

Charities, the Law and Public Benefit:
Ireland as a case study for the use of charity law
to promote the development of social capital

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Introduction

This paper recognises that charity law has a potential to either facilitate or impede charitable activity. The degree to which it leans towards either end of that spectrum provides one measure of where the society concerned is located on a continuum from liberal democracy to totalitarianism. Given the current thrust to promote greater co-operation between the two jurisdictions of Ireland, this is an opportune time to examine where both are situated on that continuum, how far apart they are from each other and from the benchmarks of public benefit.

The paper builds from a premise that consolidating civic society in N Ireland is now a social policy priority for it and indeed for both jurisdictions on this island. It suggests that charity law is unique in its capacity to assist that endeavour. Because it provides a means for orchestrating the balance between the voluntary sector and the state, particularly in relation to service provision, it readily lends itself as a mechanism which could be adjusted both within and between jurisdictions to ease the co-ordination of voluntary and statutory service provision. Because the relevant law in both jurisdictions on the island of Ireland is very dated and acknowledged to be in need of revision, it is an appropriate time to raise the question whether intra-jurisdictional co-operation might not be greatly facilitated if each were to revise their law against a common set of public benefit benchmarks.

Beginning with a brief survey of jurisdictional difference, the paper establishes the nature and extent of differences in charity law when measured against the common yardstick of the 'public benefit test'. It then considers the future role of this test and the potential for charity law to reduce jurisdictional differences and promote the building of social capital on the Island of Ireland.

This paper concludes that there are lessons to be drawn from the experience to date of charity law on this island. It further argues that a potential role exists for charity law, both within and between these two jurisdictions, to generate local opportunities for building social capital and consolidating civic society which in turn would be of more general international interest. Wherever a society is experiencing tensions, internally and/or with its neighbours, which have their roots in problems of social inclusion then charity law has a role to play. On this island, the tensions emerge from problems of religious and community divisions. Elsewhere they may be related to ethnic/racial/class divisions or spring from chronic unemployment, disability, lack of education/training, poor housing and health services etc. Where it is necessary for a society to provide for a more equitable accommodation of conflicting interests

charity law has considerable potential to orchestrate the balance necessary for greater social cohesion.

Part 1

The Public Benefit Test as a Measure of Jurisdictional Difference on the Island of Ireland

The most meaningful measure of jurisdictional difference in charity law on the island of Ireland is the extent to which the law in both jurisdictions conforms to a uniform public benefit test.

1. Measuring jurisdictional differences in charity law

Determining the indicators for measuring public benefit is a necessary first step to estimating the jurisdictional differences in charity law. This can be most satisfactorily achieved by reference to the long established framework for defining charitable activity and by then briefly considering the legal means for controlling such activity. The extent to which each jurisdiction can satisfy the public benefit test under each of the four *Pemsel* heads of charity and in relation to their respective regulatory and administrative systems will provide a clear estimate of the nature of the jurisdictional gap.

1.1 Charity law

In Ireland, as in the United Kingdom, the foundations for charity law were laid by two 17th century statutes². Subsequently, and again with equal application to the jurisdictions of both islands, the determining test of philanthropic activity was established by the courts. The actual activity now recognised in the law of these islands as being charitable remains as first stated by Lord Macnaghten in *Commissioners for Special Purposes of Income Tax v Pemsel*³. He then declared that for philanthropic activity to come within the legal definition of charity, it must constitute one of the following types of charitable purpose:

- (i) Trusts for the relief of poverty
- (ii) Trusts for the advancement of education
- (iii) Trusts for the advancement of religion
- (iv) Trusts beneficial to the community not falling under any of the preceding heads.

He added that to be charitable, a gift must be “beneficial to the community”. The Macnaghten classification has been habitually followed in these islands, as in other common law jurisdictions, and still forms the basis of charity law throughout the island of Ireland. The accompanying caveat requiring charitable activity to be “beneficial to the community” was refined by subsequent caselaw to become the ‘public benefit test’ with similar applicability throughout these islands⁴.

1.2 The ‘public benefit test’

The concept of public benefit lies at the heart of charity. The history of philanthropy is underpinned by a recognition of the morality implicit in a voluntary redistribution

of private wealth for public benefit. Exemptions from certain taxes and other financial impositions rest on the premise that such altruistic activity, by furthering a government's public service remit, justifies the displacement of taxes normally levied to finance that remit. Its significance was emphasised by Tyssen in his seminal work⁵:

It (the Court of Chancery) considered only this. Having regard to all legislative enactments and general legal principles is it or is it not for the public benefit that property should be devoted for ever to fulfilling the purpose named? If the court considered that it was not for the public benefit, it held the trust altogether void...

The 'public benefit test' consists of two strands: it must be both of a public character and be of some benefit to the public generally. The first strand will be satisfied if the charitable activity can be accommodated within one of the four *Pemsel* headings (see, further, below). The second requires the benefit to be conferred on public beneficiaries rather than favouring a recipient on the basis of a private, professional or any other relationship nexus. The requirement is not that all persons in the relevant class of the public should derive a benefit but only that they should all be eligible to do so. In the words of Lord Wrenbury this will be achieved if the gift is made:

... for the benefit of the community or of an appreciably important class of the community. The inhabitants of a parish or town, or any particular class of such inhabitants may, for instance, be the objects of such a gift, but private individuals, or a fluctuating body of private individuals, cannot⁶.

1.3 Applying the test

In theory, the 'public benefit test' offers a straightforward yardstick for identifying, measuring and comparing charitable activity. In practice, applying the test presents some problems. One general problem arises from the fact that the test defines an activity as charitable or not relative to contemporary social circumstances. It therefore follows that the same activity may acquire or lose charitable status due to changed circumstances either within the same country⁷ or between countries. Another more specific problem is that jurisdictional differences exist in relation to the application of this test: a difference between subjective and objective judicial approaches; and between judicial and legislative determination.

Firstly, in the Republic of Ireland, as distinct from Northern Ireland and unlike elsewhere in these islands, the judiciary apply a subjective test in determining whether or not a gift satisfies the public benefit test⁸. That is, the courts will pose the question 'Did the donor believe that the purpose to which he or she was directing a gift was of a charitable nature?' This is quite different from the more restrictive approach of the UK judiciary in similar circumstances where the focus is more firmly on deducing the nature of the gift from an objective appraisal of the facts⁹. In the Republic of Ireland, the leading case in this context is *In re Cranston, Webb v Oldfield*¹⁰ where the issue was whether or not a gift to certain vegetarian societies could be construed as charitable. Fitzgibbon LJ held that if the donor believed them to be so then this view would be endorsed by the court, provided the society's purposes were not immoral or illegal¹¹. This view was endorsed more recently by Keane J in *In re the Worth Library*¹² where he commented:

In every case, the intention of the testator is of paramount importance. If he intended to advance a charitable object recognised as such by the law, his gift will be a charitable gift. In the case of gifts which do not come within the first

three categories, the fact that the testator's view as to the public utility of his favoured object – eg vegetarianism – is not shared by many people will not of itself prevent it from being, in the eyes of the law, a valid charitable object within the fourth category, provided it is not illegal, irrational or *contra bonos mores*. That, as I understand it, is the effect of the majority decision of the Irish Court of Appeal in *In re Cranston*.

This important ruling illustrates the distinctive subjective approach of the Irish judiciary, when applying the 'public benefit test' as opposed to the objectivity employed by their counterparts in Northern Ireland.

Secondly, the legislature in the Republic of Ireland, unlike that of the UK, has declared certain types of activity to be *prima facie* charitable. In the case of trusts for the advancement of religion, s 45(1) of the Charities Act 1961 now provides that in the former jurisdiction it shall be conclusively presumed that such a trust will occasion public benefit. The judiciary in Northern Ireland have availed of opportunities to emphasise the inapplicability of this rule to similar circumstances within that jurisdiction (see, further, below).

2. Charitable purposes, measured against the 'public benefit test' in the two jurisdictions

The courts have established a presumption that gifts falling within any one of the first three *Pemsel* categories are for the public benefit¹³. In fact, although this holds good for the first and third categories, trusts for the advancement of education have quite often not qualified as charitable trusts because of a failure to satisfy the public benefit requirement. No such presumption applies in respect of gifts within the fourth category. The jurisdictional differences are revealing.

2.1 Trusts for the relief of poverty

Charity law has its origins in trusts for the relief of poverty. The governing principles and accompanying body of caselaw provide the foundations, the entire moral basis, upon which the modern ramifications of charity law and practice have been erected. Poverty, however, and the means of providing for its relief, are not as readily susceptible to definition, classification and regulation as was the case when the foundations first bedded down. A sophisticated national system of government departments is now charged with duties in respect of the relief of poverty.

The public benefit test has in fact lost any intrinsic viability in application to trusts for the relief of poverty. While gifts to classes of specified individuals will certainly be defined as private, the courts of both jurisdictions are equally unlikely, in this context, to rule that gifts to any other class will fail because of a failure to meet the public benefit test. The recognition of charitable status, given originally by the courts in England to the 'poor relations' class, has since been extended by analogy to such other classes as 'poor employees' and 'poor members'. Judicial recognition of a range of exceptions to the public benefit principle has now reached the point where, in the words of H Delany, 'the requirement of public benefit has all but disappeared in the context of trusts for the relief of poverty'¹⁴.

The law of the southern and northern jurisdictions derived from the Statute of Charitable Uses (Ireland) 1634 and the Statute of Charitable Uses 1601 respectively. The relevant wording used in the Irish statute refers to the relief and maintenance of 'poor, succourless, distressed or impotent persons' whereas the corresponding English provision referred to 'aged, impotent and poor people'. The clearly distinct

categorisation of potential recipients of charity in the former spared the courts in Ireland from the debate in England which has lingered around the issue of whether they should be construed in a disjunctive manner. As a consequence, in Ireland there has never been any challenge to the presumption that each named category can be considered independently (the ‘poor’ for example, are not also required to be ‘impotent’). Finally, in Northern Ireland, as in England and Wales, the judicial test of whether or not a gift confers a benefit¹⁵ is an objective one. In Ireland the subjective view of the donor is decisive, provided that the gift is neither improper nor illegal and is intended to contribute in some manner or degree to relieve or lessen the poverty of the recipient.

2.2 Trusts for the advancement of education

On the island of Ireland, religion and education have always been closely linked. The history of charity law, as it relates to trusts for the advancement of education, is tied closely to the history of religious difficulties. Unlike the position in the northern jurisdiction and elsewhere in the United Kingdom, a large part of the educational infrastructure in the southern jurisdiction has been and continues to be provided by religious bodies. Elsewhere in these islands, the importance of this branch of charity law has faded as the role of voluntary organisations in education has been displaced by state provision. But in Ireland, as many of the buildings and teachers comprising the educational system are provided by religious bodies or to a lesser extent by other independent organisations, trusts for the advancement of education continue to have a real significance.

The public benefit test is more difficult to satisfy in application to trusts for the advancement of education than to trusts for the relief of poverty or for the advancement of religion. The difficulties are evident in both the ‘public’ and the ‘benefit’ strands of the test and give rise to a range of jurisdictional differences.

2.2.1 The ‘public’ requirement

As in relation to other charitable purposes, the rules for determining when the ‘public’ component is satisfied, allowing a trust for the advancement of education deemed to be charitable, are neither fixed, precise nor readily applied. It is essential that the size of the class can be ascertained. This leads to problems in relation to both minimum and maximum numbers.

Determining the minimum number necessary to meet an acceptable definition of ‘public’ has proved to be difficult. In *Re Compton*¹⁶ the Court of Appeal had no difficulty in finding that a trust to provide for the education of the descendants of three named individuals was too restrictive to be charitable. In *Re Worth Library*¹⁷, Keane J was certain that three named persons was insufficient but could only suggest that to satisfy a definition of ‘public’ the number should not be ‘negligible’.

Determining maximum numbers, fixing the point at which a class will be regarded as closed, has also proved problematic. Where a gift is intended for the benefit of ‘descendants’ there is potential for membership of such a class to be added to indefinitely. An issue then arises as to the point at which a line must be drawn and no further descendants will be considered to be members of that class and thus potential beneficiaries. Normally, the rule is that membership of a class should be treated as having closed at the death of the donor. However, caselaw reveals a jurisdictional difference in judicial approach to this rule. Prior to the decision of the House of Lords in *In re Baden’s Deed Trusts*¹⁸ it was generally accepted that the objects of a trust must be certain: the language employed must be certain; and the trustees must at any time be able to ascertain definitively the persons who would have a vested interest in

the capital and income of the trust property. On the other hand where the trustees were not bound by a trust but merely had a power or discretion to confer or withhold a benefit then the requirement of certainty was recognised as being far less stringent¹⁹. As Upjohn LJ explained in *In re Gulbenkian's Settlements*²⁰:

...the rule is, that provided there is a valid gift over or trust in default of appointment... a mere or bare power of appointment among a class is valid if you can with certainty say whether any given individual is or is not a member of the class; you do not have to be able to ascertain every member of the class.

In Northern Ireland, as throughout the United Kingdom, the authority of that statement ceased with the decision in *In re Baden's Deed Trusts* when the House of Lords held²¹ that the test to be applied in determining the validity of imperative trusts was substantially the same as that applicable to discretionary trusts. Only if it can be said with certainty that any given individual is or is not a member of the class designated as potential beneficiaries will such a trust be valid. In Ireland, however, the judicial view is that the decision of the House of Lords is not to be preferred to the previously established caselaw. Both Budd J²² and Murphy J²³ have declared that they will continue to place greater reliance on the established authorities than on the *ratio decidendi* of *In re Baden's Deed Trusts*.

The difficulties inherent in defining the parameters of 'class' derive also from judicial development of the 'founder's kin' jurisprudence. Initially, the rationale for denying charitable status to gifts made by a donor for the benefit of relatives was on the grounds that such recipients formed an essentially private and closed group. In the words of Lord Greene MR²⁴:

A gift under which the beneficiaries are defined by reference to a purely personal relationship to a named *propositus*, cannot on principle be a valid charitable gift.

However, his lordship then went on to acknowledge that in certain circumstances the 'founder's kin' class could be eligible for exemption from this principle. He ruled that where a donor made a gift clearly intended for the advancement of education, attaching a stipulation that preference be given to the donor's kin, this would be a valid charitable gift provided the preference was 'merely a method of giving effect to this intention'. So, for example, a gift to a college coupled with a direction that the donor's kin be given preference in availing of the benefit of the gift, constitutes a valid exemption to the traditional ban on charitable status being awarded in respect of gifts to relatives²⁵. In the United Kingdom, this class of exemption has since been judicially broadened by the decision in *Re Koettgen's Will Trusts*²⁶ where charitable status was awarded in respect of a trust established to advance the education of British born persons subject to a direction that preference be given to employees of a particular company. In Ireland, there has been no equivalent to such an extension of the 'founder's kin' class which remains confined to its original interpretation based on a 'blood tie' or personal nexus.

The public benefit test is also difficult to satisfy in relation to trusts for the advancement of education because of the significance of 'dissemination', an essential and distinguishing characteristic of a charitable trust in this context. Keane J, in his review of public benefit in the *Worth* case, disclosed this as an interesting area of jurisdictional difference. In the jurisdictions of the United Kingdom, the significance of dissemination had been firmly stated by Harman J in *Re Shaw*:²⁷

...if the object be merely the increase of knowledge that is not in itself a charitable object unless it be combined with teaching or education.

A view which subsequently received some endorsement from the Court of Appeal in a ruling²⁸ which stressed the importance of sharing or publication, rather than the simple accumulation of knowledge. In Ireland, however, Keane J, declined to adhere to this narrow interpretation. Giving judgment in the *Worth* case, he held that a gift for the advancement of scholarship or academic research, and thus for the advancement of learning, which might reasonably be regarded as for the public benefit, would not be deprived of charitable status merely because such scholarship or research was not combined with teaching or education²⁹. His support for a more liberal interpretation of 'dissemination' establishes a point of reference which, in this context, serves to distinguish Irish charity law from that of neighbouring jurisdictions.

2.2.2 The 'benefit' requirement

The authorities are clear that to be charitable a trust for the advancement of education must have a purpose which meets criteria of 'usefulness'. The courts in the United Kingdom have had little difficulty in ruling that some donor intentions do not comply with usefulness criteria. For example, the compilation of lists of Derby winners³⁰ and the public exhibition of junk³¹ have failed this test. In *Re Pinion*³², applying the test led Harman LJ to the following assessment:

I can conceive of no useful object to be served in foisting upon the public this mass of junk. It has neither public utility nor educative value.

In Ireland, the court's view of what constitutes an educational purpose is of less weight. The judiciary are unlikely to substitute an objective assessment for the donor's subjective view but, as was apparent in *Re Worth*, they will nonetheless insist that the public benefit test is satisfied. Keane J, in *Re Worth Library*³³, had cause to examine the requirement for a public benefit component in gifts for the advancement of education. He noted that:

...gifts for the advancement of education ... would embrace, not merely gifts to schools and universities and the endowment of university chairs and scholarships: 'education' has been given a broad meaning so far as to encompass gifts for the establishment of theatres, art galleries and museums and the promotion of literature and music. In every case, however, the element of public benefit must be present and, if the benefit extends to a section of the community only, that section must not be numerically negligible (*ibid* at p.193).

He conceded that the gift of a library which is open to the public would be charitable³⁴ as would be a gift which was conducive to the attainment of a charitable object such as one for the purchase of books for Trinity College, Oxford³⁵ where it was held to be for the advancement of education. However, in this instance he expressed his view that the gift of a library, comprising a large and valuable collection of 18th century books, would be unlikely to come within the legal definition of charitable in an education context. The gift would fail the 'public' branch of the test because access to the library was restricted 'for the use, benefit and behoof of the physician, chaplain and surgeon for the time being of the said hospital...'. It would also fail the 'benefit' branch because as he pointed out:

...even if it could be said that the bequest was for educational purposes (and, given the insignificant proportion of the library devoted to medicine and surgery, that would involve some straining of the concept of "education" even beyond the liberal limits of the modern

decisions), it would be impossible to hold that this was an educational charity for the benefit of the public.

But, as can be seen below, he then went on to construct a novel interpretation of 'benefit' which, under a different heading, he found to be satisfied by the tranquil setting of the library.

2.3 Trusts for the advancement of religion

The courts in N Ireland, as elsewhere in the United Kingdom, will not inquire into the inherent validity of a particular religion nor will they examine the relative merits of different religions³⁶. In Ireland, however, such a legal differentiation is explicitly expressed in Article 44 of the Constitution which makes special reference to the Christian nature of the state³⁷. Article 44. 1 provides that:

(2) The State recognises the special position of the Holy Catholic Apostolic and Roman Church as the guardian of the Faith possessed by the great majority of the citizens.

There has been judicial opinion to the effect that this provision does not confer any special privileges on the Roman Catholic religion or on Roman Catholics³⁸. There is no equivalent in the northern jurisdiction to the priority given to the legal standing of the Roman Catholic religion in the south. There, constitutional affirmation has been further underpinned by s 45 of the Charities Act 1961 which states that:

In determining whether or not a gift for the purpose of the advancement of religion is a valid charitable gift it shall be conclusively presumed that the purpose includes and will occasion public benefit.

This provision, together with s 45(2), gives statutory effect to the ruling in *O'Hanlon v Logue*³⁹ where Palles CB established that a gift for the saying of masses⁴⁰ whether in public or private satisfied the public benefit test and, being affirmed by the subjective judicial approach⁴¹, was determinative of a donor's charitable intent. Gifts of this nature have long been a distinctive characteristic of Irish charitable activity, traditionally distinguishing it in particular from the non-charitable status of such activity in the United Kingdom⁴². This has been evident also in gifts to closed contemplative religious orders, as opposed to those actively engaged in good works in the community⁴³. In Ireland, unlike the UK⁴⁴, where a gift is directed to be applied for the advancement of religion it is conclusively presumed to be for the public benefit. In Northern Ireland the courts will require evidence that such a gift satisfies the public benefit test⁴⁵. That it will not do so when given to a closed contemplative order was demonstrated by the ruling of MacDermott LCJ in *Trustees of the Congregation of Poor Clares v Commissioner of Valuation*⁴⁶, where charitable status was denied. The requisite evidence may, for example, take the form of proof that masses will take place in public⁴⁷.

It is clear that in the southern jurisdiction, unlike in the northern, the public benefit test no longer has any application to trusts for the advancement of religion.

2.4 Trusts beneficial to the community not falling under any of the preceding heads

Trusts for 'other purposes beneficial to the community' form the category of charitable gifts to be found under the fourth of *Pemsel's*⁴⁸ headings. Jurisdictional

differences in the law may be most conveniently examined under the sub-headings of health, political purposes etc.

2.4.1 The 'public benefit test': generally satisfied in both jurisdictions

It has been held that it may seem anomalous to speak in terms of a public benefit in relation to this category as it is defined in terms of trusts for the benefit of the community⁴⁹. Nevertheless, it is to this category that the interpretation of the public benefit test has been applied with most rigour⁵⁰.

The subjective approach, was first articulated in *Re Cranston*⁵¹ by Fitzgibbon LJ when he argued that gifts for certain vegetarian societies were charitable and came within the category of gifts for other charitable purposes (see, above). This view was endorsed by Lord O'Brien LCJ in *Attorney-General v Becher*⁵², by Barton J in *Shillington v Portadown UDC*⁵³ and finally by Keane J in *Re Worth* when he set the seal of the Irish judiciary on this issue (see, further, above). This approach is at variance with the 'objective test' applied in the courts of the United Kingdom⁵⁴.

The 'benefit' quotient necessary to meet charitable status requirements is different under each of *Pemsel's* four heads and is most difficult to satisfy in the residual category 'other charitable purposes'. In N Ireland the difficulties were examined by Carswell J in *Re Dunlop*⁵⁵:

The essence of the charitable nature [of trusts within Lord Macnaghten's fourth category] is that the beneficiaries should not be a private class, nor should any limitations be placed upon the gift which would prevent the public as a whole from enjoying the advantage which the donor intends to provide for the benefit of all the public. It would be quite consonant with this concept that it should be more difficult for a trust under the fourth head to satisfy the requirements of public benefit, and that a bridge to be used only by Methodists should fail to qualify where a gift for the education of the children of members of that church might be a valid charity.

Carswell J then applied the public benefit test to a gift for the purpose of establishing a home for 'Old Presbyterian Persons' and upheld it as a valid charitable trust. His decision was based upon a finding that 'benefit' would accrue to those in need and that the group was sufficiently 'public' and devoid of any personal relationship nexus to the donor. The fact that the benefit would be restricted to a narrowly defined category of potential beneficiaries did not negate its public utility.

In the southern jurisdiction, the deliberations of Keane J in *Re Worth Library*⁵⁶ shed an interesting light on judicial interpretation of when the public benefit element of a gift is sufficient for it to acquire charitable status within this category. Two different approaches were considered. Firstly, Keane J rejected the proposition that such a gift was charitable *per se*⁵⁷. On the facts it failed to satisfy the 'public' requirement because the donor was most explicit that access be restricted to the physician, surgeon and chaplain. It also failed to meet the 'benefit' requirement because the books that comprised the library were on subjects which could only be of marginal interest to the designated beneficiaries. Therefore, he determined that in this instance the gift of a library did not *per se* constitute a charitable trust within the fourth category. Secondly, he considered the possibility that the gift might so qualify on the grounds that as it was directed exclusively for the use of hospital staff it could be construed as intended as a gift for the hospital which would normally be charitable⁵⁸. Again, on the facts, he held that in this instance the terms of the gift were so conditional as to debar the gift from vesting in the hospital generally. Having thus ruled out the possibility of the gift acquiring charitable status on either of the two grounds presented, Keane J then advanced a further possibility – that the library itself

‘in its beautiful setting would have provided a haven of quiet intellectual relaxation for the beneficiaries’. The necessary ‘benefit’ quotient was supplied by the intrinsic quality of the library environment, however restricted. Keane J held that the requirements of the public benefit test were accordingly satisfied and ruled in favour of the gift’s charitable status within this category on the ground that it furthered the capacity of the charity represented by the hospital.

In the southern jurisdiction, judicial application of the subjective approach together with the latitude illustrated by the importation by Keane J of ‘tranquillity’ as an indicator of ‘benefit’, allows for a much more liberal interpretation of the test than is permissible in the northern jurisdiction or elsewhere in the UK.

2.4.2 Trusts for promoting recreational facilities

In the southern jurisdiction, where a gift is for the purpose of providing social or recreational facilities then charitable status will normally be withheld. Only if the intended beneficiaries are the elderly, youth, handicapped and disadvantaged, or where the gift falls to be determined under one of the other *Pemsel* headings, will it qualify as charitable. In the northern jurisdiction the ruling in *Londonderry Presbyterian Church House Trustees v CIR*⁵⁹ demonstrated a similar approach. In England and Wales, where the law had been identical, the Recreational Charities Act 1958 was introduced to establish that it is charitable “to provide or assist in the provision of facilities for recreation or other leisure time occupation if the facilities are provided in the interest of social welfare”⁶⁰. Equivalent legislation was introduced shortly afterwards in N Ireland but never in the Republic of Ireland.

Whether the recreational facility is provided indoors or outdoors is of no relevance in the southern jurisdiction to the issue of charitable status⁶¹. This is apparent from the decision in *Clancy v Commissioner of Valuation*⁶² which concerned an application for rating exemption in respect of a hall which had been built specifically to promote temperance among the poor and labouring classes in the town of Sligo and the surrounding districts. It provided a range of recreational facilities, available to both rich and poor, and was therefore refused exemption on the grounds that its provision was not exclusively for charitable purposes. In the northern jurisdiction, however, the position is different. As MacDermott LCJ declared in *Commissioner of Valuation v Lurgan Borough Council* “the law does not regard the mere provision of recreational facilities charitable unless they are provided in the open air on land dedicated to the use and enjoyment of the public”.

The subjective judicial approach was also evident in *Shillington v Portadown UDC*⁶³ where Barton J upheld a gift to an urban council which was made for the purpose of encouraging and providing a ‘means of healthy recreation’ for the residents of a specified locality. He explained the grounds for his decision as follows:

The testator’s purpose was a charitable or public purpose. He wished to benefit the residents of his native town and of its immediate neighbourhood. The benefits which he intended to confer on them were such as he believed to be of public advantage. That belief was rational and not contrary to the laws of the land or the principles of morality.

This rationale anticipates and is in keeping with the spirit of s 49 of the 1961 Act and again illustrates indicates the more liberal application of the law in the southern jurisdiction.

2.4.3 Gifts for the benefit of animals

A gift made for the purpose of conferring a benefit upon a particular animal cannot acquire charitable status⁶⁴. However, if made for the benefit of a particular type of animal or for animals generally, then such a gift will be charitable.

In the southern jurisdiction, the subjective approach to the public benefit test has been evident in decisions grounded on a belief that the donor's intention to safeguard the welfare of animals was sufficient in itself to attract charitable status under this heading⁶⁵. This interpretation has tended to be viewed as insufficient in the courts of England and Wales⁶⁶. For example, in *Re Grove Grady*⁶⁷, Russell LJ expressed the opinion that the charitable status of gifts to animals depended upon whether or not they were of benefit to mankind; broadly speaking, domesticated or farm animals would satisfy this test but wild animals would not. The courts in N Ireland would follow this lead.

2.4.4 Trusts for the promotion of health

In the northern jurisdiction, as elsewhere in the UK, the public benefit test is applied most rigorously in relation to trusts for the promotion of health⁶⁸. Until the ruling in *Re Worth* the same could have been said of the judicial approach in the southern jurisdiction. The rationale for that decision is most unlikely to be followed in Northern Ireland and may serve to further widen the existing jurisdictional difference based on an objective/subjective approach for determining the charitable status of gifts.

2.4.5 The 'public benefit test': not satisfied in either jurisdiction

Certain types of applications for charitable exemption under the fourth *Pemsel* head will fail the 'public benefit' test. Most obviously, any form of lobbying or political activity will be disqualified under the 'benefit' limb of this test. The ruling to this effect in the Amnesty International case⁷⁰ has been followed in both jurisdictions⁷¹. Where the intended beneficiaries do not constitute a sufficient section of the community, being members of a club for example, then a gift will fail the 'public' limb of the test⁷²; though the test has a wider application under the poverty heading. The requirements of the test will also not be met in either jurisdiction where an organisation is set up solely for the purposes of fundraising or where funds are to be applied for purposes which are not exclusively charitable or for activities which are illegal.

3. Regulatory bodies and the 'public benefit test'

Charity law treads an uneasy path between leaning in favour of recognising the philanthropic intentions of a donor and seeking to ensure that his or her gift is properly applied. The law requires the recipient of a charitable gift to be accountable for its use. In an endeavour to introduce a means of regulating the probity of charitable organisations, statute law in England and Wales now provides powers for the registration, monitoring and inspection of charitable bodies. The Charity Commission is currently re-examining the public benefit test in that jurisdiction and are considering ending its dependency upon the four *Pemsel* headings. In the future it is possible that one objectively applied public benefit test will be the sole determinant of registration for charitable status. At present once registered, rigorous regulatory powers are used to police the activities of charitable bodies.

However, on the island of Ireland, both jurisdictions share the common characteristic of not having any systems for the registration, regulation, inspection or even monitoring of charities. Although both jurisdictions have considered introducing legislation to achieve this end, neither has yet done so. They remain dependent upon administrative bodies with facilitative rather than regulatory responsibilities. This clearly has implications for the application of the public benefit test.

Part 2

The Public Benefit Test and the Potential for Charity Law to Reduce Jurisdictional Differences and Promote the Building of Social Capital on the Island of Ireland

A modern interpretation and application of the public benefit test, coupled with appropriate supervisory systems, would enable charity law to play a part in the bridging of existing social divisions within and between both jurisdictions. This would also generate the conditions necessary for building social capital and accelerate the growth of a more inclusive society on this island.

4. Interpretation of public benefit test

There are considerable jurisdictional differences in the way in which this test is interpreted. We have noted the existence of a difference between subjective and objective judicial approaches to a donor's intention. This seems rather anachronistic given the scrupulousness with which the court will usually guard its right and duty to apply the law objectively. It would seem logical that while a donor's intent is carefully ascertained and taken into account it should fall to the court to objectively determine whether or not that donor's gift is in fact charitable.

We have also noted a legislative jurisdictional difference. This is of some significance in the field of recreation where the absence in the southern jurisdiction of any equivalent to the N Ireland statute is allowing a build up of two distinctly different bodies of caselaw. It is important also in the field of charitable exemption from liability for rates. Again, legislative developments in the northern jurisdiction have distanced its rating law from the principles and caselaw of the early 19th century which continue to govern the grounds for exemption in Ireland. Of greater significance, however, are statutory developments in relation to religion. In the southern jurisdiction, the combination of a statutory presumption that gifts to advance religion will always satisfy the public benefit test together with the constitutional provision favouring Roman Catholicism, is necessarily divisive both within and between jurisdictions. In an increasingly secular age, and given the fact that current community divisions are a legacy of religious differences, it may be questioned why this aspect of charitable activity should continue to be accorded preferential legal privileges. The new context offered by the provisions and ethos of the fundamental human rights legislation provides an opportunity to review such potentially discriminatory national law and benchmarks for achieving greater inter-jurisdictional harmonisation.

4.1 The 'public' requirement

An enduring legal hallmark of a charitable gift or activity is that it should not be restricted to a small closed group. However, this requirement is now under threat. In both jurisdictions, the erosion of the public benefit test in the context of gifts for the relief of poverty is unfortunate. This has been accentuated by the extension in the northern jurisdiction of the 'founder's kin' rule to allow for a raft of exemptions from the necessity to satisfy the 'public' arm of the test. In the southern jurisdiction, the ruling in *Worth* acknowledged that a gift restricted to three named professionals

would still satisfy the definition of 'public'. Again, that case provides authority for the view that dissemination is not a necessary component for a gift for the advancement of scholarship or academic research to acquire charitable status.

It is difficult to see any rationale for a differential in the application of the 'public' requirement to the different categories of charity. It is manifestly contrary to any understanding of 'public' that gifts could be restricted to a very small number of persons. The fact that such a small group may not necessarily be impoverished seems to nullify the whole basis for a charitable gift. In short, the 'public' aspect of the test is now in considerable need of redefinition in both jurisdictions.

4.2 The 'benefit' requirement

The charity law of both jurisdictions on the island of Ireland is now very out of date. In both jurisdictions, the requirement to demonstrate 'benefit' is particularly difficult in the context of trusts for the advancement of education and in trusts for the promotion of health. There are jurisdictional differences in the interpretation given to 'benefit' in the context, for example, of gifts to safeguard the welfare of animals, to provide recreational facilities and to advance religion through the work of closed religious orders. But it is in the context of unemployment, community development and advocacy that the 'benefit' dimension of the test is now most conspicuously in need of modernising. Both jurisdictions need to statutorily broaden the interpretation of 'benefit' to allow for locally based, self-defined training schemes with the capacity to cultivate grass roots responsibility for the identification of community need, to mobilise and provide advocacy on behalf of the socially excluded and to design and arrange the delivery of relevant services. The rules relating to profit need to be reviewed to permit entrepreneurial endeavour and partnership arrangements with private finance organisations. There is a need for a legislative initiative to ensure that charitable status and charitable activities are focussed on facilitating the social inclusion not only of the various alienated post-violence para-military groups but also of the many marginalised groups such as 'travelling people', racial and religious minorities, the disabled and those trapped in isolated situations of rural poverty. Such an initiative could usefully be co-ordinated across both jurisdictions.

5. Registration & regulatory framework

In both jurisdictions of this island, charity law is deficient as regards its capacity to ensure that standards of probity, transparency and accountability govern the functions of charitable bodies. Arguably charities should submit their on-going practice to the 'public benefit' test as administered by a government body.

5.1 Registration system

In an era of national lotteries, 'telethons', professional fundraising, cross-border funding, advocacy services, the complexities of tax exemptions etc, together with underlying civil unrest, it is extraordinary that neither jurisdiction has felt the necessity to introduce legislation requiring charities to be registered. Such a system would at least allow the general public to identify and access charitable bodies.

5.2 Regulatory system

Both jurisdictions would also benefit from the introduction of systems permitting greater transparency and some degree of accountability in relation to the activities of charitable bodies. In both jurisdictions responsibility for relating to charitable bodies

is divided between a range of government bodies. Each body has its own closely defined remit in respect of charities and in most instances has no duty to co-ordinate its role with other bodies. The introduction of jurisdiction specific but wholly compatible systems for the registration and regulation of charities would at least provide a common baseline of information throughout the island. This would also provide a firm foundation for the future planning and co-ordination of charitable activity on an all-island basis.

Part 3

The Capacity of Charity Law to Contribute to the Building of Social Capital: Some Opportunities and Problems

This part of the paper addresses the lessons that can be drawn from the above consideration of jurisdictional differences in charity law on the island of Ireland. It points to:

- the relevance of the *Pemsel* heads to common jurisdictional problems of social inclusion;
- the opportunities for convergence/harmonisation offered by the shared underpinning of the common law and shared adherence to human rights legislation; and
- the commonality of principle expressed in the various policy papers of both governments.

It does so by drawing attention to the fact that the common law, onto which charity law was grafted, has taken root not only on this island but also in many jurisdictions across the world. The jurisdictional differences, the subject of this study, derive from and represent some of the more distinguishing characteristics of common law. Extrapolating from the experience on this island can offer some insight into the problems and benefits of charity law for all other countries but particularly those to which the common law was successfully transplanted.

6. Common law characteristics with potential for facilitating the growth of social capital

The common law has survived and thrived in this and many other jurisdictions because of several very real strengths. These are evident in charity law generally and can be identified in the findings of the above study.

6.1 Extension by analogy

The single most valuable characteristic of the common law is its proven capacity to adapt to changing social conditions. The application of the law is through lists of specified charitable purposes. Because it can develop by analogy, re-interpreting and extending its application on a case by case basis, it can therefore grow with its social context and remain relevant to evolving social need. This is apparent in the ever extending list of health and social care activities which are gaining recognition as charities.

6.2 Emphasis on the rights and duties of the individual

The common law has long been characterised by the slogan 'no writ no action'. It is very firmly anchored on the right of an individual to seek redress through the courts

for the consequences a breach of a specific duty owed to him by another. The centuries of caselaw resulting from the 1601 Act have given a virtually impregnable strength to certain rights. Also, the common law reliance on concepts relating to the individual - such as 'reasonableness' and 'intention' - has permitted a modern interpretation of the relief of poverty and the advancement of education allowing the courts to extend charitable status to bodies engaged in community development training programmes.

6.3 Respect for institutions

The common law required civic compliance with the King's institutions. The status automatically acquired by the church and by representatives of the administrative infrastructure was transferred to charity law. The ease with which non-profit making institutions such as universities, museums, religious organisations and many public service bodies have since acquired charitable status has assisted the development of a social infrastructure in many different countries. On this island it has been of enormous importance in establishing the health and education facilities of both jurisdictions.

6.4 Reliance on rules

The common law is a law of rules. Enforcement of duties is characteristically by means of rules and regulations imposing financial penalties. This lends itself to an administrative rather than adjudicative framework for resolving disputes. Charity law has in fact always relied mainly on administration by agencies rather than judicial intervention. This presents advantages of swift, flexible and relatively cheap access to forums for resolving disputes while also permitting such forums to offer on-going advice and support. Both jurisdictions on this island clearly demonstrate their reliance on administrative systems.

7. Common law characteristics with potential for impeding the growth of social capital

For all its undoubted strengths, the common law has features which militate against the development of an effective and sensitively attuned charity law. Some of these weaknesses are direct corollaries of its strengths.

7.1 Absence of unifying principles

The common law attribute of growth by analogy is also its singular limitation. Although the lists of instances where the law will grant relief may be judicially extended and classified these are never legislatively shaped into an integrated coherent unity by governing principles. This leads to the law being governed by the rigidity of the specified; to a fact based rather than principle oriented body of caselaw; new cases can be accommodated only by distinguishing the old. It is particularly apparent in the current lack of modern principles to govern the application of the 'public benefit' test. This limited capacity to make conceptual leaps reveals itself in an inability, for example, to address the position of embryonic self-help groups or to facilitate partnership arrangements between charities and private and statutory sector bodies.

7.2 Prohibition on class actions

Again, a particular strength of the common law - its reliance on rights and duties as represented by the individual concerned - is also a limitation. The inability of the common law to countenance class actions is an undoubted handicap in the context of charities where so many of the issues concern different classes of people. Policies designed to promote the social inclusion of groups such as the disabled would be greatly assisted by a charity law which enabled disputes to be resolved on a class rather than an individual basis.

7.3 Incompatibility of charitable and political activity

The common law inhibits political activity by charities. In societies where minority groups feel alienated from the State, and are therefore unable to access the services and opportunities available to others through the normal channels, it is a matter of considerable importance that their interests can be represented by charitable bodies. The fact that charity law by and large disallows advocacy/lobbying activities is a serious constraint on the capacity of such minority groups to wholly participate in the life of their society.

7.4 Reliance on administrative systems

The fact that by far the largest proportion of disputes concerning charities are heard in administrative rather than judicial forums prevents the latter from cultivating principles capable of providing guidance for avoiding or resolving similar future disputes. It also avoids the possibility of having and maintaining an authoritative overview of developments in charity law.

7.5 Status of religion

The tradition of common law respect for religion and religious institutions can militate against social cohesion in societies with a long established history of religious divisions and related violence. Charity law, in such circumstances, can lend itself to channeling recognition and support in ways which accentuate the religious divide. Where the legislature itself gives precedence to one religious grouping in preference to all others the situation is considerably exacerbated. In such societies, and the two jurisdictions of this island are good examples of such, it is imperative that charity law is exercised in a wholly impartial manner without conferring preferential treatment on one religious grouping.

Conclusion

On the eve of the 400th anniversary of the statute which laid the foundations for charity law throughout the common law world - the Charitable Uses Act 1601 - it is appropriate to reflect on the legacy it has provided. Central to this legacy is the concept of public benefit which has come to govern the modern application of charity law. The two jurisdictions on the island of Ireland currently differ in some significant respects in their interpretation of public benefit. At a time when new foundations are being laid for future relationships within⁷³ and between these islands⁷⁴ it is helpful to examine the nature of existing jurisdictional differences. It is suggested that given the common roots of charity law on this island, sustained over many centuries, an opportunity may now exist to eliminate areas of difference and consolidate areas of similarity so as to promote greater social inclusiveness within and between the jurisdictions. It is further suggested that this process may have implications for other societies, particularly those that share the same common law heritage.

NOTES:

¹ Asst Director (Research), Centre for Voluntary Action Studies, University of Ulster. Author of several books and articles on charity law including *Charity Law* (Round Hall Sweet & Maxwell, Dublin, 2000) and *Charity Law in Northern Ireland* with Ronan Cormacain (Round Hall Sweet & Maxwell, Dublin 2001). Project leader of an externally funded research project being conducted by the Centre in relation to the appropriateness of the functions of charity law in N Ireland.

² The provisions of the English Charitable Uses Act 1601 (43 Eliz. 1 c. 4) were extended to Ireland by the Irish statute entitled “An Act for the Maintenance and Execution of Pious Uses”, 1634 (10 Car. 1 sess. 3 cap 1).

³ [1891] AC 531 at 583. But see, also, the caveat entered by Lord Cave in *AG v Nat Provincial & Union Bank Ltd* [1924] AC.

⁴ As stated by Jenkins LJ in *Re Scarisbrick* [1951] Ch 622, 648-9:

It is a general rule that a trust or gift in order to be charitable in the legal sense must be for the benefit of the public or some section of the public...

This became a statutory rule in England and Wales (See, for example, s 1(1) of the Recreational Charities Act 1958 ‘...the principle that a trust or institution to be charitable must be for the public benefit’). The rule also prevails, but never attained statutory status, in the jurisdictions on the island of Ireland.

⁵ See, *Charitable Bequests*, (1st ed. 1888), p 5.

⁶ See, *Verge v Somerville* [1924] AC 496 at 499. So, the class of persons which might benefit may be either a section of the public (See, *Re Tree* [1945] 1 Ch 325, 327, per Evershed J) or a class of the community (See, *Verge v Somerville* [1924] AC 496 at 499, per Lord Wrenbury; *IRC v Baddeley* [1955] AC 572, 593, per Lord Simmonds LC) or a section of the community (See, *Trustees of Sir HJ William’s Trust v IRC* (1944) 27 TC 409, 418, per Lawrence LJ). Conversely, it will not be met and the trust will not be charitable if those who might benefit are merely “a fluctuating body of private individuals” (See, *Re Drummond* [1914] 2 Ch 91 at 97 per Eve J; *Verge v Somerville* [1924] AC 496 at 499, per Lord Wrenbury; *Trustees of Sir HJ William’s Trust v IRC* (1944) 27 TC 409, 418, per Lawrence LJ; *Re Tree* [1945] 1 Ch 325, 327, per Evershed J; *IRC v Baddeley* [1955] AC 572, 593, per Lord Simmonds LC; and *Davies v Perpetual Trustee Co Ltd* [1959] AC 439, 456, per Lord Morton). The basis for this distinction between public and private classes is unsatisfactory because in practice fluctuating membership can be a characteristic of both types.

⁷ See, for example, the anti-vivisection trusts in England and the principles then stated by Lord Simonds.

⁸ The subjective approach was not rejected by the UK courts until the decision in *Re Hummeltenberg* [1923] 1 Ch 237.

⁹ See, for example, in *Re Fouveaux* [1895] 2 Ch 501 where Chitty J held that the abolition of vivisection was a charitable purpose because the testator’s intention was to benefit the community; he ruled that it was not for the court to consider whether the community would in fact benefit. However, the House of Lords in *National Anti-Vivisection Society v IRC* [1948] AC 31 expressly over-ruled this approach stating that it was wrong to treat the intention of the testator as decisive; the public benefit test was to be applied by the court.

¹⁰ [1898] 1 IR 431.

¹¹ See, also, *Shillington v Portadown UDC* [1911] 1 IR 247.

¹² [1994] 1 ILRM 161 at 193.

¹³ See, *National Anti-Vivisection Society v IRC* [1948] AC 31, 65, per Lord Simonds. Also, see, Keane J in the *Worth* case.

¹⁴ *Equity and the Law of Trusts in Ireland*, Dublin, Round Hall Sweet & Maxwell, 1996, p 252.

¹⁵ This is a strict legal requirement for charitable status. See, for example, dicta of Russell LJ in *Re Grove-Grady* [1929] 1 Ch 557.

¹⁶ [1945] Ch 123.

¹⁷ [1994] 1 ILRM 161.

¹⁸ [1971] AC 424.

¹⁹ See, *Inland Revenue Commissioners v Broadway Cottages Trust* [1955] Ch 20; also see, *In re Gulbenkian’s Settlements* [1970] AC 508.

²⁰ *Op cit*, at p 521.

²¹ Specifically overruling, by a majority of three to two, the decision in *Inland Revenue Commissioners v Broadway Cottages Trust* [1955] Ch 20.

²² See, *Kilroy v Parker* [1966] IR 309.

²³ See, *M Davoren decd. Op cit.*

²⁴ See, *Re Compton* [1945] Ch 123, 131.

²⁵ See, *Spencer v All Soul's College* (1762) Wilm 163 and *Attorney General v Sidney Sussex College* (1869) LR 4 Ch App 722.

²⁶ [1954] Ch 252.

²⁷ [1957] 1 WLR 729 at p 737.

²⁸ See, *Incorporated Council for Law Reporting for England and Wales v Attorney General* [1972] 1 Ch 73, per Buckley LJ who expressed the view of the court that education must “extend to the improvement of a useful branch of human knowledge and its public dissemination” at p 102.

²⁹ See, Keane J in *Re Worth Library* [1994] 1 ILRM 161, reference made to: *In re Shaw, Public Trustee v Day* [1957] 1 WLR 729, 737, dicta of Harman J doubted; *Re Hopkins' Will Trusts, Naish v Francis Bacon Society Inc* [1965] Ch 669, 680, dicta of Wilberforce J approved.

³⁰ See, *Brunyate* (1945) 61 LQR 268 at 273.

³¹ See, *Re Pinion* [1965] Ch 85; and *Sutherland's Trustees v Verschoyle* 1968 SLT 43.

³² [1965] Ch 85.

³³ *Op cit.*

³⁴ Citing as his authority *Re Scowcroft, Ormrod v Wilkinson* [1898] 2 Ch 638, 642.

³⁵ See, *Attorney General v Marchant* (1866) LR 3 Eq 424.

³⁶ See, *Thornton v Howe* (1862), 31 Beav 14.

³⁷ This was acknowledged by O'Higgins CJ in *Norris v A-G* [1984] IR 36.

³⁸ See, *In re Tilson, Infants* [1951] IR 1, per Black J at p 36.

³⁹ [1906] IR 247. See, also: *Arnott v Arnott (No 2)* [1906] 1 IR 127; and *Rickerby v Nicholson* [1912] 1 IR 343, 347 where Ross J declared that ‘according to our law a bequest for a religious purpose is *prima facie* charitable’.

⁴⁰ The Statute of Chantries led to gifts for the saying of masses being deemed illegal in England and Wales but it never applied to Ireland where the validity of such gifts was recognised (See, *Commissioners of Charitable Donations and Bequests v Walsh* (1828) 7 Ir Eq R 34n and *Read v Hodgins* (1844) 7 Ir Eq R 17).

⁴¹ In *Gilmour v Coats* [1949] AC 426 the House of Lords took the view that the subjective approach had no relevance to trusts for religious purposes.

⁴² See, *Re Hetherington* [1989] 2 All ER 129 where it was finally confirmed that such gifts are *prima facie* charitable.

⁴³ See, for example, *Cocks v Manners* (1871) LR 12 Eq 574 where the view of the English courts towards a gift for a closed Dominican convent was expressed by Sir John Wickens V-C at p585 as follows:

A voluntary association of women for the purpose of working out their own salvation by religious exercises and self-denial seems to me to have none of the requisites of a charitable institution, whether the word “charitable” is used in its popular sense or in its legal sense.

⁴⁴ See, *Gilmour v Coats* [1949] AC 426.

⁴⁵ See, *Commissioner of Valuation v Trustees, Newry Christian Brothers* [1971] NI 114.

⁴⁶ [1971] NI 174.

⁴⁷ See, for example, *Trustees of the City of Belfast YMCA v Commissioner of Valuation* [1969] NI 3, 30 where McVeigh LJ observed:

It is well established that once a trust has been held to be for the advancement of religion the question whether it has the necessary element of public benefit is a question of fact which must be answered by the court in the same manner as any other question of fact, i.e. by means of evidence cognisable by the Court.

⁴⁸ [1891] AC 531.

⁴⁹ See, Hanbury & Martin, *Modern Equity* (14th ed., 1993), p 420.

⁵⁰ See, comments of Babington LJ in *Trustees of the Londonderry Presbyterian Church House v Commissioners of Inland Revenue* [1946] NI 178, 196; Lord Simonds in *Williams v IRC* [1947] AC 447 and *IRC v Baddeley* [1955] AC 572, 615 and of Lord Somervell in *IRC v Baddeley* [1955] AC 572, 592 (although note the quite different conclusion reached by Lord Reid in *Baddeley* at pp 612-613.

⁵¹ [1898] 1 IR 431 at p 447-7.

⁵² [1910] 2 IR 251.

⁵³ [1911] 1 IR 247. See, also, *Re Ni Brudair*, High Court 1976 No 93 Sp (Gannon J) 5 Feb 1979.

⁵⁴ See, *Re Hummeltenberg* [1923] 1 Ch 237, per Russell J; *Re Grove-Grady* [1929] 1 Ch 557, 572, per Lord Hanworth MR; and *Re Lester* [1940] NI 92, 101-105.

⁵⁵ [1984] NI 408 at p 426.

⁵⁶ *Op cit.*

⁵⁷ He referred to *Carne v Long* (1860) 2 De GF & J 75 and also to *Re Prevost* [1930] 2 Ch 383.

⁵⁸ See, *Barrington's Hospital v Commissioner of Valuation* [1957] IR 299; *Re McCarthy* [1958] IR 311; *Gleeson v Attorney General*, High Court 1972, No 2664 SP (Kenny J) 6 April 1973.

⁵⁹ [1946] CA, TC 431.

⁶⁰ Following the decision in *I.R.C. v Baddeley* [1955] AC 572.

⁶¹ [1968] NI 104, 125.

⁶² [1911] 2 IR 173.

⁶³ [1911] IR 247 at p 156-7.

⁶⁴ See, *In re Kelly* [1932] IR 255.

⁶⁵ See, *Armstrong v Reeves* (1890) 25 LR Ir 325; *Swifte v Colam* (1909) unreported, per Meredith MR; and *Swifte v The Attorney-General* [1912] 1 IR 133, per Barton J.

⁶⁶ See, the issues raised by the law's recognition of charities for animal welfare (e.g. *University of London v Yarrow* (1857) 1 De G & J 72; *Re Douglas* (1887) 35 Ch D 472; *Re Cranston* [1898] 1 IR 431; *Re Wedgwood* [1915] 1 Ch 113 (CA); *Re Grove-Grady* [1929] 1 Ch 557 (CA); *Re Moss* [1949] 1 All ER 495).

⁶⁷ [1929] 1 Ch 557, 582.

⁶⁸ See, for example, *Trustees of the Londonderry Presbyterian Church House v IRC* [1946] NI 178, 183.

⁷⁰ *McGovern and Others v A-G and CIR* Ch D 1981: [1982] 2 WLR 222; [1981] 3 All ER 493.

⁷¹ See, for example, *Superintendent John V Ganly v Henry Goff* [1983] ILRM 425 where the Supreme Court ruled that a fund-raising project proposed by a political organisation could not be construed as charitable.

⁷² See, for example, *Londonderry Presbyterian Church House Trustees v CIR* CA (NI) 1946, 27 TC 431 where the Presbyterian Church was judged not to be a section of the public.

⁷³ Since Labour came to power in May 1997 four separate compacts (for England, Scotland, Wales and Northern Ireland) have been developed to set the terms for future negotiated agreements between the voluntary and statutory sectors. The *Scottish Compact* was published in October 1998, the English Compact *Getting it Right Together* and the Compact for Wales were both published in November 1998, and a similar Compact for Northern Ireland was laid before Parliament in December 1998. In addition, new 'Assemblies' have been established in Scotland, Wales and N Ireland to provide for devolved regional government.

⁷⁴ The 'Hillsborough Agreement', together with its requirement for 'cross-border bodies', promises a new era of co-operation between Westminster and N Ireland and between the latter and the Republic of Ireland respectively.