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Charity and the law: relating to each other in today's society

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Members of civilised societies are generally concerned about their fellow men. That concern may relate not just to their physical well-being, but may extend to concern for the environment in which they live and for things which some might regard as peripheral, but which others will see as an important part of civilised society itself, such as the arts. Until the codification effected by the Charities Act 2006 (now contained in the Charities Act 2011), Lord Macnaghten's simple classification of charities as being for the relief of poverty, the advancement of education, the advancement of religion, or "other purposes beneficial to the community"ⁱ had described such concerns adequately for over 100 years.

In the UK over the last 65 years or so we have been used to a relatively high proportion of State provision for many of these causes. Whilst the State's role here in the UK may never have approached that of, say, the Swedish or French State, it has been considerably more active than that of the USA, where the funding of many of these "civilising influences" is left to individual philanthropists.

The current UK Government is promoting the "Big Society", which the Cabinet Office website explains: "*is about helping people to come together to improve their own lives. It's about putting more power in people's hands – a massive transfer of power from Whitehall to local communities.*"

We now find ourselves in a time of recession, and some may see the Big Society not so much as "massive transfer of power" as a "massive transfer of cost". However, particularly when finance is tight, if things can be done more efficiently by individuals and communities than by Government, it may be better to allow individuals and communities to do those things. In all this, though, care needs to be taken to ensure that "more efficiently" is not used simply as a euphemism for "more cheaply".

Whatever one's political view, it is clear that some things can no longer be funded to the same degree by Government and charities will have to step in. But will those charities be able to cope? Will communities and individuals (who will ultimately have to provide the funding to charities and who are also subject to the effects of the recession) be able and willing to fund those things? But first, what is our role as Christians and lawyers in all this?

While religion may not have a monopoly on acts of charity, what should be beyond debate is that it encourages them. Judaism recognised the need to care for the poor, to treat the widow, orphan or stranger in the land properly and introduced the concepts of the tithe and the jubilee. Unsurprisingly, these concepts were developed in their own ways by the other Abrahamic faiths, Christianity and Islam.

The Christian theological basis for this can be found in Jesus' summary of the Mosaic Law, where He describes "loving one's neighbour as oneself" as second only to "loving God with all one's heart, soul, mind and strength"ⁱⁱ. As we are told, "All the Law and the Prophets hang on those two commandments"ⁱⁱⁱ.

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To the extent that the State does not provide, it will increasingly be left to individuals to do so and here the role of “charity” and “philanthropy” will become increasingly important. In the UK and many other countries, while religious charities have a role to play, it is no longer the case that charity (in its widest form) is provided exclusively through the Synagogue, Church, Mosque or other “house of worship” and as Christians we should be concerned about charity in its widest form. It is, after all, no coincidence that the word “charity” is used throughout the King James and Revised Standard Versions of the Bible to denote “love” and that philanthropy means “love of one’s fellow man”.

Jesus had little time for those who neglected their responsibilities to others by seeking to hide behind religious orthodoxy^{iv} and, as Christians, we do well to remember that the early church concerned itself with acts of charity as well as with matters of faith. At an early stage in its development, the Apostles appointed seven men, “known to be full of the Spirit and wisdom”^v to ensure the proper distribution of the food which the Church distributed amongst its widows. But we must remember that it is not just our fellow Christians to whom we are called to reflect God’s concern for His world and people, nor indeed by whom we may expect to see that concern displayed.

In addition to giving individual financial support to charities as their consciences dictate, lawyers, including Christian lawyers, can provide the sound professional advice which charities increasingly need, especially as the Charity Commission reduces its advisory activities; in addition, they can help charities to play their part not just by acting as professional advisors, but also by offering their skills as trustees. Remember it may not be your specialised legal knowledge which charities need; it may simply be your ability to exercise forensic thinking and your practical experience of life. And it is not just the avowedly Christian charities which need (or deserve) this help.

Charitable giving has undoubtedly suffered in the recession, but evidence^{vi} suggests that many people have continued to give and indeed some people have increased their giving, recognising that others may have reduced theirs. Other evidence^{vii} shows that there are many who want to give who are looking for advice on how best to do this but do not appreciate that their professional advisers can help them. Increasingly, we should consider how best we can help our clients to play their part by discussing their philanthropic aspirations with them and helping them to realise them, whether through lifetime or testamentary giving or engagement with charities.

In doing all these things, though, we need to be both Christians and lawyers. We need to be objective about what our skill sets are and how best we can be of service. I have a clear memory from over 30 years ago of one of my University lecturers breaking off halfway through a lecture to say: “If you have a burning desire to help people, make sure you practise in Mayfair where your clients can afford your mistakes; if you want to work in a Law Centre, where people are desperate, you should know what you are doing!”

And although I have seen many Christian lawyers making a real and positive difference, regrettably, I have also seen others, no doubt deeply committed to their cause, trying to help where they were clearly out of their depth or on occasions allowing their personal views to cloud their forensic skills by assuming that a given result must be “right”. In either case, disaster may follow: for the client and potentially for the reputation not only of that Christian lawyer but Christian lawyers in general, who may be perceived as well-meaning but lacking in intellectual rigour.

Particularly in a time of recession, charities (and those who wish to support them) need solid professional advice and the willingness of Christian lawyers to give that advice is to be warmly applauded. However, in the current climate more than ever, charities cannot afford well-intentioned amateurism; and, as Christian lawyers, we need to be prepared to think hard and "outside the box" about how best we can help, bearing in mind that our duty is not owed solely to our clients.

Clive is a solicitor, who having become a partner in 2000 is now a consultant to the Charities and Philanthropy Team at Withers LLP. In addition to advising on charity governance and operational issues, he advises both charities and donors in relation to tax-efficient giving and funding. Clive is a member of the Charity Law Association and the Society of Trust and Estate Practitioners ('STEP'). He chairs the STEP England & Wales Philanthropy Advisors Group and the Community Foundation Network Professional Advisors Council. He is also a member of 'Philanthropy Advisors Forum' chaired by Lord Janvrin, the Charity Law Association Standing Committee on Taxation and was a member of the working party set up by HM Revenue & Customs to review proposed changes to the Substantial Donor Rules (now Tainted Charity Donation Rules) He was a member of the Finance and Services Committee and the Audit Committee of Tearfund for nine years and is currently a trustee of the WO Street Charitable Foundation, of the Community Foundation Network and of the London Community Foundation. He writes his following thoughts in his own personal capacity – not as a representative of any of the above.

ⁱ IRC v Pemsel [1891] AC 531

ⁱⁱ Matt 22:39; Mark 12:31 (NIV)

ⁱⁱⁱ Matt 22:40 (NIV)

^{iv} Mark 7:5-13

^v Acts 6:3 (NIV)

^{vi} See, for example the Institute for Philanthropy's report "Giving in the Recession" at:

http://www.instituteforphilanthropy.org/cms/pages/documents/Giving_in_the_Recession.pdf

^{vii} See for example the research carried out by Scorpio Partnership, commissioned by New Philanthropy Capital, Wise and Bertelsmann Stiftung in 2007 available at:

http://www.philanthropycapital.org/publications/improving_the_sector/improving_philanthropy/philanthropy_advice_donors.aspx