Charitable Causes, Political Causes and Involvement

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This is the third occasion on which I have had the duty and the honour of inaugurating tenure of a chair of law, and it is the third occasion on which I have had no predecessor to extol. Thus I have been relieved simultaneously of material for an opening passage and the risk of hypocrisy. I content myself, therefore, with expressing appreciation of the efforts of all those at University College, Cardiff, and elsewhere in the University of Wales, who planned and made possible the creation of a department of law at this college.

The subject on which I have elected to speak today is one which concerns a traditional part of the law, charitable trusts, in relation to a problem which is well-known, the dangers of straying from charity into political activity, but which has acquired a topical novelty as a result of the desire of some administrators of charities to go beyond the good works for which their funds were subscribed and get involved in the formulation of policy in this country, in other countries and by international organisations. The universities are affected because the resolve to stray from the advancement of education has afflicted administrators of funds placed at the disposal of students' unions.

To establish that a particular purpose is charitable in law is important for a variety of reasons. One significant reason is that donations to charity and property held by a charity are given considerable privileges in respect of income tax,[1] estate duty,[2] capital gains tax,[3] rates,[4] S.E.T.[5] (R.I.P.), bingo duty,[6] gaming machines licence duty,[7] and pool betting duty.[8] It was estimated[9] as long ago as 1955 that the annual loss in revenue attributable to tax exemption from charities was probably about £35 million. Inflation will have multiplied that in seventeen years. The new concessions in capital gains tax and estate duty this year are expected[10] to amount to £15 million annually. Rating concessions add to the figure. In relations with the tax men, it is good to be a charity.

To define charity has been shown to be a task requiring a book; but for present purposes charity in our law may be regarded as good works, without possibility of personal gain, in the interests of religion, education, the relief of poverty or the distress of old age, disablement or ensuing from communal disaster, social welfare, the promotion of good health, local public works or amenities, or the national welfare in military or economic terms. There are many disputes every year about borderline cases, but two principles are clear: first, that property held or given for a charitable purpose must be applied for that purpose, and secondly, that political activity is not charitable. The fact that principles are

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easy to state with clarity does not mean either that courts find it easy to apply them consistently or that people abide by them willingly even in clear cases.

The modern tendency was noted by the Charity Commissioners for England and Wales in their report for 1969, where they said: "One contemporary development which has given us some concern has been the increasing desire of voluntary organisations for "involvement" in the causes with which their work is connected. Many organisations now feel that it is not sufficient simply to alleviate distress arising from particular social conditions or even to go further and collect and disseminate information about the problems they encounter. They feel compelled also to draw attention as forcibly as possible to the needs which they think are not being met, to rouse the conscience of the public to demand action and to press for effective official provision to be made to meet those needs. As a result "pressure groups" or "lobbies" come into being. But when a voluntary organisation which is a charity seeks to develop such activities it nearly always runs into difficulties through going beyond its declared purposes and powers. No charity should, of course, undertake any activity unless it is reasonably directed to achieving its purposes and is within the powers conferred by the charity's governing instrument."

Although reported litigation about charities in this country goes back six hundred years, one of the earliest examples of argument about a charitable purpose connected with politics arose out of a deathbed disposition by the will of the Reverend J. H. Scowcroft, vicar of Bishop's Itchington, in the county of Warwick, who died in February 1897. He left to the vicars for the time being a building known as "The Conservative Club and Village Reading Room" to be maintained "for the furtherance of Conservative principles and religious and mental improvement and to be kept free from all intoxicants and dancing." In a judgement of impressive brevity and apacity, Stirling J. held that to be a valid charitable gift.[12] No doubt the learned judge was influenced by the solemnity of religious and mental improvement, by the sobriety of refreshment indicated and by the immobility: the place was certainly not going to be a den of vice. The judge did not believe, as many other people have, that Conservative principles were not political. But he did succeed in providing material for many subsequent arguments addressed to courts that gifts for the advancement of Conservatism were charitable.

The organisations which pinned their hopes on that precedent were doomed to failure. In 1929, there came before Eve J. a dispute over a gift of land "to the Primrose League of the Conservative cause to be used as a habitation in connexion with the league or in a manner which will benefit the cause." That was held not to be a charitable disposition.[13] The Primrose League Manual said that the league's principles were: "the Maintenance of Religion, of the Estates of the realm, and of the Unity of the British Empire." The second two of these principles, so far as they are comprehensible at all, were no doubt among the most-loved of lost causes by a considerable section of the community, many of whom might not have recognised them as being partisan.

Coupled with the maintenance of religion, though the evidence that the Conservative Party is in power in the next world is scanty, they are couched in high-sounding phrases of inter-war rectitude. But they could hardly be expected to fool a High Court judge, and anyway the game was given away by the Primrose League Manual, for anyone who ploughed through it as far as page seventeen, where it said: "It is most essential that the political character of the Primrose League should be conspicuously maintained."

Four years after that case was decided, Finlay J. held not charitable a trust of a mansion for use as an educational centre for the Conservative Party.[14] It was clear that what went on in the mansion was political propaganda. The fact that some of the lectures delivered there were also educative did not make the trust charitable.

That settled the matter. The reason for the first three English cases on political parties having involved Conservatism is probably that the capacity of Conservatives at that period to give property for political purposes was greater than that of the supporters of other parties. The principle is clearly a general one: no political party can be a charity.[15] Indeed, that is more obvious in respect of other parties than it is of the Conservatives, because one of the threads running through the legal fabric is this: in distinguishing between education, which is charitable, and political propaganda, which is not, propaganda is usually advocacy of change, while education is largely dissemination of knowledge about what exists. The distinction between teaching what exists and advocating retention of the status quo, though a significant distinction, is not as striking as that between teaching what exists and advocating its alteration.

The turn of the Labour Party came in 1949. Robert Hopkinson, who died in November 1947, left his residuary estate to Philip Noel Baker, Emanuel Shinwell, Arthur Greenwood and Morgan Phillips on trust "for the advancement of adult education with particular reference to . . . the education of men and women of all classes (on the lines of the Labour Party's memorandum headed 'A Note on Education in the Labour Party,' a copy whereof is annexed to this my will and signed by me) to a higher conception of social, political and economic ideas and values and of the personal obligations of duty and service which are necessary for the realisation of an improved and enlightened social civilisation." Here we have the progressive rectitude of the post-war period, couched in the respectable language of the conscientious left, comfortable in the belief that, once he appreciates the proper duties of good citizenship, every man will become a moderate socialist. It sounds good, but the memorandum which the testator had incorporated as part of his will was on education in the Labour Party. That memorandum was clearly directed to training party cadres. With even less felicity than had the language of the testator's will, the memorandum said that ". . . providing for a higher and broader intellectual nurture of these persons in the party, it would be reasonable to expect that the general culture of the party as a whole would be elevated, and the impact on the

electorate would become vibrantly educative in character." Vaisey J. held the trust not charitable.[16]

No other bodies in this country that would be popularly described as political parties have been discussed in charity litigation, even though the most obvious head of charity is the relief of poverty. There are, however, clubs which, while they are not political parties, exist mainly or in part for the purpose of promoting some particular legislation. I take a political party to be a club which seeks either a majority in the House of Commons or sufficient members in Parliament to exert influence on the government party. An association with a one-track policy is in a somewhat different category. Nevertheless, if its objective is to influence Parliament, it may fail to achieve charitable status on the ground of its political character.

A society for the abolition of vivisection, for example, could scarcely expect a majority in a general election if it put up six hundred candidates with no other policy for the national well-being than prohibiting certain types of scientific experiment (though who can be confident that that is a less promising panacea than those who have tried?). Eccentric, perhaps, members of such clubs have never been so optimistic as to imagine they could form a government; yet anti-vivisection societies have been before the court several times on the issue of whether they are charitable or political.

Feelings of extreme kindness towards lower animals and indifference towards scientists are sometimes manifested by sections of the community. The attitude of the judges towards this phenomenon has changed during the twentieth century. In 1890, the Vice-Chancellor of Ireland held charitable a gift of £500 to the Society for the Abolition of Vivisection, whose object number 1 was: "To procure by legislative enactment the entire suppression of vivisection."[17] The relevant passage of his judgment runs:[18] "It is said that there is something illegal in the nature of the society, which, it is stated, has been instituted for the purpose of interfering with the operation of an Act of Parliament. I cannot yield to that argument. The society does not profess to interfere in any way with the Act of Parliament. It is a society for the purpose of inducing the Legislature by legitimate means, by bringing public opinion to bear, to make certain alterations in the law, and, instead of regulating the practice of vivisection to procure a law abolishing it altogether. The statute at present allows vivisection to be carried on, under certain restrictions and limitations, for scientific purposes, and the object of the society does not contain in itself any element of illegality."

Five years later, an English High Court Judge came to a similar conclusion in respect of a disposition to three anti-vivisection societies,[19] and Canadian[20] and American[21] courts followed suit in 1912 and 1938.

Three and a half decades passed by without the matter coming before a Commonwealth court. When it did, the break with past precedents was as complete as it was sudden. The first thing that happened was that the House of Lords, in

1947, held the National Anti-Vivisection Society not to be a charity on two grounds: first, vivisection was for the public benefit, therefore to abolish it was not; and secondly, a main object of the society was political.[21a] The objects of the society included the repeal of the Cruelty to Animals Act, 1876, and the substitution of a new enactment prohibiting vivisection altogether. Lord Porter, who dissented, would have classified as political any objective which could only be achieved either by legislative prohibition or by persuading people to desist from the practice. The majority did not go so far as to deny charitable status to all associations in favour of a change in the law, but only to those seeking legislation as one of their main objects.

Later decisions, in Victoria[22] and England[23] follow the same theme.

In one of the later English cases,[24] the testatrix seems to have been moved by vindictiveness towards people as well as compassion towards other animals. She died in 1962 having left some of her property to an institution opposing vivisection, the property ". . . to be used by such institution to do all in its power as soon as possible urge and get an Act of Parliament passed prohibiting such atrocious and unnecessary cruelty to animals and then to watch and have offenders severely punished." Buckley J. had no hesitation in deciding that that was not charitable.

Meanwhile, several years earlier, it had been shown that restraint did not pay. In 1950, Danckwerts J. decided that the Animal Defence and Anti-Vivisection Society was not a charity.[25] The objects of that society did not specifically refer to changing the law, but included general opposition to vivisection. The learned judge held[26] that the lack of reference to legislation in the objects did not distinguish this case from the decision of the House of Lords on the National Anti-Vivisection Society. He said that the activities of the society ". . . must necessarily in the end involve an attack on the Cruelty to Animals Act 1876, and the promotion of the support of legislation for repealing that Act and for suppressing vivisection altogether."

Can one understand that that society was not charitable because the abolition of vivesection would not be for the public benefit; but to hold it to be a political organisation when it proclaimed no interest in securing legislation goes much further than did the House of Lords and is the product of non sequitur. The majority of the House of Lords had based their decision on the society having legislation as one of its main objects, while the other society considered by Danckwerts J. might well have confined itself to trying to convince teachers and research workers that vivisection was unnecessary or immoral. If a society is formed for the abolition of poverty in Wales, it does not follow that the organisation will be driven in the end to promote or support legislation making it a criminal offence to be a poor Welshman.

It is quite clear that an association which is otherwise charitable does not lose its charitable status the moment it begins to support or oppose legislation. Frederick Inman's will provides an interesting contrast. In addition to making

a gift to an anti-vivisection group, held non-charitable because legislation was sought, he left some property to the R.S.P.C.A.[27] That body's objects were: ". . . to prevent cruelty to animals, by enforcing where practicable the existing laws, by procuring such further legislation as may be thought expedient, by inciting and sustaining an intelligent public opinion regarding man's duty to the lower animals, by rendering relief to animals requiring the same and by doing all things incidental and conducive to the attainment of the foregoing objects." Holding the R.S.P.C.A. to be a charity, Gowans J. said:[28] "The general object is, therefore, to prevent cruelty to animals. This dominates the statement of objects . . . None of the methods set out for the achievement of this object detracts from its character. It is true that one of those methods, viz. procuring such further legislation as may be thought expedient, if taken alone, would be a political object and nothing more. But it is only a method of achieving the main or fundamental object, the prevention of cruelty to animals."

The confusion is not surprising, for it pervades most branches of the law of charities. This confusion is competently maintained by the cases on the temperance movement.

As with opposition to vivisection, there has been widespread competition in opposing the consumption of alcoholic liquor. In respect of this field of endeavour, too, there has been a shift in British judicial opinion during the twentieth century.

Before starting on a consideration of the law, one point of language should be cleared up. Sometimes the judges have thought of temperance as meaning moderation in drinking reducing incidence of drunkenness; but on the whole it is more accurate to equate temperance with stopping a drop of alcohol passing anyone's lips. Why that extreme should be regarded as being for the public benefit, especially by members of Inns, defies speculation; but that can be allowed to pass at present for the object of the inquiry is only whether the purpose is political.

The story begins in 1892, when the Chancellor of Ontario considered the will of Abram Farewell.[29] He left $2,000 to trustees "to apply the same in such lawful ways as in their discretion they may deem best in order to promote the adoption by the Parliament of the Dominion of Canada of legislation prohibiting totally the manufacture or sale in the Dominion of Canada of intoxicating liquor to be used as a beverage, and in order to give practical aid in the enforcement of such legislation when adopted, and whether by educating and developing a strong public sentiment in its favour, or by other and more direct means, or in such other way as my trustees shall think best." Boyd C. somewhat unpromisingly characterised the purpose as "not only legitimate but praiseworthy."[30] Then he acknowledged that: "Some doubt may however arise when the bequest is regarded in its political aspect—as seeking to promote the adoption of legislation . . ."[31] He did not think that advocating a change in the law was necessarily a political activity.[32] He recorded that legislation had already moved in the direction desired by the testator, and said that to go as far

as the testator wanted might be impossible but that was no reason for it not being charitable to try.[33]

Some traces of this attitude are to be found in England, and it became firmly established in the United States,[34] but it has now disappeared from British courts. The Temperance Council of the Christian Churches of England and Wales was constituted by resolution at a meeting of representatives of the various Christian churches on 24th June 1915. It was held not charitable by Rowlett J. in 1926.[35] The resolution setting it up said: "The purpose of the Council shall be united action to secure legislative and other temperance reform." The learned judge commented:[36] " 'Legislative temperance reform' is not a very exact phrase, but what it means is legislation diminishing the consumption of alcohol." He concluded: "Any purpose of influencing legislation is a political purpose in this connection." That attitude certainly conflicts with that of the judgment on Mr. Farewell's will.

Opponents of vivisection and soft-drink addicts are not the only disciples of lost causes to have fallen foul of the dichotomy between charity and politics. As recently as the mid-1930's, an Ontario testator left $10,000 ". . . to the Henry George Foundation, an organisation formed and established for the promotion of the doctrines of the late Henry George, including his theories and principles respecting Single Tax . . ." That was held not charitable.[37] Henry George and his forlorn economic theory have been before American courts on several occasions:[38] expounding his doctrine has always been held charitable and advocating its adoption not charitable. In the U.S.A. birth control activities have been held charitable, but only when unaccompanied by any interest in promoting or influencing legislation.[39] In Canada, the Saskatchewan Farmers Union was held not charitable because its objects included promoting the interests of its members by suggesting suitable legislation.[40]

There may be a line to be drawn between urging legislation and advising on it. The Yorkshire Agricultural Society, which was formed in 1837 for the promotion of agriculture, a charitable purpose, changed its rules in 1923 and adopted as one of its objects: "The watching and advising on legislation affecting the agricultural industry and the improvement, assistance and promotion of agriculture generally." The Court of Appeal did not regard the reference to legislation as a serious threat to the society's charitable status.[41]

Some of the decisions on advocacy of change in the law are difficult or impossible to reconcile with each other; but in order for a charity to know what it can do and what it cannot, or for a donor or the promoters of a society to judge what objects will be classed as charitable, it is necessary to try and discover some principles. To do that, it is helpful to examine the reasons for not counting political purposes as charitable. There is one very good reason, but some of those stated by judges seem unconvincing.

An early proposition is to be found in Tyssen on *Charitable Bequests*[42] quoted with approval by two of the law lords in the case of the National Anti-Vivi-

section Society.[43] Tyssen said: "However desirable the changes may really be, the law could not stultify itself by holding that it was for the public benefit that the law itself should be changed. Each court in deciding on the validity of a gift must decide on the principle that the law is right as it stands." Now this is in reality nothing more than a rather elementary game with words. Granted that a judge must decide cases on the basis of the law as it stands, he does not have to approve the eternal correctness of all our law. The law does change from time to time, by the action of judges in deporting from old precedents as well as by parliamentary legislation. Nothing could be more stultifying of the legal system than the judges always sticking to precedent, never breaking new ground, taking no notice of changing social conditions, applying a rule in 1972 solely because there is a precedent of 1372. Even when a judge is bound by precedent, because it derives from a court of higher authority than that of the court in which he is sitting, he will sometimes comment adversely on the law and suggest reconsideration in the appropriate quarter. There would be no stultification in the law if the law were that the object of improving the law was charitable.

If that is the law, the next question is, how do you decide what changes in the law are improvements? Lord Parker of Waddington,[44] quoted with approval by two law lords in the National Anti-Vivisection Society Case,[45] said: ". . . the court has no means of judging whether a proposed change in the law will or will not be for the public benefit . . ." That is true pathos. It is also a strain on credulity. There are few people better qualified than judges to assess whether a change in the law would be for the public benefit. Change of the law so as to prohibit vivisection is not a charitable object because vivisection was proved in court to be for the public benefit. Change of the law so as to reduce cruelty to animals is a charitable object because reduction of cruelty to animals was proved in court to be for the public benefit. In cases where the judge cannot make up his mind whether a change would be for the public benefit or not, he ought to hold the achievement of that change not to be a charitable purpose, for no purpose is charitable unless it is proved to be for the public benefit. But that need not govern, and does not in reality govern, cases where the judge can make up his mind on the issue of public benefit.

As the cases show, advocacy of changes in the law has not always been held to be a political object and therefore non-charitable. Absolute statements that urging legislation is not charitable have to be read in context. The true rule probably is that promotion of legislation is charitable in some circumstances and not in others. This view is supported by the speech of Lord Normand in *National Anti-Vivisection Society* v. *Inland Revenue Commissioners*.[46]

The method of advocating legislation is also relevant. It may be charitable to put forward suggestions on the basis of reasoned argument, or to advance reasoned criticism of governmental or other legislative proposals, but not charitable to conduct a public campaign, lobby M.P.s, or indulge in general in activities which might be collectively called conducting a pressure group.[47]

Law reform as an exercise in itself is hard to fit in with any scheme of distinguishing between charity and politics. All the Commonwealth decisions relate to amending the law on some point because the instigators of the change have a policy on the point of substance. No court has yet had to adjudicate upon the charitable nature of a gift or society whose main or only purpose is improvement of the legal system by legislation. Assuming that the method of operation is that of the academy and not that of the hustings, it is at least arguable that a gift for law reform would be charitable. It is true that legislation would be the main object of the gift, but it would not be legislation in a sectional interest, and improvement of the law is the policy of all governments. There is a statutory commission charged with proposing law reform and much work is done to that end in universities, who must stop doing it if it is not charitable. Improvement of the law is clearly for the public benefit and is probably within the spirit of the preamble to the Statute of Charitable Uses on the footing that it would be idle to distinguish between the provision of court buildings and what goes on inside them.

The only room for controversy is about whether any particular change proposed is an improvement. A body does not cease to be a charity because it makes a mistake, but a law reform body would cease to be engaged in charity if it started a campaign for the acceptance of a particular change. Conversely, a trust (if such an eccentric trust could be imagined) to keep the law exactly as it is would not be charitable because improving the law is for the public benefit and opposing improvements is not. But a body established for the purpose of improving the law could consistently with its charitable status, present reasoned arguments against a particular change on the ground that it would not be an improvement.

There is some American authority for the view that law reform is charitable. Waterman J., giving the judgment of the federal Court of Appeals in *Dulles* v. *Johnson*,[48] said so. A long line of analogous decisions supports him, though American cases, like ours, show some muddle. Trusts for the maintenance of good government have been upheld,[49] as have trusts for the improvement of government[50] (though not trusts for the promotion of specified changes[51]). The advancement of civil rights has been held a charity in the case of negroes,[52] Red Indians[53] and Jews.[54] Promoting the cause of women's rights was held not charitable[55] in 1922 and 1937, but in 1966 a Maryland court came to the opposite conclusion.[56]

Turning away, now, from instigation of changes in the law to other objectives on the borderline between charity and politics: just as there have been people who gave property for propaganda in the mistaken belief that they were promoting education, at the other extreme there have been people who believed that if engaging in politics was not charitable, then the study of politics, or political education, might not be charitable either. There is no foundation for that belief.[57]

There is also no warrant for denying charitable status to a body merely because

it is subject to a greater or less degree of ministerial control. Hospitals did not cease to be charities when they vested in the Minister of Health in 1948;[58] last year Pennycuick V.-C. held[59] that the Construction Industry Training Board, established by the Minister of Labour in 1964, was not "disqualified from being a charity merely by reason that the institution is under the control of the Minister for the time being in charge of the public interest in the relevant sphere."

Some of the gifts which, not being concerned with changes in the law, have been challenged as charities on the ground of their political nature, have come from benefactors with international aspirations. Most of them achieved no success whatever. The majority were concerned only with doing good in ways that could do harm to none; but the earliest reported do-gooder at this exalted level was apparently oblivious of the implications of what he was suggesting. That was a testator whose will, which came before the court in 1851, gave £1000 for the "political restoration of the Jews to Jerusalem and to their own land . . ."[60] That legacy was held[61] not charitable. "If it could be understood to mean anything," said the Vice-Chancellor, "it was to create a revolution in a friendly country. Jews might at present reside in Jerusalem; and, if the acquisition of political power by them was intended, the promotion of such an object would not be consistent with our amicable relations with the Sublime Porte."

£1000 for a revolution in Palestine was controversial, inconvenient, impossible to prove to be for the public benefit and, even in 1851 optimistic as to the purchasing power of the pound. By 1936, when the California Supreme Court had to consider the matter, it was the United Kingdom government and not the Sublime Porte who had ultimate jurisdiction. In *Re Murphey's Estate*[62] that court held charitable, despite its being political, a gift "To further the development of the Jewish National Home in Palestine." Finally, two years ago, in New South Wales, Helsham J. held charitable a gift to an organisation whose object was settling Jews in Israel.[63] It was not a political purpose, said the learned judge, in the state of affairs now prevailing: if political matters came in, they were only incidental to the charitable purpose. But revolution remains non-charitable even in America. In *Re Jukkeb's Will*[64] Slater S. held not charitable a bequest of $1000 to be expended ". . . in the manner which . . . will best further development of the Irish Republic . . ."

More benevolent, less sectarian, gifts which have come to grief include one for Anglo-Swedish understanding[65] and another for the League of Nations Union of New Zealand.[66]

By contrast, in *Parkhurst* v. *Burrill*[67] the Supreme Judicial Court of Massachusetts held charitable a legacy to the World Peace Foundation (a body campaigning against war). Rugg C.J. pointed out that educative, not political, means were employed by the foundation, and that they proposed no legislation. In *International Reform Federation* v. *District Unemployment Compensation Board*[68] a federal Court of Appeals held the Federation charitable. Its objects included ". . . the substitution of arbitration and conciliation for both industrial

and international war." The federation frequently submitted bills to legislatures. Nevertheless, the majority of the court regarded the main purposes as charitable and the promotion of legislation as merely incidental to those purposes.

The latest benevolent gift of this type to come before an English court was that in *Re Strakosch*[69] ". . . for any purpose which in the opinion of the trustees is designed to strengthen the bonds of unity between the Union of South Africa and the mother country and which incidentally will conduce to the appeasement of racial feeling between the Dutch and English speaking sections of the South African community." The Court of Appeal held that not charitable. Lord Greene M.R., who gave the judgment of the court, said:[70] "The problem of appeasing racial feeling within the community is a political problem, perhaps primarily political. One method conducive to its solution might well be to support a political party or a newspaper which had such appeasement most at heart. This argument gains force in the present case from the other political object, namely, the strengthening of the bonds of unity between the Union and the Mother Country. It would also we think be easy to think of arrangements for mutual hospitality which would be conducive to the purposes set out but would not be charitable."

It is therefore established in this country that political purposes not qualifying as charity go beyond advocacy of changing the law and embrace all propaganda on policy and all activities of political parties, however much the objectives might be for the public benefit if pursued by other means. That is illustrated by domestic affairs as well as by those concerned with international relations.

The Roll of Voluntary Workers was formed as an association in 1919 by people who thought that strikes were a grave menace to the country; that strikes, by producing hardship, had "behind them the intention to foster that revolutionary atmosphere so essential for the purposes of the extremist section"; and that they should get together to ensure the supply of food, fuel, light, water and other necessaries of life if threatened by strikes. The association acquired funds and a trust of these was set up in 1922, to apply them for ". . . the taking of all or any measures which might be calculated to assist the Government of the public in resisting or helping to resist any strike, lock-out, or civil commotion . . . which interferes with the essential public services . . . and . . . necessaries of life." They enrolled 2,500 people in Glasgow to work undertakings affected by the general strike in 1926. The association bound themselves to take no part in political or industrial controversy. The Court of Session held the arrangement not charitable.[71]

The law of charities thrives on analogies, especially on analogies to analogies, but sometimes the judicial stride from one concept to its analogue outstrips the pace of the follower. Such is the judgment of Harman J. on the will of Bernard Shaw.[72] The testator left some of his property on trust for research into the possibility of improving the British alphabet, and the learned judge held that trust invalid. The judgment is both learned and, as befits the occasion, entertaining, but, with a little bit of luck, will not be regarded as a persuasive

precedent when it gets to the point of saying[73] that the bequest is not charitable because ". . . the objects of the alphabet trusts are analogous to trusts for political purposes, which advocate a change in the law."[74]

Conflict in the cases in our own jurisdiction, in the Commonwealth and in the United States of America makes it abundantly clear that we have no settled rule as to the point at which involvement in politics takes an objective outside the category of charity. An attempt to draw conclusions is therefore bound to be a compound of advocacy of what the law ought to be and propositions which draw support from some judgments but are inconsistent with others. The following statements purport to be nothing more than tenable suggestions as to the way in which the law of England and Wales may come to be settled as it develops.

(1) A trust to advocate the adoption of a particular opinion is not charitable unless the opinion is one relating to a religion.
(2) The same applies to a trust for spreading information about an opinion, unless the opinion is religious (like the works of Joanna Southcote) or an academic theory (like a critique of Shakespeare's poetry, Palmerston's foreign policy, stress on box-girder bridges or the law of charitable trusts). Our courts have not adopted the American distinction between informing the public, for example, of the principles of socialism and persuading the public to adopt them.
(3) A trust to promote a particular change in the law or to promote legislation on a particular subject is not charitable (unless, perhaps, it can be proved that the change would be for the public benefit and that it would advance a purpose which is itself charitable).
(4) A trust for the improvement of the law is charitable.
(5) A trust for a primary charitable purpose is a charitable trust notwithstanding that the object of the trust or the activities of the trustees include advancing or scrutinising proposals for changing the law affecting the carrying out of the primary purpose.

This analysis is based on the theory that the question of whether a purpose fails to qualify as a charity because it is political is simply one facet of whether it is a purpose which advances the public benefit in a way that is within the spirit and intendment of the statute of Elizabeth I. The reason for the failure of many trusts involving a change in the law is that the particular change could not be proved to be for the public benefit, or that it was not within the spirit and intendment of the statute, or both; not that all changes in the law are outside the pale. A further ground for a political activity to be held invalid can be that it is ultra vires the particular charity engaging in it.

On no view of the law can the University of Sussex students' union have had any hope of maintaining the legality of their actions which were called in question late last year in *Baldry* v. *Feintuck*.[75] Students' unions at universities, like academic departments are not separate corporations and do not exist for purposes other than those of the universities of which they are subdivisions.

Such unions are, therefore, to put it as extensively as possible, brought into existence for the advancement of education. More accurately, they exist for the advancement of education of the particular university by methods appropriate to be organised by a group whose membership consists of student members of that university. At a general meeting on 4 November 1971, the University of Sussex students' union, in general meeting, resolved to give £500 from union funds for relief of residents in or refugees from Bangladesh and £800 for a campaign of protest against the ending of the supply of free milk to pupils at primary schools. Both these payments were ultra vires, and were restrained by injunction, because they were not for the advancement of education at all, let alone for the advancement of education at Sussex University. Relief work in Bangladesh is charitable, but one charity cannot give money to another unless the recipient charity is bound to use it to carry out a purpose of the donor charity.[76] Charity does not begin at home, and trustees cannot treat trust money as if it belonged to them. Brightman J. said[76] "If the members of the union wish to express their views financially, that money should come from their own personal funds and not from trust money. Admittedly, part of the educational process is research, discussion, debate and reaching a corporate conclusion on social and economic problems, but, in my view, the provision of money to finance the adoption outside the university of that corporate conclusion does not form any part of the educational process." The reasoning so far is impeccable and is sufficient to establish that both payments, whether for charitable purposes or not, were ultra vires: they were not for the charitable purposes of the union. As to the campaign for free milk, Brightman J. went further and held that that was not charitable at all. He said:[77] "That is, admittedly, according to the literature, a political purpose. It is, therefore, inevitably not a charitable." Now that does not get one very far unless it means that the admission that the purpose was political amounted to an admission that it was not charitable. The provision of free milk at primary schools was presumably charitable while it went on. If the milk was needed by the children, providing it was presumably advancement of education, for the public benefit, in the quest for *mens sana in corpore sano*. Protest against discontinuance of the supply must have been political in a non-charitable way for one or more of the following reasons: (a) continuation of the supply could not be proved to be for the public benefit; (b) the free-milk issue had become one of party controversy; (c) even if supply of free milk remained charitable, a campaign on the subject was not.

Misapplication of funds is always with us. The Act of 1601 was passed to control abuse of charitable trusts. Educational endowments were an open scandal in the nineteenth century. The Committee of Enquiry on the Education of the Lower Orders, established in 1816, unearthed some outrageous examples of misapplication of funds. "In several cases, as at Huntingdon and St. Bees, the land had been leased to the trustees at ridiculously low rents, while the income was used for political purposes. Pocklington School, which was nominally under the supervision of St. John's College, Cambridge, still boasted a

headmaster, but the building was used for storing lumber, and the one pupil was discovered working in a saw-pit . . . The arcana of College Bursaries at Oxford and Cambridge were dragged out into the open. The Master of St. John's College was so upset by his cross-examination about the disposal of Fellowships that he burst into tears."[78] Acts of Parliament were passed to add to the regulation of charities. In 1835, a select committee of the House of Commons told the story of Berkhamstead Grammar School, well-endowed with funds for the school and relief of the poor. "Your Committee find a Master and Usher, the latter the son of the Master, and appointed by him when a minor, the incorporated Trustees of the charity property, receiving to their own use considerable stipends, the schoolhouse dilapidated, no boys on the foundation, and the surplus revenue so exhausted by law and other expenses as to leave an uncertain trifle for the relief of the poor."[79] Acts of Parliament were passed to add to the regulation of charities. Now we have involvement; trendy, more relevant ways of misapplying trust funds; swinging, with-it, breaches of fiduciary duty. The courts, in their square way, will hold them illegal; or Parliament, with its old-fashioned bias against theft, will pass Acts to add to the regulation of charities; or the establishment and its bourgeois hangers-on will meanly stop donating money to charities which do not use the money for the purpose for which it is given.

Footnotes

1. Income and Corporation Taxes Act 1970, ss. 360-3.
2. Finance Act 1972, s. 121.
3. Finance Act 1972, s. 119.
4. General Rate Act 1967, ss. 39-46.
5. Selective Employment Payments Act 1966, s. 5. See also the Finance Act 1972, s. 122.
6. Betting and Gaming Duties Act 1972, ss. 17 and 20 and sch. 3, paras. 3-4.
7. Betting and Gaming Duties Act 1972, ss. 21 and 25 and sch. 4, para. 1.
8. Pool Competitions Act 1971; Betting and Gaming Duties Act 1972, s. 7(4).
9. By the Board of Inland Revenue: Final Report of the Royal Commission on the Taxation of Profits and Income (Cmd. 9474) (1955), p. 54, para. 163, and pp. 54-5, para. 164.
10. By the Chancellor of the Exchequer: Report of the Charity Commissioners for England and Wales for 1971, pp. 15-16, para. 44.
11. Page 5, para. 8.
12. *Re Scowcroft* [1898] 2 Ch. 638.
13. *Re Jones* (1929) 45 T.L.R. 259.
14. *Bonar Law Memorial Trust* v. *Inland Revenue Commissioners* (1933) 49 T.L.R. 220.
15. See also *Re Strakosch* [1949] Ch. 529; *Re Boorse's Trust* (1948) 64 Pa. D. & C. 447; *Re Deichelmann's Estate* (1955) 21 Pa. D. & C. 2d 659; *Estate of Carlson* (1970) 41 A.L.R. 3d 825; Annotation, 41 A.L.R. 3d 833.
16. *Re Hopkinson* [1949] 1 All E.R. 346. See also *Re Loney Estate* (1953) W.W.R. (N.S.) 366; *Workmen's Circle Educational Center of Springfield Inc.* v. *Board of Assessors of City of Springfield* (1943) 51 N.E. 2d 313; *Re Andrejevich's Estate* (1945) 57 N.Y.S. 2d 86; *Re Grossman's Estate* (1947) 75 N.Y.S. 2d 335; *Re Liapis' Estate* (1954) 88 Pa.D. & C. 303; *Register of Wills for Baltimore City* v. *Cook* (1966) 22 A.L.R. 3d 872; American Restatement 2d, *Trusts*, § 374 comment k.
17. *Armstrong* v. *Reeves* (1890) 25 L.R. Ir. 325.
18. 25 L.R. Ir. 339.
19. Chitty J. in *Re Fouveaux* [1895] 2 ch. 501.
20. *Re Gwynne*, 5 D.L.R. 713 (Ontario High Court, Middleton J.).
21. *Old Colony Trust Co.* v. *Welch*, 25 F.Supp. 45 (federal District Court).

21a. *National Anti-Vivisection Society* v. *Inland Revenue Commissioners* [1948] A.C. 31.

22. Gowans J. in *Re Inman* [1965] V.R. 238.
23. *Re Jenkins's Will Trusts* [1966] Ch. 249; *Animal Defence and Anti-Vivisection Society* v. *Inland Revenue Commissioners* (1950) 66 T.L.R. (pt. 2) 1091.

24. *Re Jenkins's Will Trusts* [1966] Ch. 249.
25. *Animal Defence and Anti-Vivisection Society* v. *Inland Revenue Commissioners*, 66 T.L.R. (pt. 2) 1091.
26. 66 T.L.R. (pt. 3) 1094-5.
27. *Re Inman* [1965] V.R. 238.
28. [1965] V.R. 242.
29. *Farewell* v. *Farewell*, 22 O.R. 573. See also Scott on *Trusts*, 3rd ed., vol. IV, p. 2904; *Re Hood*; [1931] 1 Ch. 240.
30. 22 O.R. 579.
31. 22 O.R. 579-80.
32. 22 O.R. 580-1.
33. 22 O.R. 581.
34. *Bowditch* v. *Attorney-General* (1922) 28 A.L.R. 713 (Massachusetts); *Collier* v. *Lindley* (1928) 266 P. 526 (California); *Girard Trust Co.* v. *Commissioner of Internal Revenue* (1941) 138 A.L.R. 448 (federal); *International Reform Federation* v. *District Unemployment Compensation Board* (1942) 131 F.2d 337 (federal); American Restatement 2d, *Trusts*, § 374 comment b.
35. *Commissioners of Inland Revenue* v. *Temperance Council of the Christian Churches of England and Wales* (1926) 136 L.T. 27. See also *Knowles* v. *Commissioner of Stamp Duties* [1945] N.Z.L.R. 522.
36. 136 L.T. 28.
37. *Re Knight* [1937] 2 D.L.R. 285.
38. *George* v. *Braddock* (1889) 18 A. 881 (New Jersey); *Leubuscher* v. *Commissioner of Internal Revenue* (1932) 54 F. 2d 998 (federal); *Ross* v. *Freeman* (1035) A. 527 (Delaware); *Brocker* v. *Ware* (1942) 29 A. 2d 591 (Delaware).
39. *Slee* v. *Commissioner of Internal Revenue* (1930) 72 A.L.R. 400 (federal); *Faulkner* v. *Commissioner of Internal Revenue* (1940) 112 F.2d (federal).
40. *Re Patriotic Acre Fund* [1951] 2 D.L.R. 624.
41. *Inland Revenue Commissioners* v. *Yorkshire Agricultural Society* [1928] 1 K.B. 611.
42. 1898 ed., p. 176.
43. *National Anti-Vivisection Society* v. *Inland Revenue Commissioners* [1948] A.C. 31, 50, *per* Lord Wright, and 62, *per* Lord Simonds.
44. *Bowman* v. *Secular Society Ltd.* [1917] A.C. 406, 442.
45. *National Anti-Vivisection Society* v. *Inland Revenue Commissioners* [1948] A.C. 31, 50, *per* Lord Wright, and 61, *per* Lord Simonds.
46. [1948] A.C. 31, 75-7.
47. See also the Report of the Charity Commissioners for England and Wales for 1969, paras. 13-15; Scott on *Trusts*, 3rd ed., vol. IV, pp. 2910-13; Bogert, *Trusts and Trustees*, 2nd ed., vol. 4, pp. 181-4.
48. (1959) 273 F. 2d 363, 367-8. See also *Taylor* v. *Hogg* (1922) 21 A.L.R. 946, 950, *per* Frazer J.
49. *Collier* v. *Lindley* (1928) 266 P. 526; *International Reform Federation* v. *District Unemployment Compensation Board* (1942) 131 F. 2d 337; *Seasongood* v. *Commissioner of International Revenue* (1955) 227 F. 2d 907.
50. *Taylor* v. *Hoag* (1922) 21 A.L.R. 946; *Collier* v. *Lindley* (1928) 266 P. 526.
51. *Re Killer's Will* (1925) 209 N.Y.S. 206; *Marshall* v. *Commissioner of Internal Revenue* (1945) 147 F. 2d 75. See, further, Scott on *Trusts*, 3rd ed., vol. IV, 2913-14.
52. *Re Lewis's Estate* (1893) 25 A.878 (Pennsylvania).
53. *Collier* v. *Lindley* (1928) 266 P. 526 (California).
54. *Re Murphey's Estate* (1936) 62 P. 2d 374 (California).
55. *Bowditch* v. *Attorney-General* (1922) 28 A.L.R. 713 (Massachusetts); *Vanderbilt* v. *Commissioner of Internal Revenue* (1937) 93 F. 2d 360 (federal).
56. *Register of Wills for Baltimore City* v. *Cook* (1966) 22 A.L.R. 3d 872. See also the American Restatement, *Trusts*, § 374 comment j.
57. *Re The Trusts of the Arthur McDougall Fund* [1957] 1 W.L.R. 81. See also *Peth* v. *Spear* (1911) 115 P. 164.
58. *Re Frere* [1951] Ch. 27.
59. *Construction Industry Training Board* v. *Attorney-General* [1971] 1 W.L.R. 1303, 1308, the decision being affirmed by a majority in the Court of Appeal: [1972] 3 W.L.R. 187.
60. *Habershon* v. *Vardon* (1851) 4 De G. & Sm. 467.
61. 4 De G. & Sm. 468.
62. (1936) 62 P. 2d 374.
63. *Re Stone* (1970) 91 W.N. (N.S.W.) 704.
64. (1925) 209 N.Y.S. 206.
65. *Anglo-Swedish Society* v. *Commissioners of Inland Revenue* (1931) 47 T.L.R. 295. In *Buxton* v. *Public Trustee* (1962) 41 T.C. 235, before Plowman J., it was agreed

that a trust "To promote and aid the improvement of international relations and intercourse" by various stated methods was not charitable.

66. *Re Wilkinson* [1941] N.Z.L.R. 1065.
67. (1917) 117 N.E. 39.
68. (1942) 131 F. 2d 337.
69. [1949] Ch. 529.
70. [1949] Ch. 538.
71. *Trustees for the Roll of Voluntary Workers* v. *Inland Revenue* 1942 S.C. 47.
72. *Re Shaw* [1947] 1 W.L.R. 729.
73. [1957] 1 W.L.R. 742.
74. See, generally, as to political purposes in relation to charity, Scott on *Trusts*, 3rd ed., vol. IV, pp. 2914-19; Bogert, *Trusts and Trustees*, 2nd ed., vol. 4, pp. 181-4.
75. [1972] 1 W.L.R. 552.
76. *Per* Brightman J., [1972] 1 W.L.R. 558.
77. [1972] 1 W.L.R. 558.
78. See G. T. Garratt, *Lord Brougham*, pp. 105-6.
79. House of Commons Paper 449, vol. VII (1835), p. vii.