australian stakeholders to explore key themes identified in the Canadian research. The convergent interview technique allows for an exploration of issues in a flexible manner, while providing some safeguards against the interviewer’s potential bias. Based on the main themes that emerged (cultural differences, tax incentives, investment and disbursement restrictions), semi-structured interviews were conducted with a purposeful selection of 11 ‘sub-fund’ (DAF) industry experts. The interviews were transcribed and coded, followed by a manual qualitative analysis that identified commonality among and saturation of themes.

² Some of the data were compiled by co-author, Sjogren, for the 2018 report Donor-Advised Funds: The Intersection of Philanthropy and Wealth published by Strategic Insight.

4 The Relative Size of DAF Markets and Assets

Estimates put the US DAF market at \$120 billion in 2018 (Rooney 2019), the Canadian at C\$4 billion (Strategic Insight 2018),³ and the Australian sub-fund market at just over A\$1 billion (Seibert 2019). In absolute terms, these are huge differences. Our aim, however, is to establish whether there are differences between actual and expected DAF assets on per capita giving and participation rates across the countries, and to illustrate the general magnitude of these differences. Specifically, we calculate the comparisons as:

$$\text{GDP adjustment (relative to US)} \times \text{Giving participation rate} \times \text{Giving rate (as percentage of income)} \text{ (adjusted for currency exchange).}$$

The Gross Domestic Product (GDP) speaks to the aggregate wealth of the economy; the participation rate covers the proportion of tax filers who claim charitable contributions on their tax returns (likely to be more significant for HNW tax filers using DAFs); and the giving rate shows the amount of giving relative to income.

While admittedly very rough estimates, they demonstrate a marked difference in Australia versus Canada and the US, as shown in Table 1. When considering per

Table 1: Comparisons of giving and DAF assets: US, Canada and Australia.

Dimension	US	Canada	Australia
GDP US\$ trillions ^a (2018)	20.4	1.7	1.4
Population (2018)	327.2 m	37.1 m	24.9 m
Giving as a % of GDP ^b (2013/2014)	1.4	0.8	0.7
Participation of tax filers claiming donations (%) ^c	24.9	20.4	32.6
Giving rate (% of income) ^d	1.5	0.5	0.4
Individual charitable contributions ^e (2016)	US\$ 281.9 b	C\$ 9.8 b	A\$ 2.9 b
Individual charitable contributions per capita (2016)	US\$ 873	C\$ 253	A\$ 122
Estimated DAF assets ^f (2018)	US\$ 120 b	C\$ 4 b	A\$ 1 b
Expected DAF assets, applying US participation & giving rates		C\$ 3.6 b	A\$ 3.2 b

Years vary slightly due to availability of data. ^aWorld Bank <https://data.worldbank.org/country>. ^bLasby and Barr (2018); latest available data. ^cUS and Canada: Fraser Institute (2019); Australia: McGregor-Lowndes and Crittall (2018) – data for 2016–17. ^dUS and Canada: The Fraser Institute (2019lab); Australia McGregor-Lowndes and Crittall (2018) – data for 2016–17. ^eUSA: GivingUSA (2017); Canada: Statistics Canada (2018); Australia: McGregor-Lowndes and Crittall (2018). ^fUS: National Philanthropic Trust (2018); Canada: Strategic Insight (2018); Australia: Seibert (2019).

3 DAF assets have grown substantially in both the US and Canada since 2018: the 2020 total for the US is estimated to be \$142 billion (National Philanthropic Trust 2020) and for Canada \$5.7 billion (authors’ estimate). For this comparative analysis, we use the 2018 information as it is latest year of data available for all three countries.

capita giving and participation rates, the amount of assets held in DAFs in Canada is roughly proportionate to the US. However, the Australian DAF market is only about a third of what would be expected based on its own charitable giving characteristics.

Lower levels of personal wealth or limited philanthropy can be ruled out as the basis for Australia's smaller sub-fund market because wealth and giving patterns are similar to Canada. The portion of the adult Australian population with household wealth above US\$ 100,000 is 66 percent (52 percent in Canada), one of the highest of any country (Shorrocks, Davies, and Lluberas 2019). The overall patterns of giving behaviors are generally similar in the three countries, although the average percentage of income donated in Canada and Australia is about half that of the US. Our argument is that the discrepancy is due to differences in the supply side and regulatory regimes, relevant to the set of motivating factors identified in the three scenarios, and that these differences affect support for, or resistance to increased regulation.

5 DAF Markets and Regulation Compared

As examined in detail in this section and summarized in Table 2, several factors differentiate DAF markets and regulation in Australia from Canada and the US. A less developed community foundation sector with higher entry thresholds on funds may dampen participation. A more collectivist culture of philanthropy, compared to a more individualistic one in the US, has tilted Australian tax incentives and charity regulation toward an emphasis on public benefit rather rewarding giving by the very wealthy. This plays out in stricter regulation of capital gains incentives, requirements for sponsors to pool assets, higher disbursement quotas, and limitations on transferring assets between foundations and DAFs.

5.1 The Supply Side and the Culture of Philanthropy

Proposition 1: *The availability of community foundations encourages the use of DAFs.*

The DAF infrastructure in all three countries involves community foundations, financial services-affiliated and single purpose sponsors, but in different mixes, notably in the relative presence of community foundations. We argue this affects donors interested in treating DAFs as pseudo-foundations, who will be

Table 2: Comparison of DAF suppliers and regulations.

Proposition	Australia	Canada	US
P1: Community foundations	25% of total DAF assets	27% of total DAF assets	28% of total DAF assets
P2: Entry & administration fees	Highest (\$20-\$50 k)	\$5-\$25 k	Lowest (\$0- \$25 k)
P3: Management of assets	No – all assets pooled	Yes, but no regulatory guidance	Yes, specified in tax code
P4: Payout rates	4%	3.5%	None
P5: Capital gains	No foundation – DAF; no DAF – DAF	Foundation – DAF; DAF – DAF allowed	Foundation – DAF; DAF – DAF allowed
	No capital gains exemption	Capital gains exemption, but only on public shares	Capital gains exemption on variety of assets; other measures incentivize DAFs over foundations
P6: Anonymity	Yes	Yes	Yes

incentivized by the availability of community foundations. Relative to population, the coverage by community foundations is higher in Canada (1: 196,000) than in the US (about 1: 410,000) and both are much higher than in Australia (1: 638,000). In the US and Canada and, to a lesser extent in Australia, community foundations played a pivotal part in the establishment and expansion of DAFs. The first fund that provided donors with the ability to make granting recommendations to the sponsoring institution was established in 1931 as a foundation administered by the New York Community Trust, and DAFs gained in popularity in the US during the 1950s although still mainly held by community foundations (Berman 2015; Brunson 2020; Watts 2018). That changed dramatically after the first commercial investment firm, Fidelity Charitable, entered in 1991, soon followed by others, so that “commercially” affiliated sponsors now dominate. In 2018 they held almost 60 percent of total DAF assets compared to 28 percent at community foundations which have experienced a significant decline from their 36 percent share in 2015 (National Philanthropic Trust 2020).

Canada shadowed the US with a lag of about 20 years. DAFs were first offered in Canada in 1952 by the Vancouver (Community) Foundation; financial institutions (mainly bank-affiliated) entered in the early 2000s, and the supply quickly expanded and diversified to include fund companies and investment firms. With increased competition, community foundations have actively sought to distance themselves from their more commercial peers and attract a broader range of donors by advertising their education and information services, lower

costs of entry and management fees, and that they can make advisors “look good” to their clients (Calgary Foundation 2020). Although growth rates of DAF funds at community foundations have remained strong (39 percent in 2018), they have lagged the financial services and single purpose sponsors. In 2018, the 191 community foundations held about 27 percent of total DAF assets, which is comparable to the US (National Philanthropic Trust 2020) and slightly higher than Australia, but down significantly from their 53 percent share held in 2016.

DAFs are a more recent development in Australia. Most of its 39 community foundations were established after 2000 (Australian Community Philanthropy 2020; Leat 2004) and the option of sub-funds required legislative and regulatory change creating the category of Public Ancillary Funds (PuAFs) which can solicit funds from the public and enable donors to establish funds in their own name (O’Connell 2002; Williamson 2019). In spite of a later take-off, DAFs quickly became accepted as a vehicle of structured philanthropy, growing to almost 2000 accounts by 2018 (Siebert 2019). Community foundations hold about 25 percent of total sub-fund assets while trust (diversified financial services) companies, which operate separately from banks, manage an equivalent percentage. Although the DAF funds managed by community foundations (A\$415 million) grew by 62 percent from 2013 to 2019 (Australian Community Philanthropy 2020), this remains a relatively small amount – well below the fund assets managed by the five largest Canadian community foundations.

The culture of philanthropy – and how it is viewed by donors, their peers and the public – affects how people give and is embedded in charitable tax incentives. Here, too, are marked differences. The philanthropic culture of the US is premised on individualism and reflects a positive view of wealth – that wealth, particularly when earned rather than inherited, is a “universal measure of achievement and success” (Wright 2001: 408; also Wolpert 1993). Giving is viewed as “generosity” rather than altruism, and is extolled to encourage further generosity (McDonald and Scaife 2011). Giving co-exists with self-aggrandizement (Schneider 1996) and is “interlaced with self-interest” (Wright 2001: 413). This individualism was incorporated into the creation of the charitable contribution deduction whose intent, Duquette (2019: 554) argues, was to “protect voluntary giving to public goods by rich industrialists who had made their fortunes in business.” By design, the incentive still disproportionately benefits wealthy households.

Australia’s culture of philanthropy, as reflected in media reporting (McDonald and Scaife 2011) and as a consistent theme in our interviews, is more equalitarian. It values “mateship” and being quick to help others as “something we just do,” particularly in times of disasters, and it creates a reluctance to stand above the collective (McDonald and Scaife 2011; McGregor-Lowndes and Williamson 2018). Wealth or a person’s financial achievements are not celebrated (Leat 2004;

McDonald and Scaife 2011: 314), rather the culture eschews boasting about wealth or giving it away in a public manner. This “tall poppy syndrome” – standing too tall above the rest warrants being cut down to size – may be waning (Smerdon 2015), but the Australian interviewees almost uniformly raised it as a key aspect of philanthropic culture and reinforced the cultural value of protecting privacy in giving. An emphasis on collective public benefit is further evidenced in tax incentives and regulation. The designation of charitable status, as recognized in common law and institutionally by the Australian Charities and Not-for-Profits Commission (ACNC) is separate from eligibility to provide tax receipts for charitable gifts, which is accorded by the tax office. The subset of charities with status as Designated Gift Recipients (DGRs) must meet a public benefit test, now established in charity legislation, and a formal responsibility of the ACNC is to promote “trust and confidence” in the sector (McGregor-Lowndes and Wyatt 2017).

A Canadian philanthropic culture is less well defined, or at least is not widely discussed by the media nor identified in academic literature or in our interviews. Indeed, the host of a popular national radio program once ran a contest to name the Canadian identity, with the winning entry being “as Canadian as possible under the circumstances” (Little 2007: 17). We might infer, then, that the Canadian philanthropic culture sits somewhere between the individualistic American and more equalitarian Australian. Rather than focusing on the very wealthy, the charitable tax incentive, introduced during WWI, was intended to encourage the public to support specific government objectives with broad participation across the population (Watson 1985). Over time, it has become very generous with a continuing view to encouraging participation by people of modest means. The accompanying regulatory approach aims to balance growing philanthropy with protecting the integrity of the tax system (McGregor-Lowndes and Wyatt 2017). In terms of policies governing DAFs, Canada has tended to be a decision taker, rather than shaper, generally following the US albeit it with some important differences.

The implications are that the collectivist/public benefit culture of philanthropy in Australia has inhibited the creation of a regulatory system favoring the tax savings motivated donor, but that the more limited availability of community foundations has also dampened the use of DAFs as pseudo-foundations. Differences in the specific aspects of DAF regulation are examined in the rest of this section.

5.2 Entry Thresholds and Management Fees

Proposition 2: *Low entry and administration/management fees encourage the use of DAFs.*

Table 3: Minimum initial contributions across representative DAF sponsors.

	US (US\$)	Canada (C\$)	Australia (A\$)
Community foundations	\$5000–\$10,000	\$5–\$25,000	\$20,000–\$50,000
Large financial	\$0–\$25,000	\$10,000	\$20,000–50,000

Source: websites of the largest community and financial institution affiliated sponsors.

The minimum size of initial contributions and continuing fund balances vary greatly within each country. Community foundations tend to have lower thresholds than financial institutions, although the largest US players, Fidelity and Schwab Charitable (2017), recently reduced minimum initial contributions to zero. In general, initial minimums tend to be higher in Australia than the US or Canada, particularly at community foundations, as indicated in Table 3. In order to be competitive, many Canadian community foundations have reduced the cost of entry in recent years, from an average of \$10,000 to \$5000 (sometimes lower), bringing them in line with their US counterparts. At most Australian community foundations, the entry amount is A\$20,000 with some setting the threshold even higher at A\$50,000 (McLeod 2018).

Administration and investment fees are also highly variable and cumulative, usually lower the larger the asset under management. Even with low initial contribution thresholds, the combined fees may discourage middle-income donors with smaller accounts (Andreoni 2018). As with entry thresholds, Australian community foundations tend to have higher management fees than their North American counterparts. While at a representative Canadian community foundation, fees range between 80 and 125 basis points on fund assets (lower with larger funds), those at a typical Australian community foundation range between 50 basis points for funds over A\$2.5 million to 220 basis points for funds with assets below A\$500,000 (authors’ calculation).

In short, sub-funds available to Australian donors through community foundations require a higher level of assets and are more costly to maintain. In North America, the participation of single-purpose foundations associated with major financial institutions and their broad networks of financial advisors have forced community foundations to adjust their costs downward. It is reasonable to expect that as the community foundation movement develops in Australia, and as competition for donor dollars from trust companies becomes more intense, Australian community foundations will seek ways to enhance their appeal. As in North America, however, it seems likely that the fastest growth of DAFs (in terms of undistributed assets) will be by those supported by networks of either independent or affiliated financial advisors.

In spite of the now very low entry thresholds in the US and Canada, the popular notion that DAFs serve as the “poor person’s foundation” (Colinvaux 2011) and that they have significantly democratized giving has to be challenged. The average amount held in DAFs in the US is variously estimated to be \$167,000 (National Philanthropic Trust 2020) and \$300,000 (Moffett 2018), and in Canada is about \$200,000, although these averages can be skewed by very large and very small DAFs. While the “average” Canadian donor gives about \$1600 a year (claimed as tax receipted), our research indicates that the average donation to a DAF is about \$50,000, albeit lower at some community foundations. Australia more formally sets the entry bar in this range. It would take the average donor, contributing \$1600 annually (assuming a five percent compounded return and no disbursements) 40 years to build a \$200,000 account. The limited (and declining) use of DAFs by small donors, and the diminishing share of DAF assets by community foundations, is partly driven by the growing presence of financial advisors, particularly those associated with financial institutions. Advisors power the creation of new funds and, as we learned from the interviews, are increasingly focused on clients with a minimum portfolio of \$100,000 or those facing liquidity events.

5.3 Involvement in Asset Management

Proposition 3: *The ability to advise on investment of assets encourages the use of DAFs.*

The extent to which donors can advise on the investment side of DAFs differs radically in Australia from the US and Canada. The US framework is explicit that donors retain advisory privileges over how assets are invested, as stated in the definition of a DAF in the tax code (Hussey 2010; Internal Revenue Service n.d.; Madoff 2014). Donors can retain the services of their own investment managers who, in turn, contract directly with the foundation. The 2021 California court case of wealthy former hedge fund managers, Emily and Malcolm Fairbairn, against their DAF sponsor, Fidelity Charitable, had the potential to strengthen donors’ legal rights over the ongoing management of funds (Grumet 2021; Sullivan 2019). The Fairbairns contended that Fidelity Charitable managed the sale of their donated securities in contradiction of their advice, which resulted in devaluing the share price and reducing their tax benefit. The court ruled in favour of Fidelity, however, finding there had been no evidence of broken promises or negligence (Rubin 2021). The Canadian practice generally follows the US model where the donor retains some influence over how DAF assets are invested, but this is by practice rather than codification as there is no statutory definition of a DAF and no regulatory guidance on how DAF assets should be invested or guided by account

holders. Sponsoring foundations have stepped in with contractual arrangements on asset investment, which generally focus on capital preservation and give donors and their advisors discretion over specific product selection, although these policies vary from sponsor to sponsor (Strategic Insight 2018: 46).

In contrast, Australia requires that sub-fund assets within a PuAF be pooled and invested collectively. Because investments associated with individual accounts do not exist, it is not possible for donors to provide advice over how ‘their’ personal assets are managed. The spirit of this practice is loyal to the public nature of PuAFs that operate under terms of public administration of donations (Australian Taxation Office 2004: 4). The benefit of pooled assets is that it creates the potential scale for sophisticated investment policies that could generate a better risk and return trade-off, as well as cost-effective asset management. Pooled assets also better enable sponsoring foundations to allocate a portion of the portfolio to impact investing, thereby putting dormant assets to work for public benefit. In Canada impact investing is still limited (but expanding), currently offered for DAFs mainly by community foundations; where available, donors have to opt-in to participate. Conversely, Australia’s stipulation of pooled assets means that when the sponsors – primarily community foundations – choose to participate in impact investing, by default all sub-fund donors participate. Representatives of the trust company sponsors we interviewed indicated that impact investing could contradict their obligations for ‘prudent person investing,’ so most have not yet ventured into this territory. Overall, participants had mixed views on pooled assets: an advantage being the benefits of scale for smaller funds, while a disadvantage is that wealthy donors, confident in their ability to manage assets and reluctant to relinquish such control, may opt for a Private Ancillary Fund (PAF, equivalent to a private foundation) over a DAF.

About a quarter of the respondents noted their growing concern over the potential for conflicts of interest and private benefit for advisors and DAF sponsors affiliated with for-profit entities, pointing to a need for a more serious examination of the investment side of DAFs. Wealth advisors are key players in promoting philanthropy and are required to act in the best interests of their clients, but in the case of DAFs, since the funds have been gifted to the sponsor, who is their client? The issue is particularly complicated when the donor’s advisor is employed by the investment firm or bank affiliated with the sponsoring foundation. Given that financial services firms profit from having more assets under management in their own products, advisors employed by a ‘commercial’ sponsor stand to gain from dissuading donors to make large disbursements (Economist 2017). It is estimated, for example, that Fidelity Investments receives about \$60 million in fees from the DAFs held in its charitable foundation and that 60 percent of its DAFs are invested in Fidelity funds (Gandel 2019).

5.4 Disbursement Requirements

Proposition 4: *An absence of or low mandatory payouts on accounts or sponsor organizations encourages the use of DAFs.*

None of the three countries impose minimum annual disbursement requirements on individual DAFs, but Canada and Australia place such quotas on the sponsoring foundations, with Australia being more restrictive in also applying a public benefit test. Although the US requires an annual disbursement quota of five percent by private foundations, it has no such rule for public charities which include DAF sponsors. Canada applies the same disbursement quota, 3.5 percent, to all registered charities. Australia has differential rates of five percent for PAFs and four percent for PuAFs including sub-fund sponsors. For all three countries, it is up to the sponsoring foundation to limit free riding: that is, to ensure some funds are not dormant while others have high payouts that, when averaged, enables the sponsor to meet any mandatory annual disbursement quota. Research from both the US and Canada indicates that the average payouts are well above 5 percent (Heist and McMullen 2019; Strategic Insight 2018). In terms of donor motivation, our interviews overwhelmingly indicated that disbursement quotas on sponsors are not a determining factor in selecting or avoiding DAFs.

A related issue is whether ‘circular’ transfers – from DAF-to-DAF or foundation-to-DAF – are permitted. The US and Canadian regimes permit both types of transfers, while the Australian model is more complicated. Charities that have been conferred DGR status are further classified as DGR-1 (thought of as ‘doers’) or DGR-2 (‘grantmakers’). To ensure that tax privileged assets are always disbursed to ‘doing’ organizations, grantmaking DGRs including sub-fund sponsors can only gift to operating (DGR-1) charities. Therefore, distributions are not allowed from a private or public ancillary fund to another ancillary fund (Murray 2020).

A legitimate reason for DAF-DAF transfers is that the account holder thinks the current sponsor is unsatisfactory and moves to another, referred to as ‘portability.’ A foundation-DAF transfer might occur in the process of winding up the foundation. An additional example of how transfers are used for ‘manageability’ purposes was provided by a Canadian donor who made a contribution of complex assets to a DAF at a ‘commercial’ sponsor in order to use its expertise to liquidate the assets, and then disbursed the proceeds to a private family foundation for future management. The reason that has been of greatest concern to DAF critics is that such transfers enable a foundation to meet its disbursement quota without actually grantmaking to charities. Evidence of such circular flows is debated, although a US

study that tracked \$22 billion in grants from 2012 to 2015 found that 4.4 percent of dollars granted from DAFs were directed to other DAFs (GivingUSA Foundation and Lilly Family School of Philanthropy 2018: 29), representing \$968 million. Another study of 375 US foundations found they moved more than \$740 million to DAFs in 2018 (Gunther 2020a). The Canadian DAF sponsors told us that less than five percent of total annual disbursements go to other DAFs or private foundations, including the portability of entire accounts. Yet, in a study of the 38 largest family foundations (holding assets over C\$100 million), Phillips (2018: 7) found that four made substantial grants to sister foundations or DAFs.

The views of the respondents on the value of restricting such transfers is divergent. Most Canadian interviewees cautioned on balancing increased administration with the supposed benefits of additional oversight. Several of the Australian interviewees were critical of the limitations of the DGR-1 and DGR-2 restrictions because they do not allow PAFs to disburse to community foundation endowments. However, others disputed that this was a significant constraint for large community foundations because most have dual structures – one with DGR-2 status and another as a DGR-1 that could accept such transfers. This arrangement makes the system complicated and less than transparent.

5.5 Tax Incentives and the Treatment of Capital Gains

Proposition 5: *Capital gains exemptions on donations of a variety of asset types encourage the use of DAFs.*

The treatment of capital gains on donations is the major factor that sets the North American systems apart from Australia. The US and Canada tax capital gains as part of income, although with somewhat different schemes, and both give exemptions on capital gains if the property is donated to a charity, foundation or DAF. In addition, the donor receives a charitable receipt for the fair market value of the property or securities at the time the donation is made. Consequently, donating an asset (including securities) to a DAF has a significantly lower net cost to the donor than selling the asset and gifting the cash. Donating securities further changes how donors engage in philanthropy. If the intended charities do not have the capacity to receive securities or lack access to brokerage accounts, or if the proceeds are to be granted out over time or to many different beneficiaries, a DAF is a convenient mechanism to receive and liquidate the securities and distribute the proceeds. A difference between the two countries, however, is that the US allows deductions for donations of private shares and real estate, whereas Canada does not.

In Australia, people can donate securities to sub-funds (with DGR status), taking a receipt for the full value – but without an exemption for the capital gains. Interestingly, none of the Australian key informants said that there is strong pressure to institute a capital gains exemption or additional tax incentives. Indeed, aligned with the overall culture of philanthropy, 90 percent felt such a tax incentive would not be well received. The privilege inherent in having accrued capital gains in the first place and then rewarding the donation, would likely not pass the ‘pub test’ (how members of the general public, present at any corner pub on any particular day, would respond) because it would be seen as double-dipping. Rather, they believe the tax incentive for the fair market value of the securities, which could then be used to offset the deemed capital gains inclusion, is sufficient.

The US tax system not only offers stronger tax-savings incentives by applying the capital gains exemption to a wide variety of assets, it incentivizes the use of DAFs over foundations in several ways. First, it provides higher tax deduction limits for gifts of cash, stock or real property to public charities, which includes all DAF sponsors, than to private foundations (Steele and Steuerle 2015). In contrast, the Canadian and Australian charitable tax incentives are the same regardless of whether contributions are made to operating charities, private foundations or public foundations (assuming DGR status in Australia). In addition, on gifts other than publicly traded shares, the US applies the (appraised) fair market value to DAFs while only the original purchase price is allowed for private foundations.

Second, the US system creates an incentive to ‘bunch’ charitable contributions in a particular year. Whereas Canada and Australia require receipts for all charitable contributions claimed as credits in tax filings, the US offers a standard deduction, a threshold that was almost doubled in President Trump’s 2018 tax bill. The dramatic 150 percent rise in the number of DAF accounts created from 2016 to 2018 and over 50 percent growth in assets has been linked to the anticipation of the loss of itemization under the Trump tax bill (Rooney 2019). Only if US tax filers are eligible for deductions in excess of the standard limit (US\$12,000) are itemized receipts required; for those below there is no marginal benefit for making charitable deductions. The way to enhance the tax incentive is to make large contributions in excess of the threshold in certain years and reduce donations in other years (Carrns 2017). Flowing the consolidated contributions through a DAF allows the tax filer to optimize tax incentives and still maintain steady cash flow to the receiving charities.

Third, Charitable Remainder Trusts (CRTs) have been popular in the US, but are rarely used in Canada or Australia given that there are no estate taxes. A CRT is a tax exempt, irrevocable split trust, one portion of which provides annual payments for life to the contributor and a remainder that is a tax-receipted charitable

gift. The use of a DAF as the beneficiary is widely advertised by the large financial services sponsors as providing flexibility and removing the pressure of identifying the ultimate recipient charities at the creation of the CRT (Kinaitis 2020). Canadian and Australian tax rules create more drawbacks than benefits of CRTs, while offering generous tax benefits for estates (Burrows 2020).

The results in the US, as Andreoni (2018) and Colinviaux (2017) observe, are that DAFs have become magnets for tax savings on capital gains, and this benefit is widely advertised by the foundations associated with the large financial investment firms. In the Canadian context, all the interviewees agreed that DAFs are being used in this way, but with a more modest take-up. While 5.5 million Canadians claimed a charitable contribution on their 2014 tax return (Statistics Canada 2018) and about half that amount (2.6 million or 7.3 percent of tax filers) reported taxable capital gains, only 5400 claimed the capital gains tax exemption for charitable contributions of securities, representing 9.3 percent of total charitable contributions (Government of Canada 2017: 212). Thus, there appears to be substantial room for more Canadians who already give to charity to take advantage of the capital gains exemption. Without a capital gains exemption on donations in Australia and, given the relative ease of setting up a PAF that has the same tax advantages, the attraction of DAFs as tax savings vehicles is significantly reduced. Indeed, in a study of ultra-HNW entrepreneurs, Williamson and Scaif (2013: 5) found that PAFs were the giving structure of choice and outweighed sub-funds more than 2 to 1, although by 2018 the number of sub-funds had surpassed the number of PAFs (Seibert 2019).

5.6 Provisions for Anonymity

Proposition 6: *For this segment of donors, protection of anonymity encourages the use of DAFs.*

The option to give anonymously from a DAF exists in all three countries, thus any differential effects of this aspect are difficult to assess. Concerns over anonymity have been raised from both a principled and practical perspective, however. As a matter of principle, do donors who have received public subsidies for their gifts have a right to privacy? Do the recipients and public have right to know the source of grants? From a practical perspective, what if the gift is from a donor that the charity, for whatever reason, would not knowingly take a donation: do they need to turn down all anonymous gifts? In terms of good practice, such anonymity might

hamper charities' ability to build relationships and engage with donors over time (Lilly Family School of Philanthropy 2020; Martin, Buteau, and Gehling 2020).

Although possible in all three countries, the US system creates greater incentives for the use of DAFs by those who want to fund advocacy and policy work, masking their identity in doing so.⁴ It is estimated, for example, that in 2010 a quarter of the donations for the anti-climate change lobby in the US came from a single DAF which could remain anonymous (Brulle 2014). In 2019, reports emerged that DAFs held at four of the largest US investment firm-affiliated sponsors had contributed (anonymously) millions to organizations classified as 'hate' groups (Kotch 2019). If such causes were funded through a private foundation, the gifts and recipients would have to be publicly reported, whereas the use of a DAF provides a shield between donor and recipient.

The lack of transparency on individual accounts makes the extent of intentional identity concealment difficult to uncover. However, DAF sponsors such as Fidelity Charitable (2020) estimate that only three percent of US donors choose the anonymity option, and thus dismiss this as a serious regulatory concern. The Canadian DAF sponsors we interviewed put the preference for anonymity at about five percent of account holders. What we heard in an almost unanimous voice from the Australians is that privacy matters to enough donors that it should remain protected when requested. As a regulatory matter, anonymity is a tough one because the funds actually belong to the sponsoring foundation, so it may be difficult to compel them to identify donors.

4 The advantages of DAFs over private foundations for identity shielding and funding policy and advocacy work are greater in the US than in Canada or Australia. As public charities, US DAF sponsors do not need to publicly report their gifts, whereas if these gifts were made through a private foundation disclosure is mandatory. In Canada both public and private foundations must publicly report the recipients and amounts of their gifts, although the donor appears as the DAF sponsor, not the individual DAF, thus still providing some distance between specific donors and their gifts. Australia requires both public and private ancillary funds (foundations) to report gifts, but the information is not public. In the US DAFs can also be used to enable donors to skirt its "public support test" requiring that public charities are not dependent on a few donors because a donation from a DAF sponsor, as another public charity, meets the test (Cantor 2015). Recent relaxation of the restrictions on charities engaging in public policy 'advocacy' in Canada and Australia means there is less of a regulation-induced incentive to conceal support for policy work; the effects of the liberalization of the advocacy rules on DAF grantmaking have not yet been tested, however.

7 Discussion: Implications for Regulation

This study assesses the effects of different regulatory approaches to DAFs, relative to three different donor scenarios, and shows how these differences explain why the assets held in sub-funds in Australia are disproportionately lower than in Canada or the US. We argue that a major reason is Australia's absence of capital gains exemptions on donations, which affects the donor motivated primarily by tax savings during major liquidity events. The Australian key informants were consistent in linking this to the notion of a tall poppy syndrome as part of the culture of philanthropy: capital gains exemptions reward those who have accrued wealth through shares or property rather than earned income, and stakeholders felt that taking both a charitable tax receipt and a capital gains exemption is a double benefit. The similar exemption in Canada appears to be under used, suggesting it is of lesser significance or that advisors are reluctant to have conversations about philanthropy with their clients (Sjogren and Bezaire 2018).

In addition, Australia requires DAF assets to be pooled, removing any opportunity for account holders to provide guidance on investment strategies, which may be a consideration for market-savvy donors. The minimum annual payout rates for the sponsors are higher – at four percent compared to 3.5 percent in Canada and no requirement in the US – which may be a factor for those uncertain or inattentive to their giving, although our interviews indicate mandatory disbursements are not a major consideration in the use of DAFs. The fewer number of community foundations and their higher fees may discourage those who use their DAFs as pseudo-foundations intended to facilitate intergenerational engagement.

In recent years critics of DAFs, mainly in the US, have advocated for a variety of reforms as indicated in Table 4. These include measures that: reduce the endowment effect and incentivize timely distribution of funds; address proper valuation of donated complex assets (an issue that also applies to foundations); increase transparency; and reduce potential conflicts of interest between clients and advisors employed by sponsors that invest the assets. As the donor scenarios suggest, the implications of differing regulations will vary depending on the priorities of donors. Changing the timing of the tax benefit or adjusting the capital gains exemptions, for example, would have the greatest impact on the donor whose priority is tax savings.

Despite these extensive recommendations, significant regulatory change has not occurred, and policy “drift” is evident in all three countries, but in different configurations and for differing reasons. Galvin and Hacker (2020: 217) argue that policy drift occurs “when a policy or institution is not updated to reflect changing external circumstances.” This enables powerful, well-resourced actors – the

Table 4: Summary of proposed reforms.

Issue	Proposed reforms
Timely distribution	
Incentivize distribution/reduce the endowment effect	Tie the timing of tax benefits to distribution, or allocate between the time of contribution and distribution (Colinvaux and Madoff 2019b; Madoff and Colinvaux 2017) Mandate payouts on an account basis; set a time requirement on payouts (Zerbe 2018); mandate 10 % payouts for three years (charitystimulus.org) Require reporting on payouts from individual accounts (2019 California bill; Collins, Flannery, and Hoxie 2018) Ensure the directors of DAF foundations consider issues of intergenerational justice when making accumulation and spending decisions (Murray 2020) Pool fund investments (Australian framework), limiting donors' ability to advise on investments, thus reducing the endowment effect Evaluate and classify the status of DAFs at the account level; if they effectively serve as private foundations, classify them as private foundations (Brunson 2020) Prevent foundations from contributing to DAFs (and vice versa) to meet their minimum payout; make such payouts more transparent (Colinvaux and Madoff 2019a; Collins, Flannery, and Hoxie 2018)
Prevent circular transfers; ensure donations go to active charities	Stricter enforcement of 'washing' of non-permissible securities and capital gains; limit the tax advantages of non-cash assets (Canadian framework); allow donations only of cash and tradeable securities; non-cash assets must be paired with cash contributions (Andreoni 2018; Murray 2020; Zerbe 2018)
Valuation of assets	Value non-publicly traded securities at net rather than appraised value (Madoff 2018a, 2018b)
Prevent over valuation of donated assets	
Transparency	
Enhance transparency	Require reporting on payouts from individual accounts (2019 California bill; Collins, Flannery, and Hoxie 2018) Eliminate ability to give anonymously
Prevent distribution to causes without a public benefit	

Table 4: (continued)

Issue	Proposed reforms
Enable charities to undertake better donor relationships	Eliminate ability to give anonymously
Conflicts of interest	
Reduce conflict of interests in sponsors linked to investment firms	Boards of DAF sponsors must be independent from the investment firm (Zerbe 2018) Better enforcement of fiduciary duties of boards (Murray 2020) DAFs cannot be managed by the same organization that handles the donor's personal assets (Makous 2005) Mandate commercially-affiliated foundations to demonstrate they meet charitable purposes by showing their grants improve lives/the environment (Hurtubise 2017) Require better fee disclosure information (Murray 2020)
Avoid excessive management fees	Limit management fees for commercial advisors so they do not increase with size of assets (Collins, Flannery, and Hoxie 2018)

‘winners’ of drift – to stymie or block change in a low visibility manner. To be clear, however, drift does not simply take the form of inattention, but can result from the active, strategic intervention of winners in ways that keep an issue off policy agendas or block its advance. Drift is reinforced through the creation of interpretative policy frames and discourses around the purpose and effects of a policy (Jacobs and Weaver 2015), and subsequently on the need for change (Rosenbloom, Meadowcroft, and Cashore 2019). Such framing also generates resource and incentive effects for some interests to organize and others to sit on the sidelines (Béland and Schlager 2019; Pierson 1993).

In the US, policy drift can be attributed largely to the well-resourced DAF ‘industry’ dominated by the sponsors affiliated with investment firms, but joined by a group of community foundations, the Council on Foundations and several other philanthropy peak associations (Gunther 2020b). The interests of the large segment of DAF donors motivated by tax savings align with these as do the pseudo-foundation users who have few alternative vehicles of structured philanthropy. As reported by the Lilly Family School (2020), most nonprofits have a neutral view of DAFs with those receiving DAF funds have quite positive views. With few incentives for other donors or the public in general to take an opposing stance or advocate for policy change, the rest of the actors in the policy space are diffused. The effects are evident in the response to a bill introduced in the California legislature in 2019 that would have required DAF sponsors to report (without identifying donors) disbursements on a fund-by-fund basis and disclose the value of assets in investment vehicles operated by the commercial investment firms associated with the sponsor. The bill faced strong opposition from the DAF industry and an alliance of community foundations, was withdrawn, and an even more modest bill (AB 2936) introduced in 2020, which was then bumped from the legislative agenda (Alliance for Charitable Reform 2020; Cantor 2020; Daniels 2020).

The critiques in the US have emanated primarily from academics and commentators on philanthropy. While a variety of concerns have been raised, the “cornerstone” of DAF reform has been centered on payouts (Zerbe 2018). The payout rate has thus become a measurement issue, with DAF proponents stressing that rates are higher than required for foundations, refuting any need for change (Ludwig and Harmann 2019). The COVID-19 pandemic may have realigned old debates and created new potential for regulatory change, however. The effects of COVID-19 have elevated the need to move funds in large amounts and in a timely manner to assist hard hit charities and vulnerable communities. Although evidence indicates a strong uptick in the number and amount of grants from DAF holders (Theis 2020), the issue has been reframed slightly to emphasize that billions are still sitting in DAFs which could be used to help the charitable sector. This has led to the mobilization of new coalitions, including philanthropists, DAF holders and foundations,

and produced a new round of calls for regulatory reform (Gunther 2020b), including a proposal to Congress for ‘emergency charity stimulus’ legislation to double the mandatory annual disbursement for foundations from 5 to 10 percent, and to require the same for DAFs for a three year period, thereby providing an injection of \$200 billion (CharityStimulus.org 2020). In addition, state level action is increasing, for instance in Minnesota, to require reporting of foundation-to-DAF transfers (also under review by the IRS), leading to speculation that, with an expanded set of proponents and seemingly less opposition from the philanthropic trade organizations, substantial regulatory reform may yet be achieved (Gunther 2020b).

Policy drift has taken a different form in Canada as it stems from the absence of attention by the public or the regulator, in part due to more limited research (Funk 2020) and a proportionately smaller segment of donors focused on tax savings. When a Special Senate Committee began public hearings on a policy reform agenda for the charitable sector in 2018, DAFs were not a priority, nor well understood, and its recommendations were cautious – to consider “means of ensuring that donations do not languish in donor-advised funds, but are instead used to fund charitable activities in a timely fashion” (Senate of Canada 2019: 21). There was no vocal push back from the financial services-affiliated DAF sponsors or private foundations, perhaps assuming that policy change was unlikely. Community foundations, many of which have been leaders in providing greater transparency on their own DAFs, also did not engage on the issue. Rather, the focus of the charitable and philanthropic sector has been on getting wealth and other philanthropic advisors to be more knowledgeable about and active in assisting their clients with charitable giving (CAGP 2018), and on a broader policy agenda for the sector. As two of our Canadian interviewees from DAF sponsors noted, they could foresee measures to increase transparency on the disbursement from individual accounts, and may need to accept these in order to protect the credibility of DAFs. Unlike the US, this would not likely be opposed by community foundations, many of which already report this. COVID-19 has brought calls to increase disbursements for foundations, from 3.5 to 5.0 percent, with many signing a pledge to do so. The pressure has applied mainly to foundations, however, demonstrating that DAFs still tend to fly under the policy and public radar.⁵

5 The impetus for change in Canada may arise if nonprofit and philanthropic sector leaders (and bank-affiliated DAF foundations) are successful in convincing the federal government to extend the capital gains exemption for public shares to private shares and real estate. The Conservative government had initiated such a measure in 2015 but the succeeding Liberal government revoked its implementation. With a quarter of family businesses predicted to be sold in the next five years (Sjogren 2021), this rule change would likely result in a strong, sudden uptick in DAF contributions, as well as concerns over proper evaluation of assets, thus heightening scrutiny of current DAF regulations.

Australia has little push for regulatory reform because total DAF assets are still small and, from the outset, the regulatory regime addressed several issues of the US system, including sponsor disbursement quotas, capital gains exemption and pooled assets. As with Canada, any such reform is likely to be incremental, centering on greater transparency.

8 Conclusion

More than 20 years ago, when DAFs were still fairly new, Steuerle (1999) predicted that their success would largely depend on whether the public trusts that they would not be abused. It is now difficult to ignore that DAFs have a growing problem of legitimacy, which has been amplified by the global pandemic. How DAFs are regulated in the US, Canada and Australia has created different policy feedback, generating different interpretive frames and differential benefits on different sets of donors and sponsors. Conceptually, this paper presents three scenarios that capture the various priorities donors apply in their use of DAFs: as pseudo foundations, tax savings and protection of privacy. How DAFs are regulated affects each of these scenarios somewhat differently.

Our contribution is to assess how different regulatory regimes have shaped DAF ‘markets’ in different ways, demonstrating that Australia is only about a third of what would be expected on a per capita giving and participation rate basis, whereas Canada is almost proportionate to the US. A philanthropic culture in the US that values individualism and the focus of charitable tax incentives on promoting giving by the wealthy has produced a DAF system that is weighted toward supporting tax savings related to wealth liquidity events. A variety of other US tax incentives further favor the use of DAFs over private foundations as intermediaries of structured giving. Canadian charitable tax incentives lean toward encouraging philanthropy widely across the population, while the Australian system puts the emphasis on demonstrating public benefit, resulting in greater restrictions on DAFs than in Canada or the US. Lacking an exemption on capital gains on donation of securities and other property, Australia has not tilted toward strong promotion of DAFs as tax saving vehicles. While allowing such exemptions, but only on public shares, Canada has avoided some of the serious issues of valuation of donated assets that exist in the US. A less developed community foundation sector in Australia, accompanied by their higher entry thresholds and administrative fees, also contributes to proportionately lower DAF assets.

The defence of DAFs as serving a public good because they democratize philanthropy – being widely used by donors of modest means – has to be questioned and examined more closely. In spite of very low thresholds for initial contributions

in the US and Canada, it appears from the average size of donations and accounts that the primary users are affluent, able to make donations in tens of thousands of dollars. The minimum entry level in Australia (A\$20,000) reflects this expectation. Financial advisors play a pivotal, and increasing, role in the growth of DAFs and, as we learned from our interviews, their focus is on the affluent, particularly those likely to experience wealth liquidity events. Community foundations are losing their share of DAF assets as a result of increased involvement by financial advisors in planning philanthropy and the participation by financial institutions in liquidity events such as the sales of family businesses or real estate and transfer of wealth between generations.

As DAF numbers and assets grow in all three countries, particularly those held by sponsors linked to investment firms, banks and trust companies, greater attention will need to be paid to how DAFs provide a private benefit for sponsors, financial advisors and donors versus a public benefit for charities and society. An important, and likely the most achievable incremental step to retain, or regain legitimacy in all three countries is greater transparency of assets and payouts, followed by measures to address potential conflicts of interest and excessive fees. COVID-19 has opened the door to more substantial policy change, however. Whether enough stakeholders and regulators walk through that door is still an open question.

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