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VOLUME 1

CITY UNIVERSITY

EXTERNAL REGULATION AND INTERNAL CONTROL IN THE CHARITY  
SECTOR.

By Paul William Palmer.

A Thesis Submitted to the City University for the award  
of Doctor of Philosophy in March 1995 .

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## DECLARATION

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## **ABSTRACT.**

The thesis comprises an analysis of the regulation of the charity sector and its managerial implications, focusing on internal control. The thesis begins with an introduction which outlines the aim of the thesis, research design and method, and is divided into four further interlinking but self contained chapters with appendices.

The second chapter reviews the definition problem of charity; the debates on politics, convergence and religious influences; a critical evaluation of the Salamon and Anheier hypothesis; the problem for statistical analysis and new developments.

The third chapter places charity into an historical, political and economic context; the 'spirit' of charity is reviewed; the emergence and dismantling of the statutory welfare state is discussed and the policy implications for the future direction of charity.

The fourth chapter looks at the history of charity regulation and the events which led to the establishment of the permanent Charity Commission. The 1987 criticisms are considered from the perspective of how much was the Commission itself to blame. The new system of regulation and the charity accounting standard are described and appraised against theoretical perspectives. International comparisons are made and the British system evaluated.

The fifth chapter looks at the regulatory focus, the charity trustee. The role of the trustee is considered against the new legislation and managerial perspectives of the ideal trustee are considered. Liability and risk considerations, we argue, inevitably focus on an evaluation of control systems. The absence of information on control functions in charities is considered and why a survey was deemed necessary. A synopsis of the findings in 1991 and their relevance in 1995 is discussed, which offers comfort and concerns about internal control in the larger charities.

In the appendix are the full results of the 1991 Internal Audit Survey and the European Survey of Audit, Accounting and Supervision Practices.

The Conclusion provides a combination of practical suggestions for improvements of internal control in charities and suggestions for the Charity Commission as it embarks upon a more pro-active role. Future directions for research in this field are recommended.

## CHAPTER ONE - INTRODUCTION, RESEARCH DESIGN AND METHOD.

### INTRODUCTION

This thesis is a study of regulation of the charity sector and internal control functions within the charity sector. We advance the following hypothesis - The Charity Acts 1992/93 have formalised a new regulatory regime on charities. The Acts cannot be divorced from the wider social policy perspective of the state's delivery of welfare services. Some larger charitable organisations are increasingly being used to deliver welfare services that were previously delivered by statutory services. The Charity Act 1992 and the subsequent De-regulation Task Force (Baring 1994) have polarised the charity sector into two distinct sectors according to regulation. The vast majority of small charitable organisations, some 160,000, will be relatively unaffected by these legislative changes.

A numerically smaller group of charities, some 10,000 in number but financially accounting for 90% of the wealth (Aston 1994) will be subjected for the first time to an overt regulatory regime. To meet the requirements of this regime, the governing bodies of larger charities - the trustees - will be compelled to review the adequacy and efficiency of their system of internal control - a review that we believe will inevitably lead to the introduction of formal internal control functions.

From our literature search there is an emerging body of charity study, but to date it has been relatively segmented. While the social policy changes of the state moving from statutory delivery to resource funding voluntary agencies has been well documented, this has been in the fields of social policy and politics (Billis and Harris 1992; Deakin 1994; Flynn 1993). With some notable exceptions (Paton 1993, Bruce 1994) there has been an absence, particularly from business schools, of a multi-disciplinary perspective. Beyond some useful,

primarily prescriptive books (Leat 1993, Palmer and Harrow 1994) there has been a dearth of business school studies linking social policy through economic and legal studies to accounting and managerial outcomes in this field.

This is not surprising, for there is still emerging a distinctive body of knowledge on the charity sector. As we explore in chapter 1, there is still no universal definition of charity and the voluntary sector. We explore the reasons for this omission, including the premise of Warburton (1993) of the charity 'black letter' law tradition. Support for her hypothesis has been found from studying the Hansards of the 1960 Charity Act. We discovered that the leading legal texts and indeed any other text referring to charity law and modern definition have failed to reference the modern definition of charity, debated in the House of Lords. A number of different theoretical perspectives have recently been developed to explain the absence of 'voluntary sector' studies (Salamon and Anheier 1994), but there is still lacking a substantive body of theoretical knowledge, for example, the absence of critical theoretical perspectives. Until 1994, there had been no authoritative statistics on the size of this sector and until 1995, there have been insurmountable methodological problems to undertake quantitative empirical study on the sector, for example, the formulation of a probability sampling frame.

On the issue of internal control in charities, beyond prescriptive best practice texts (Sams 1978, Dale 1985) there have been three academic studies. Two studies were sponsored by the Institute of Internal Auditors.UK and both were conducted in 1985. The first was the inclusion in the IIA-UK survey of 'Internal Auditing in the United Kingdom and Eire' (IIA-UK 1985) of two hundred top charities. However, only ten charities responded to the survey and of that ten, only one had an internal

audit function. The second study was commissioned research by 'charity academics' Billis and Harris(1987a; 1987b). This study consisted of six interviews with three charities that had internal audit and three that did not. As we explore in chapter 4, this invaluable, pioneering research posed a whole series of questions for action research rather than any answers. The third study was a working paper on charity regulation, accountability and audit (Vinten 1989). This theoretical review, laid the foundations for this thesis. At the managerial micro level there is a complete absence of any statistical data as well as qualitative information on internal control functions in charities. One part of this study was to obtain such information. At a policy level, this will be one of the first studies to appraise the new system of charity regulation.

The charity sector, despite claims of convergence which we discuss in chapter 1, has distinctive characteristics from the public and private sectors. The charity body of management which directs the charity 'in trust' may not be paid, beyond special circumstances requiring the approval of the 'regulator' - the Charity Commission. The Boards are therefore voluntarily giving their time, however, they are personally accountable for the proper management of the charity and its assets. While the trustees can employ paid staff including chief executives on salaries of £100,000, they cannot delegate their authority or liability. A situation in the private sector of the entire Board of Directors being composed of non-executives. We explore in chapter 4 the literature on how these bodies work and develop a typology (Palmer and Harrow 1994) to explain their behaviour. We suggest that the combination of liability, risk and new standards of expected performance will lead these bodies to seek comfort and reassurance with formal control functions.

The charity 'regulator' - the Charity Commission - we argue is a unique body with a long and distinctive

history. Its dual role of 'promoter' and 'regulator', while not new, has been undergoing change. We suggest the Charity Commission still has not yet determined the equilibrium of role balance. Through 'interviews' with key Commission staff, both past and current, we explore changes in the Commission. In particular, we review the 1980s and the critical reports on the Charity Commission (Woodfield 1987; NAO 1987). From interviews and subsequent review of reports and resources we suggest that while the Commission does have to take responsibility for some of the criticisms, many were also unfair. In particular, the public 'humiliation' of the then Chief Charity Commissioner was an injustice, as many of the subsequent reforms had been enacted under his leadership, against a hostile climate of woefully inadequate resources.

The 'purpose' of charity we argue cannot be divorced from the state. From the 'Tudor' period to the modern day, charity has been interlocked with social and public policy. We review the history of charity, social policy and charity regulation from Tudor to the present day. We note the authoritative historical works were written in the 1950's by professors from Harvard (Jordan 1958; Owen 1965). There has been no contribution from British historians in recent years to our charity history. In particular, we note the lack of 'hermeneutics' studies to understand the reasons for philanthropy and the importance of the work of Titmuss. We critically review contemporary social policy studies on the voluntary sector and the limitations from their 'political' perspective that these works have had on objectively discussing a role for the voluntary sector. We also critically evaluate the contribution of the new 'charity scholars' - the impact of the contracting state and the distinctiveness of the charity sector as a force for change.

The changes in the regulatory role of the Charity

Commission have still to be enacted on the sector. We look at market theories of regulation, notably from the positivist theories of the Chicago school (Stigler 1971; Posner 1974; Peltzman 1976) and their application to the charity sector. We also evaluate applications from critical accounting theorists on regulation (Okcabol and Tinker, 1990). The final new regulation on charity accounting at the time of submission had still to be released, but from the last draft and papers of the Accounting Review Committee we have been able to offer an initial descriptive account of the new standard and its radical adoption of a statement of financial affairs based upon 'fund accounting' principles. We note how the charity accounting standard, SORP 2, reflects the domination of the 'interpretative' school of accounting, its prescriptive nature following the failure of the previous charity SORP. From the 'positive' perspective of Watts and Zimmerman's (1978, 1979) critique on accounting standards we evaluate SORP 2. We also apply a critical accounting theoretical perspective to the SORP.

A comparative evaluation of English regulatory and accounting measures is undertaken from studies in the US, New Zealand and Australia. Attempting a similar exercise for a European Union perspective, we note that in 1993 there was no knowledge either in the Charity Commission or in the European Commission of what are the respective accounting, auditing and supervision practices of charities in the European Union. To resolve this omission in information, using an international firm of chartered accountants, we surveyed every union member country and with the exception of Greece have compiled a description of each country's practices. We discover that the popular conception of the UK having the most advanced accounting and supervision can be challenged. In France, they have adopted a solvency requirement which has not featured in the SORP.

The research conclusions are both of a theoretical and directly practical nature...and are divided into four parts. The first part focuses on wider charity issues and future policy. The second part is on the Charity Commission and suggests a more pro-active agenda. The third part deals with trustee issues both long-term and current priorities. The final part is on internal audit in charities. These examinations suggest further avenues for research.

## **RESEARCH DESIGN AND RESEARCH METHODS.**

Using Bryman's(1989) definition, for this section we distinguish research design - which is the overall structure and orientation of an investigation - from research methods which are the techniques of data collection. The division is somewhat arbitrary because in the research design part we also discuss qualitative research methods, personal position and the literature review. It is a useful division, however, for this study as it divides a primarily theoretical discussion in research design, from the primarily descriptive account of the quantitative survey methodology.

### **Part 1 - RESEARCH DESIGN AND METHODOLOGY.**

Herbert(1990) notes:

" ...the main criteria of a research design can be summed up in two questions: Does the design generate answers to the research question? Does it adequately test the hypothesis if it is a hypothesis-testing study?...The crucial point to remember is that the research problem or question should determine the approach."(Herbert 1990, p18). The logical structure of the quantitative research process has been depicted as follows:

## Main Phases

## Intervening processes

Theory

-----Deduction

Hypothesis

-----Operationalization

Observation/  
data collection

-----Data processing

Data analysis

-----Interpretation

Findings

-----Induction

Source: (Bryman 1989,p7)

The intention of this study was to follow this traditional pattern. Following my training as a Chartered Secretary and employment as a charity finance director I had made the following observations in the mid 1980s:

a). The charity was undergoing massive growth, becoming a national organisation with a network of geographical centres and a complexity of local, regional and national funders(Finlayson and Palmer 1989).

b).It was the intention of the Charity, to also become a Housing Association. This meant compliance with the regulatory procedures of the Housing Corporation. This included annual monitoring reports and visits by the Housing Corporation monitoring team. A feature of the monitoring brief is to evaluate the system of internal

control.

c). There was a need to address control procedures by the trustees.

I concluded the current control structures in the charity were inadequate both operationally and for future policy. Through consultation with external auditors and reading of the control literature, I recommended that we needed to introduce some form of internal control function. A consultancy report was sought from the External Auditors who recommended an internal auditor (Finlayson and Palmer 1989). Subsequently resources were found and an internal auditor was appointed. In researching the implementation of the function, I became associated with the Internal Auditors Charities Discussion Group and subsequently a member of the Institute of Internal Auditors (IIA.UK).

At the end of 1989, I changed career and became an academic in finance studies at the then South Bank Polytechnic. I had also become by this time Chairman of the IIA.UK Charities Discussion Group and a member of the Charity Finance Directors Group (CFDG). Teaching on the IIA.UK professional examinations course and retaining my interest in charities, particularly contributing prescriptive papers to research seminars (Palmer 1989; Palmer 1990) led to registration for a higher degree in the Centre for Internal Auditing at City University Business School. The intended original thesis was Internal Audit in Charities based upon previous research by Billis and Harris (1987a; 1987b) and a working paper by Vinten (1989). A working outline was prepared based upon the lack of research, particularly quantitative, in the charity sector (see section 4.7).

My initial approach was determinedly empirical. While I valued qualitative studies, particularly participant methodology (Becker and Geer 1970; Bruyn 1970). I felt the 'gap' in knowledge in this subject favoured some form of

quantitative study. Specifically, as the only previous research had been qualitative, following the poor response by charities to the IIA.UK survey(1985). Through my active membership of the respective charity discussion groups, I would be able to keep up to date with developments and while not a formal part of the study, such feedback would be complimentary to the survey interpretations. In addition for the policy aspects of the thesis there would be interviews with key figures in the Charity Commission. The thesis from the beginning was intended to combine both qualitative and quantitative approaches. Through 'triangulation'(Fontana and Frey 1994) I used several different methods for the study.

As subsequently discussed in chapter 1 and in the following section(see also Perri 6 1992 report to the Central Statistical Office), it became apparent that it was impossible to construct a probability sampling frame. Nor would it prove possible to do so until, at the very earliest, 1995. As such the study had to change its original focus. The decision to go ahead with the survey was made on the basis that it would provide a useful indicator of what was existing practice in charity internal audit and control; in particular to focus on the attitude of finance directors to internal auditing that had featured in the Billis and Harris(1987a;1987b) original research and the prospects for its development. Many of the practice issues and in particular the 'specialities' of charity could be addressed. The survey would also be a useful 'historical bench-mark' on what was practice and attitude in the early 1990s before the intended legislation took effect. A major advantage of quantitative research is its ability to permit replication:

" One of the reasons for the distrust of qualitative research among some proponents of quantitative research is that the former does not readily permit replication."( Bryman 1989,p10).

While obviously there might be differences, the CFDG was a purposive sample and subsequent research from 1995 should be based on a probability sample, from the sampling frame now available at the Charity Commission, it does not negate its value in providing a snapshot of practice in the 'leading' charities at that time.

It had always been the intention to compliment and underpin the qualitative research with qualitative methods, particularly as the theoretical methodology was based on 'grounded theory' rather than positivism:

" ...it is a mistake to think of all quantitative research as concerned with the testing of hypotheses. In many instances, the research is much more exploratory." (Bryman 1989,p22) .

The revised focus of the study was subsequently agreed in the 'viva voce' from MPhil registration to PhD, when the survey was presented and the future direction was agreed. In particular its interpretation of policy, through review of documentation, such as Hansard and interviews.

Grounded theory was developed by Glaser and Strauss(1967) in the mid 1960s. Strauss and Corbin(1994) provide the following definition:

" Grounded theory is a *general methodology* for developing theory that is grounded in data systematically gathered and analyzed. Theory evolves during actual research, and it does this through continuous interplay between analysis and data collection. A central feature of this analytic approach is "a general method of[constant] competitive analysis." ( Strauss and Corbin 1994,p273) .

Studies using grounded theory use the same data sources as other methods of qualitative research; interviews,

field observations, documents of all kinds and:

" Adaption will include combining it with other methodologies(hermeneutical, phenomenological, for instance).It will also be combined with quantitative methods on predominantly quantitative or predominantly qualitative projects, or on projects of equal emphasis."(Strauss and Corbin 1994,p283).

The important difference is the emphasis upon theory development throughout the course of a research project. In particular, grounded theory has been used in developing substantive theory studies, although higher-level' general' theory is possible. The study's focus was charity, where there had been to date few studies. As Billis(1990) writing on the dramatic international upsurge in the study of nongovernmental sector organisations in the last few years, commented at the time:

" Within this embryonic discipline the major research questions are still in the process of formulation."(Billis 1990,p77).

At the beginning of this study, following a seminar between academic researchers and the Charity Commission(Billis 1989) issues discussed in this thesis were still being formulated:

" Government concern about the accountability of charities and voluntary organisations is sometimes also expressed as anxiety about the supervision and management of charities. And at the centre of the debate lies the Charity Commission. Thus all three reports referred to earlier look towards some change in the role and duties of the Commission as one way in which the objective of increased accountability and greater efficiency might be achieved. Quite what the impact of these changes might be is not spelt out, but the appointment of a new Chief

Commissioner has raised expectations that the Commission will move away from what is generally agreed to have been its previous rather narrow role." (Billis 1989 p2-3).

Grounded theory adopts a pragmatic position, which believes that theories are interpretations made from given positions. This of course, counter to a positivistic conception which exists on the basis of scientific rationality of something to discover out there. A grounded theoretical perspective recognises that theories are created by people, and people are fallible. We are conditioned by our time and the beliefs of that time, therefore, the interpretation of one age will not necessarily be the interpretation of another. Therefore all interpretations and, by inference, the status of a theory has a limited life. Secondly, by its nature, theory is never static as the world is constantly changing, thus theory will always be provisional and will allow for elaboration and qualification as time passes. However:

" To say that a given theory is an interpretation - and therefore fallible - is not at all to deny that judgements can be made about the soundness or probable usefulness of it." (Strauss and Corbin 1994,p279) .

This study contributes to the body of knowledge developing in the charity sector, and as such meets its theoretical obligation. In addition, there is an immediate and direct application of this research to both the charity sector and to the wider society in which charity is placed. This is not to claim that all grounded theory studies have an immediate practical or direct application. We do, however, take the perspective that this study has provided a historical and policy framework for understanding the current regulatory regime. It also offers to both the charities and to the Charity Commission clear practical advice on the implications and limitations of the policies being pursued.

Adopting an interpretative approach facilitated the historical element of the study and the approach of the respective historians:

" To interpret their theoretical work one must appreciate what they took for granted as characteristic of *their* time and their interpretations of the past." (Tuchman, 1994, p310)

The integrity of Owen(1965) and Jordan(1958), as the two principal charity historians, is not questioned, it must be recognised that both were writing in the 1950s from an 'elitist' perspective of history. Our call for an 'hermeneutics' perspective on philanthropists after our criticism of Knight (see chapter 2) must also be balanced with a 'social' history of charity. In Chapter Two we noted the absence of historical studies focusing on working class involvement in charity. Two conclusions can be drawn. Either it does not exist: charity was an upper middle class preserve, or it did, but has been 'lost' by the pre-occupation of historians like Owen who primarily charted great men and political movements. Occasionally one finds in Owen references to working class involvement, such as the early origins of the Royal National Institute for the Blind, although the principal focus is on Dr Armitage. Owen's discussion on the Royal National Lifeboat Institution similarly has no mention that the actual 'volunteers' must have been working class fisherman. Using this interpretative perspective one goes beyond noting that there has been a 'gap' for some years in charity historical studies to offering directions for future study and omissions in the literature.

The use of grounded theory to constantly reanalyse data, as it is collected, and to reassess upon a basis of competitive analysis, is illustrated in Chapter Three with the contemporary study of the charity commission and the events of 1987. My initial perceptions of the Charity Commission changed from a perception of the Charity

Commission and particularly the Chief Charity Commissioner from 1982-87 as reactionary to management change, through to an appreciation of the complexity of charity regulation and to the view that there was an unfair 'public criticism' of the Chief Charity Commissioner. The failures identified in 1987 was not solely the fault of an 'intransigent' Commission but also the failure of a government through its political dogma to properly resource the Charity Commission. In retrospect it may well be that the 'real' failure was the then Parliamentary Accounts Committee, who followed the easy option of 'blaming' the Chief Charity Commissioner and not putting penetrating questions to the government of why the Charity Commission had been allowed to become so under resourced?

A criticism of qualitative methodology, notably participant observation studies is the inability of the researcher to be objective. Such a criticism goes also to the heart of grounded theory. The following comment has been made on participant observation:

"Moreover, it has been argued that in a sense *all* social research is a form of participant observation, because we cannot study the social world without being part of it." (Atkinson and Hammersley 1994,p249).

The concept of the independent, detached, objective researcher has been challenged and subjected to considerable academic debate (Denzin and Lincoln 1994) since the seminal paper of Becker's who declared on neutrality and value free research:

" This dilemma, which seems so painful to so many, actually does not exist, for one of its horns is imaginary. For it to exist, one would have to assume, as some apparently do, that it is indeed possible to do research that is uncontaminated by personal and political sympathies. I propose to argue that it is not possible

and, therefore, that the question is not whether we should take sides, since we inevitably will, but rather whose side we are on." (Becker 1970, p15).

For example, the classic Weber study on the protestant ethic has been questioned not only on the evidence, but most importantly why did Weber choose that set of data? (Tuchman 1994, p309) One explanation offered is that Weber's use of historical data was intended to negate a Marxist perspective and instead promote his own theory of the development of capitalism. Another contemporary example has been the critical accounting theorists challenge to the independent role claimed by the professional accountant (Rosenberg 1989; Lehman 1992).

This is not to claim that there cannot be an application of 'scientific' tools professionally deployed to enhance the quality of the research, for example a 'value' placed on the research, measured by the application of research methodology. What is rejected is the concept of the aloof researcher. Recognition of your perspective and therefore your interpretation of data is an aid to research findings and conclusions. An objectivity can therefore be sought, but it is a different objectivity to the positivist conception. This objectivity is found in self-reflection and honesty with the consumers of your research. It is more honest to declare and be aware of your perspective, rather than claim some unsupportable scientific objectivity. It is important to the consumers of your research that they are aware of your position and can judge accordingly.

This research has involved active participation and support for internal control functions (Palmer 1990a, 1990b; Palmer and Findlayson 1992; Palmer 1992a, 1992b, 1993a, 1993b, Palmer and Harrow 1994). Our support for such functions derived from our experiences as a charity finance director. In active promotion of internal audit functions and in discussions with charity

finance directors, chief executives and trustees we have not been presented with a viable alternative to meet the management problems facing charities and particularly their trustees. Our support for internal control functions has not been limited to a narrow assumption that they inevitably need to be 'in-house'. Nor does it mean we cannot be critical both of some charities not to undertake internal control reviews or the limitations of some charity internal control functions.

With regard to the future direction of charity, we wish to see retained and encouraged the advocacy role of charity. We believe the diversity and individualism of the charity sector is appropriate to meet a plethora of needs from AIDS to womens' issues. We are not sentimentally looking back to the nineteenth century but instead towards the twenty-first. Hence the important need for a new definition and legal status for charity. The need for a wider debate on the role for charity not an agenda set for it as some cheap substitute for statutory welfare services. The accountability of charity is also different. In the same way that companies cannot exist in a vacuum devoted only to profit, charities cannot be shielded from the demands of society. Charity has a responsibility to the wider society. The tax privileges enjoyed by charity is met by a mass tax paying public not as in the last century by a few wealthy individuals. Charity Trustees should be ensuring that their charities are being run as effectively as possible for their intended beneficiaries and for society. That is the 'trust' they have been given. The role of regulation is to ensure that they are meeting that trust. This is our personal perspective on charity and how we have interpreted regulation. We have attempted to demonstrate an 'objectivity' by the respective use of positivist and critical theory interpretations of policies.

An important qualitative methodology used in this study was interviews. Interviews can take three forms,

structured, semi-structured or unstructured (Bryman 1989). The structured interview for example, whether face to face or by telephone and reliant upon coding and consistency, was developed as part of the 'quantitative' approach in social sciences. Unstructured and semi-structured interviewing on the other hand belong firmly in the qualitative research methodology. Unstructured interviews provide a greater breadth than structured interviews as they allow for discussion and an unrestricted approach. The principal disadvantage is the problem of bias, for example by use of follow-up questions or by style of delivery encouraging one form of response. Completely unstructured interviews raise the issues to be discussed but leaves it to the interviewee to talk about it in their own way. The disadvantage of this method is the problem of validation and the skill of the interviewer. For the purposes of this study semi-structured interviews were used, though all of the interviews tailed into discussions. This type of interviewing was deemed best for key persons in authority to provide clarification on past policies as well as providing scope for elucidation on present and future. They were designed in the study to be complementary to the secondary data. Using semi-structured techniques allowed for key information gathering and clarification role. On this basis the study adopted the traditional open-ended ethnographic (in-depth) interview and we therefore view the interviews as a separate research method from participation observation.

In part we also make this distinction because, as with the postal survey we followed some 'best practice' techniques to obtain the specific information. The questions designed as an 'aide-memoire' were 'pilot-tested' to ensure they were clear in meaning. They were arranged with these 'specific questions' requiring answers following an 'ice-breaking' introduction to the research aims. All the interviews were prepared in advance with the interviewee being given a written or

verbal brief on the purpose of the interview and the focus of the study. Confidentiality of what was said and the right to see interpretative material before publication in this study was guaranteed to the interviewee. Given the civil servant responsibilities of the individuals this was important to both obtain the interview and most importantly to make the interviewee relaxed and able, if they wished, to explore wider topics. The background of the interviewer, as a chartered secretary with charity management experience who was now an academic, facilitated the openness and part discussion aspect of the interview. In addition there were gathering information interviews for specific purposes ie for the European Survey with staff at the Charity Commission, NCVO and the European Commission.

The schedule of formal interviews were

Janet Morrison - European Policy Officer, NCVO	14.12.92
Richard Corden - Charity Commission	21.12.92
Andrew Crook - DG23, European Commission	23. 2.93
Patrick De Blesser - Moores Rowland, Brussels	23. 2.93
Richard Fries - Chief Charity Commissioner	1. 9.94
Dennis Peach - Former Chief Charity Commissioner	6.10.94
Peter Mimpriss - Allan & Overly, Solicitors	21.10.94
Victor Mitchell - Director of Operations, Charity Commission	8.12.94

In addition to the formal interviews with the commission and for the European research, a series of informal discussions both prior to and after were held with correspondence confirming the accuracy of the reported interviews.

It was considered inappropriate to resurvey in 1994/95 due to expected changes in the accounting and auditing regime not coming into force until the end of 1995. In addition there is some evidence (Gillingham 1994) that the increasing number of charity surveys is leading to

resistance by senior charity staff to complete survey requests. After consultation with the respective chair's of the CFDG (Hind 1994) and charity internal audit (Rooke 1994) they both advised against a survey. They considered support for a survey in late 1996 or early 1997 would be more likely. It was considered some form of qualitative input to check the relevance of the 1991 data would, however, be useful.

To ascertain the relevance of the 1991 internal audit survey data in 1995 a group of Charity Finance Directors, Internal and External Auditors were invited to meet for a morning to discuss the relevance of the survey results and the future for internal auditing charities. The group was selected from those who had completed the survey in 1991. The Finance Directors were chosen from those who had indicated they were considering introducing an internal audit function. Three of the Finance Directors had done so and the third still had plans too. The group met on the 25.4.95 and comprised:

Edward Bates, Finance Director, The Childrens Society.

Ian Powell, Finance Director, Sight Savers.

Marie Flangan, Internal Auditor, Macmillan Cancer Relief.

John Tame, Chief Accountant, Macmillan Cancer Relief.

John Owens, Internal Auditor, Hanover Housing Association. Former Secretary of the Housing Association Internal Audit Forum.

Adrian Randall, Formerly Finance Director of the Cancer Research Campaign and Chair of the Charity Finance Directors Group, now Charities Director of Moores Rowland, Chartered Accountants.

John Flett, Finance Secretary, International Salvation Army.

Peter Woods, Head of Internal Audit, International Salvation Army.

Marian Lower, Senior Lecturer in Internal Auditing, South Bank University.

The primary data collection therefore involved a postal survey, semi-structured interviews and participant observation. Secondary data - defined as data that already exists in an accessible form and has to be found - involved a literature review and searching through specialist libraries for original source material. The literature review followed a systematic method using computer search facilities at South Bank and City Universities. Computer search packages were based on key words charity, non-profit and control. On CD-Rom for example there is now a Business and Management data base. For specific charity research there is VOLNET - The Community and Voluntary Sector Database, which is a directory of voluntary action research. The British Library Document supply centre was used extensively to obtain specialist and 'milestone' papers and books.

Four refereed academic journals were scanned for appropriate articles from their date of publication. Three were charity Journals - Nonprofit and Voluntary Sector Quarterly; Non-profit Management and Leadership and Voluntas. The first two journals are North American oriented but carry limited UK studies. The last two journals have English joint editors of David Billis from LSE and Martin Knapp from Kent University. Voluntas jointly edited by Professor Knapp is published by Manchester University Press and tends to be more European in orientation. The fourth journal reviewed was Financial Accountability and Management as it claims within its scope charitable organisations. This journal has published a number of useful articles on charity accounting and audit, particularly focusing on the limitations of the SORP. Its theoretical orientation is towards the interpretative school of accounting, which is to focus on the usefulness of accounting information to the user. In addition a number of professional and popular journals were consulted, notably Internal Auditing and Managerial Auditing for control and an internal audit perspective. For the charity sector NGO

Finance and NCVO Newsletter were specifically used. The first journal has established itself as the leading charity magazine carrying specifically professional charity finance and accounting articles. The NCVO newsletter provides a wider overall coverage of policy and management issues affecting the charity sector. Other Charity journals monitored included Charity, the long established journal of the Charities Aid Foundation and more recent popular journals devoted to the charity sector, Third Sector, Charity World and Charity Management.

Original source material notably Hansard relating to charity were consulted at the Charity Commission Library. In addition a copy of every report of the Charity Commissioners from their inception is available. A comprehensive review of every report since 1959 was made to cover events from the 1960 Charity Act. Unfortunately, as the reports are an edited selection of events which the commissioners wish to report on, rather than a comprehensive yearly review of activities, it is impossible to undertake a quantitative form analysis of events that concern the Commission. At the Commission, in the legal Commissioner's office are the Brougham Commissioners records. These provide invaluable material for historic analysis of past charity abuse.

There was attendance at international academic conferences organised by the Association for Research on Nonprofit Organisations and Voluntary Action(ARNOVA) and the International Society for Third Sector Research(ISTR). National conferences of the British Academy of Management(BAM) and the British Accounting Association(BAA) and the ESRC seminars at LSE on the Voluntary Sector. Working papers were either available or were requested from these events. Presenting papers at conferences and publication in professional journals resulted in a number of papers being sent to me. Organising a national symposium for English non-profit

academics and an international conference on contracting(both jointly with Perri 6 at NCVO) also resulted in papers being available which are at the forefront of study in the charity sector.

## **PART 2- RESEARCH METHODS - 1991 INTERNAL AUDIT SURVEY.**

Once the decision to undertake some form of quantitative research was made the question then became what type of survey method to adopt. To answer this problem I attended the post-graduate research programme at City University Business School.

I concluded that a postal questionnaire survey was more appropriate rather than other techniques such as telephone or face to face interviews. This decision was made following seminars provided by the Social Statistics Research Unit at City University where the respective advantages and disadvantages of postal, face to face and telephone survey methods were discussed. As the following table illustrates:

### **Comparison of Postal, Face to Face and Telephone Survey Methods.**

Factor	Postal	Face to Face	Telephone
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#### Administration

Cost	1	4	2
Personnel	na	4	3
Supervision	2	3	4
Implementation time	4	4	1

#### Sampling

Sample coverage	3	1	1
Response rate	4	2	2
Refusal rate	dk	3	3
Non-contact rate	2	3	2
Response from elites	4	1	2
Correct respondent	4	2	2

#### Data Quality

Interviewer control	na	3	1
Socially desirable response	1	4	3
Item non-response	3	2	3
Questionnaire length	3	1	2
Confidentiality	4	4	4
Sensitive questions	2	1	2
Probing	4	1	2
Clarification	4	1	2
Complex questions	3	1	3
Open-ended questions	3	1	2
Visual aids	2	1	4
Consultation with others	4	1	1

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Key: 1 = Major advantage      2 = Minor advantage  
3 = Minor disadvantage      4 = Major disadvantage  
dk = Unknown      na = Not applicable

Source : Dr Peter Shepherd, Social Statistics Research Unit, City University.

Hoinville, Jowell and Associates(1980) comment on postal surveys:

"...for factual surveys, simple behavioural studies and for collecting limited attitudinal data, a postal survey can be very reliable, and particularly useful when a large sample is desirable and only a small budget is available: Its limitations have to be recognised, but they are not disqualifications."( Hoinville, Jowell and Associates 1980, p127) .

## 2.1 Administration.

A budget for the non-labour costs of a postal questionnaire for the identified sample(see 4.8.2) was estimated at £740 based on the following estimates:

a. Questionnaire design and production.	200
b. Printing.	350
c. Postage.	100
d. Stamped addressed return envelope.	90
	<hr/>
Total	<u>£ 740</u>

These in effect 'capital costs' were agreed to be met by the Institute of Internal Auditors.UK. The 'personal costs' were my own with some additional help on data input and mail out, for which the IIA.UK also assisted.

This method had to be compared against the other two methods both of which would be time consuming as no staff would be employed, while the amount of data collected, which obviously in the case of 'face to face' interviews would be more qualitative in nature, would not be of the quantity that was required to answer the questions that were determined as being more important( this issue against the overall objective of the thesis is discussed in section 4.9) .

The pilot study ascertained that to complete the questionnaire fully would take about an hour. As some of the information required would have to be compiled, notably the quantitative information on finance and staff, the timing and information constraint ruled out a telephone survey. For, assuming five per day could be arranged with the quantitative information pre-assembled, an estimated forty six days would be required to survey the entire sample.

Implementation time, which was considered a disadvantage for postal surveys was discounted in this study as the following time scale illustrates:

**Activity:**

**Date:**

Attend City University Research Methods course.

January - April 1991

Prepare questionnaire draft 1, discuss with supervisor and revise.

April - May 1991

Send draft 2 to IIA.UK Research Committee meet with chairman. Prepare draft 3 and review with supervisor.

May - June 1991

Draft 3 goes out to 'expert' group and pilot study group.

June -July 1991

Final draft is printed and mailed out

15 July 1991

Follow up to non-responses

2 September 1991

Data Input

September 1991

While the survey questionnaire went out during July/August which is generally not considered appropriate. As Moser and Kalton(1977) comment:

"In general it is better not to conduct the fieldwork in the holiday season when many people may be away from their homes." (Moser 1977,p46).

This problem was discounted for two reasons. The first being my own availability, particularly to deal with any enquiries. As a University Lecturer there was no teaching commitments during the summer vacation so my full attention could be given to the survey. Secondly, and most importantly for methodological reasons, the time scale was not considered harmful to the survey sample which was not the general public but a specialist sample. Other discounting factors were that holiday entitlements are now taken throughout the year and the survey had a built in follow up. The questionnaires as advised(Moser 1979; Hoinville and Jowell 1980; SCPR 1982) were sent out on a Monday.

## **2.2 The Survey Sample.**

A problem for all surveys is to determine who are to be surveyed and why? What sampling techniques to apply to achieve a representative group:

" It has been emphasised that a decision about the survey population stems more from the purpose of the survey than from the sampling considerations, though these may influence it."(Hoinville, Jowell and Associates 1980,p56).

It would be clearly impossible given the resources to mail out to all the estimated 170,000 registered charities. It would also be unnecessary as the information being sought was only applicable to larger

charities with employed staff. The issue in 1991, with the inadequacy of the Charity Commission register and the computer database not estimated to be live until at the earliest 1994; was how to identify such charities and how would you compile a representative sample, once such charities were identified? As the research officer of the Charities Aid Foundation(CAF) had noted a year earlier:

" Our experience is that consulting the current register is a difficult and arduous task. We have identified three major shortcomings. In the first place the information that is found on registration slips is often outdated, misleading and incorrect. Secondly the archaic way information is formatted complicates access to information and considerable time can be wasted tracing files. Surely a central register should be the first port of call? Access is made difficult because not more than 40 files may be drawn out (special permission is needed to do this). When it is done the files often lack the date of the latest accounts or any available financial details of the charity"( Saxon-Harrold 1989 p43).

Using the Charity Commission's database with some form of probability method, for example simple random sampling or systematic sampling was therefore not feasible(This limitation is discussed in section 4.8.3).

A second source would be to use the CAF database of charities from their annual statistical trends. The problem with this course of action is that only the top 400 charities - fund raisers and grant givers are supplied. CAF also relies on charities voluntarily sending their accounts to them. For as CAF themselves declare:

" This sample is certainly not representative of the whole charitable sector, but then it has never been promoted as such."(CAF 1990,p5).

The response rate achieved by the 1985 IIA.UK survey was only 10% when it wrote twice to the top two hundred charities. To use the CAF lists would mean that as well as not having a representative sample of the charitable sector, the response rate could be disappointing.

As a former charity finance director I had access to one other potential sample - the Charity Finance Directors Group(CFDG) and of course to the members of the IIA.UK Charities Discussion Group.

The CFDG had been formed in February 1988:

"...to provide an opportunity for the exchange of views and discussion of and potential resolution of common problems across the whole spectrum of issues which face charity finance executives."(Randall 1991, p3).

Discussions with the then Chairman, Adrian Randall, led to the agreement of the CFDG to support the research by providing a list of their members and addresses. As Chairman, Mr Randall also supplied on the CFDGs headed notepaper an introductory letter of support, assuring 'confidentiality' and a second follow-up letter.

A high response rate was therefore hoped for given the topicality of the control issue and the high level of endorsement to motivate the respondents to return the questionnaire. CAF had been achieving a response rate of 88% to their annual trends survey(CAF 1990,p5). The Charity Commission had recently been sending out questionnaires and had achieved a 65% response rate. This was clearly much higher than the 10% achieved by the 1985 IIA.UK survey.

Reviewing the membership list of the CFDG gave a total of 211 charities.( Some charities had more than one member and there are non charity members). This was compared and

analyzed against the 1990 CAF statistical profile. The CFDG member charities were represented as follows:

a. CAF top 400 fund raising charities:

<u>CAF</u>	<u>CFDG Members</u>	<u>%</u>
Top 20	19	95
21-100	38	47.5
101-200	24	24
201-300	14	14
301-400	10	10
<hr/>	<hr/>	<hr/>
400	105	26.25

b. CAF top 400 grant making trusts:

<u>CAF</u>	<u>CFDG Members</u>	<u>%</u>
Top 20	4	20
21-100	5	6.25
101-200	2	2
201-300	1	1
301-400	0	0
<hr/>	<hr/>	<hr/>
400	12	3

A further 94 CFDG member charity organisations did not feature in either of the CAF groupings. These 94 organisations were composed of professional associations, independent education and research institutions, charitable housing associations and charities whose income primarily came from government grants and fees. It is on this last group that the following comment was made by the ACCA research report on the SORP in 1990:

" SORP 2 and many other current proposals for charities seem to be addressed to the traditional image of a

charity: staffed by volunteers, financed from uncertain sources such as flag days, appeals, legacies etc., run on a 'shoe string' and administration expenses kept to a base minimum. There is no doubt about the continuing importance of these charities. However, there is a new phenomenon that is not addressed by SORP 2 : the 'modern' charity created by the not-for-profit privatisation of the welfare state, in which control is exercised by the 'benefactors' (central government, non-departmental public bodies, health authorities and local authorities) through a system of budgets and reports to which the 'annual report' of the charity as a whole adds little as a control device. Further research into the accounting requirements of these 'modern' charities seems necessary." (Gambling, Jones, Kunz and Pendlebury 1990, pvi).

While making no claims for the sample being representative of the charity sector as a whole there seemed to be a fair spread of large down to medium sized charities. Given that in 1991 it was impossible to develop any objective sampling frame of the charity sector the proposed target population was as good as any other. More importantly for the purposes of the research which was to gain a wider impression of what sort of control function activity was occurring in the charity sector the sample was ideally placed. I had made the not unreasonable assumption that members of the CFDG would be the most progressive and active of finance staff in the charity sector. If these charities did not have an awareness of control functions then how more likely would the rest of the charity sector? Secondly, Billis and Harris (1987a; 1987b) had raised the issue of resistance to internal audit functions perhaps coming from traditional finance and accounting departments. Again the sample would prove an ideal bench-mark to not disprove the Billis and Harris observation but to see if among 'progressive' finance directors such an opinion existed.

The IIA.UK Charities Discussion Group was also identified

for survey purposes. The rationale for surveying the group was that it would enable a more 'qualitative' questionnaire to be sent out. This should be able to establish actual internal audit and control practice in charities. Given the 'niggling' problems issue this would hopefully provide some form of objective assessment.

Against the CAF classification:

16 were in the top 20 fund raising charities;  
3 were in the next top 10  
4 charities while being of considerable size (multi-million) were neither trusts nor had substantial voluntary donations.

The absence of an internal auditor in a trust gave substantive backing to comments that had been made to me on the likelihood of control functions existing in charitable trusts. Although large in income, primarily from investments, their organisational expenditure was extremely small. The existence of internal audit functions in these organisations was therefore limited.

As a member of the IIA.UK Charities Discussion Group since 1988 and having been elected to the chairmanship, I had explained the purpose of the questionnaire to the group at a meeting and also sent a letter with the questionnaire. A high return rate was expected.

### **2.3 Critique of the Internal Audit Survey Sample.**

A simple definition of sampling is provided by Hedges (1980):

" A sample is a small scale representation - a kind of miniature model - of the population from which it was selected" (Hedges 1980,p57).

Sampling as a technique was developed in the 20th century

(Moser and Kalton 1977;Kalton 1983) as an alternative to a complete enumeration of a population. In areas of cost, labour and time:

"The advantages of sampling, as against complete coverage, have become obvious in recent years." (Moser and Kalton 1977,p57).

Moser and Kalton describe the prime factors of sample design as:

" Two major principles underlie all sample design. The first is the desire to avoid bias in the selection procedure, the second broadly to achieve maximum precision for given outlay of resources." (Moser and Kalton 1977,p79).

To avoid these problems the preferred methods of sampling are those based on probability as opposed to non-probability:

" A probability sample is one in which each person in the population has an equal chance(Probability) of being selected while in a non-probability sample some people have a greater chance than others of selection." ( de Vaus 1986, p52).

The advantages of probability sampling over non-probability are explained by Kalton:

"The major strength of probability sampling is that the probability selection mechanism permits the development of statistical theory to examine the properties of sample estimators. Thus estimators with little or no bias can be used, and estimates of the precision of sample estimates can be made. The weakness of all non-probability methods is that no such theoretical development is possible; as a consequence, non-probability samples can be assessed only by subjective evaluation." (Kalton 1983,p90).

Hedges further criticises non-probability samples:

" There is plenty of empirical evidence to show that when selections are made by non-probability methods results are liable to distortion that may be serious."( Hedges 1980,p57) .

However, for charity research until 1995 using a probability method to select from the only comprehensive charity database, the Charity Commission's was not possible. As de Vaus argues:

" There are often situations where probability sampling techniques are either impractical or unnecessary. In such situations the much cheaper non-probability techniques are used. These techniques are appropriate when sampling frames are unavailable or the population so widely dispersed that cluster sampling would be too inefficient."( de Vaus 1986, p67) .

In defence of the sample used, we have identified that there was a spread of charities by income. The charities are all large but these are the bodies to which the pressures of legislation will be applied. An early indication of this selective policy, which has subsequently been enacted(as discussed in chapter 3) was given by Woodfield:

" However, we do not think it is appropriate for every charity to submit full detailed accounts each year. There are many thousands of small local charities for whom this would be an unnecessary burden."( Woodfield 1987,p23) .

The sample was also not identified by some of the more questionable methods of non-probability sampling which have led to the criticism of this method, for example haphazard sampling or availability sampling. A more damaging criticism can perhaps be made not of the charities but the questionnaire completers - the charity

finance directors.

As Shaw (1978) writes on sampling methods:

"...there should be no other significant group of clients whose opinions or attitudes and behaviours differ from the sample." (Shaw 1978,p132).

The very strength of the sample was also its weakness being finance directors who perhaps could be regarded as an elite as CFDG members.

To conclude, we accept that there are methodological flaws in the survey. However, for the reasons described, at the time the survey was undertaken there was no practical alternative. More importantly for the value of the findings the purpose of the research was not to represent an accurate portrayal of control functions in charity but instead to focus on what could be reasonably claimed to be best practice in the charity sector.

#### **2.4 Questionnaire Design.**

The formulation of the questionnaire is thought to be the easiest part of the design of surveys - so that all too often, little effort is expended on it."(Sudman, 1982 p1).

Classic research by Horde in the 1930s, (quoted in Payne 1951) in this area provides evidence that a principal defect is the improperly worded questionnaire, instead of viewing the questionnaire as a vital scientific tool in the research process, it is seen as just a form to be filled in. Payne(1951) points out that a difference in wording can, on occasions, yield results that vary by 20% or more. While Moser and Kalton claim:

" It is said that 'no survey can be better than its questionnaire', a cliché which well expresses the truth

that, no matter how efficient the sample design or sophisticated the analysis, ambiguous questions will produce non-comparable answers, leading questions biased answers and vague questions vague answers." (Moser and Kalton 1977,p308).

Principal writers in this area(Payne 1951; Moser and Kalton 1977;Sudman 1982) all suggest that there are a number of basic principles to questionnaires. As Moser and Kalton, who are less keen of the concept of the questionnaire as a scientific tool, comment:

" There are admittedly a number of general principles guiding questionnaire design and some pitfalls to be aware of."( Moser and Kalton 1977, p308).

Guidelines based on previous practice are available on question wording, length of individual questions and questionnaires as a whole, avoiding 'double barrel' questions, ranking orders, non-threatening questions through to questionnaire presentation to make it attractive (Sudman 1982). Further advice goes against all the 'rules' of academic life:

" Plagiarize, Plagiarize

let no one else's work evade your eyes

Remember why the good lord made your eyes

So don't shade your eyes

But Plagiarize, Plagiarize,Plagiarize

Only be sure always to call it,please- Research"(Sudman 1982,p14).

Sudman, however, does qualify this song by advising that you only do so with good questions. In addition to reviewing questionnaire examples, three surveys were examined in detail to see if they could provide questions(IIA-UK 1985; Cooper,Leung and Chau 1989; D'Silva 1991). The survey by Cooper,Leung and Chau (1989) consisted of two elements: A smaller survey aimed at

Chief Executives and the other at Internal Auditors. The survey had four specific aims:

"(a) To determine the current state of practice of internal audit in Hong Kong. Such knowledge helps us better appreciate the emerging role of internal audit in Hong Kong;

(b) To determine the qualifications of individuals currently engaged in the practice of internal auditing and to evaluate the impact of formal education and training on their careers. Such data will be used to determine the body of knowledge and training facilities required to meet the needs of the profession;

(c) To review and forecast the internal audit manpower situation in Hong Kong. Such information can be used to project the demand for internal auditors in future years; and

(d) To ascertain the level of professionalism of internal auditors in Hong Kong.

This survey supplied me with the concept of undertaking two surveys. A larger survey(Finance Directors) for attitude and scope and the smaller survey(internal auditors) for investigation of practice.

The second survey by D'Silva, was on 'External Auditors Independence'. A (successful) doctoral candidate at City University Business School, he surveyed external auditors, bankers, credit managers and internal auditors. The 'mail' survey to the last two groups gave a response rate of just over 50%. This survey provided a number of clear methodological stages to be followed.

The third survey was the last major survey undertaken in the UK on internal audit. The project team was led by Dr G Selim of City University Business School, the field

work was undertaken by Marplan. This survey gave an example of a large professional questionnaire as well as description of internal audit practice in the private and public sectors.

Original questions, however, also had to be developed. These were on specific aspects of charity and were in three main areas.

1. Information to find out about the type of voluntary organisation - what it does, financial size, sources of income, incorporation, staff and volunteers.

2. Information to follow up the Billis and Harris(1987a;1987b) research on why internal audit had been introduced into the charity and did it have problems unique to the charitable sector.

3. Information to evaluate internal audit functions in charities.

In drafting these questions, we returned to one of the basic principles:

" Early questions should be easy, salient and non-threatening." (Sudman 1982, p228) .

The first question on both surveys 'What category best describes your organisation' was supplied with an appendix. This incorporated another 'basic principle' of making the questionnaire look professional. The appendix supplied and categories used was that of CAF, who had given permission to use their classification of voluntary organisations. CAF is well known in the charity sector and its use enhanced the image of the questionnaire.

The second group of 'original' questions related specifically to the areas raised by Billis and Harris(1987a;1987b). To enable a consistent evaluation

actual phrases were taken from their text and put into attitude questions(Q30 and Q40 of the Finance Directors Questionnaire and Q17 and Q47 in the Internal Audit Managers Questionnaire). Both these questions were also 'ranked'. As Sudman(1982) explains:

"Sometimes you may be interested not in respondent's agreement or disagreement with particular opinions but, rather in the relative ranking of attributes or the rank ordering or preferences among different policy positions."(Sudman 1982,p158).

Moser and Kalton(1977) describe a number of different types of rating scales. The method chosen for this survey was based on 'Likert' scales:

" In Likert scaling the respondent is not asked to decide just whether he agrees or disagrees with an item, but rather to choose between several response categories, indicating various strengths of agreement and disagreement."(Moser and Kalton 1977,p361-2).

Five categories were employed as recommended and a number scoring was used with the number 1 being of least importance to 5 being of most importance as opposed to a strongly agree to disagree scale, which is more common. The reason for adopting 'numbers' reflected the aim of the 'ranked' questions to obtain an opinion on 'importance' rather than emotion. For example 'Why Internal Audit had been introduced'.

There have been a number of problems using 'likert' scales, primarily associated with 'emotion', which we attempted to avoid,however:

" In forming the item pool,three considerations should be borne in mind. First, since the aim is to spread the respondents over the response categories, no purpose is

served by extreme items to which nearly everyone in the population under study will respond in the same way. Secondly, it has been found that neutral items do not work well in likert scales. Thirdly, it is advisable to have a roughly equal number of positive and negative worded items in the scale. Variation between positive and negative items forces the respondent to consider each item carefully, rather than to respond automatically to them all in the same way."( Moser and Kalton 1977, p361-2).

These considerations were considered with the choice of wording from the Billis and Harris(1987a;1987b) research. Other questions using 'ranking' namely preferred qualifications could not be applied. The list of qualifications, however, was varied to avoid only the first few being answered. Some ranking was also applied to the third category of original questions which aimed to discover the level of professionalism in the internal audit function in charities. The approach chosen here was to use the actual standards of the IIA.UK. For example Q35 of the Internal Audit Managers Survey used General Standard 300.

As the survey sample were finance directors and internal auditors, this allowed specialist questions to be asked. Even so, to avoid pitfalls on knowledge, (for example Payne(1951) explains how in one survey, one third did not know what profit meant), a telephone number was given for enquiries. This was actually used by three finance directors to clarify internal audit and controls. In addition to this defensive action, one of the surest ways to avoid such problems is by 'pilot testing':

" Once the initial questions have been developed each question must be rigorously evaluated before being included in the final questionnaire. Normally these initial questions will be given a trial sample to try them out. This is called 'pilot testing'( de Vaus

1986,p77) .

Moser and Kalton endorse the use of pilot testing:

" To the problems of questionnaire design in general there is no easy solution. Even if one follows all the accepted principles, there usually remains a choice of several question forms, each of which seems satisfactory. Every surveyor tries to phrase his questions in simple, everyday language, to avoid vagueness and ambiguity and to use neutral wording. His difficulty lies in judging whether, with any particular question, he has succeeded in these aims. He may appreciate perfectly that leading questions are to be avoided, but how can he know for sure which words will be 'leading' with the particular questions, survey and population that confront him, perhaps for the first time?

The answer to this question lies in detailed pre-tests and pilot studies: more than anything else, they are the essence of a good questionnaire." ( Moser and Kalton 1977, p348).

Pre-testing was undertaken with two groups. A pilot test involving the questionnaires being sent to ten finance directors and internal auditors for them to complete and to give their comments on ease of completion, format and time taken to complete. A second group of 'experts' comprising academics and professionals in internal audit and charity.

The feedback from the respective groups led to a number of changes from flow order ie: Q13 on the finance directors questionnaire had originally been placed at position 16. This had resulted in Finance Directors who did not have an internal audit function having to read unnecessary questions - this could have resulted in this question being missed; through to question wording, ie: Q25 on the Internal Audit Managers Questionnaire - 'To

whom do you report'- lacked originally the qualification - (please state position) - I wonder if this small error had not been detected how many Alan's and Brenda's we would have received as working in management positions in charities.

The first pilot group consisted of six finance directors and four internal auditors. Two of the internal auditors were of the same charity as the Finance Director. Eight of the ten responded to the pilot test within the time scale - five finance directors and three internal auditors. The second pilot group consisted of three academics, two internal auditors with experience of research, an employee of the Charity Commission in a personal capacity. Two members of the South Bank University staff from computing and design respectively.

The involvement of a 'computing' adviser accorded with another 'basic principle' to ensure that aspects of computer analysis and measurement were not looked at after the questionnaire was sent out, but were an active part of the planning process.

## **2.5 Data Definition and Management.**

The decision to use the computer statistical analysis programme SPSSX was made in consultation with John Shanks, Computing Adviser, at South Bank University Computer Unit. The decision was based upon the choice of either using 'SPSS' or 'Minitab'. Minitab was not used as it was considered not to have sufficient analytical and reporting facilities for the scale of the project.

Once the decision to use 'SPSS' was made the process of interpreting the questionnaire for analysing the data, involved design aspects and preparing a number of preparation files. On design, for example, questions that required only one single response were open bracketed, while those allowing a multi-response were closed boxed.

For file preparation we had to identify what questions needed to be given a single variable and possibly a value list. For example, Q1 on both surveys became 'Org Def' with 14 possible values, as SPSS variables are limited to eight characters.

We also codified costs, for example, Q6 on sources of finance on both questionnaires had the following numbers field for each source of finance:

Option

1	1	-	249,999
2	250,000	-	499,999
3	500,000	-	999,999
4	1,000,000	-	4,999,999
5	5,000,000	-	9,999,999
6	10,000,000	-	19,999,999
7	20,000,000	-	49,999,999
8	50,000,000+		

eg if value was £400,000, option 2 was chosen.

Number fields were developed for staff and volunteer functions, also for the forms of incorporation: Q5 on both questionnaires

5a) Forms of Incorporation for main charity

1. Company limited by Guarantee.
2. Charitable Trust.
3. Industrial and Provident Society.
4. Royal Charter.
5. Other.

5b) Group size of charity

1. Main charity only
2. Main charity plus trading company
3. Main charity plus trust

4. Main charity plus trading company plus trust
5. Charity greater than three organisations.

For questions requiring 'tick as many as apply' we created one variable for each potential answer.

Once all the variables were defined, we then defined the structure of the file to hold the results of the survey. A 'dummy' file was then created to check the file format specification. The following errors were identified:

1. Five variables were too long at nine characters.
2. A spelling error in one field.
3. A layout error involving variable levels which should have been indented.

These were corrected. The programme was run through again with no errors detected. A visual scan was also undertaken. Prior to the questionnaire data being entered a 'data entry programme' was written by John Shanks and with him a trial entry run was undertaken.

## **2.6 Confidentiality.**

The issue of confidentiality was dealt with by the introductory letter from the respective chairs of CF DG and IIA.UK and the front page of the questionnaire explaining that no individual or individual charity would be named. Only aggregate statistical summaries would be published. Serial numbers on the front and last page were used to identify who the questionnaires had been sent to and for reminders to be sent out to those not returned in the first mail out.

## **2.7 The Physical Mail Out.**

A set of address labels was obtained from the CF DG. A pre-paid return envelope coded for identification by the

University post room was also enclosed with each questionnaire and letter. All the questionnaires were posted out on Monday 15 July to catch the mid-day post - in accordance with the 'basic principle' that it is best to mail out at the beginning of the week. The same process was undertaken for issuing reminders, which was scheduled for Monday 2 September.

Each questionnaire was coded with a letter and number on the front and last page to identify them. The respective codes were 'a' for finance directors followed by three digits, ie: a023, a156. For internal auditors 'c' followed by three digits. The codes were applied with the charities who were in both surveys being numbered first. The remaining finance director charities were then numbered sequentially according to the alphabetical list provided by the CFDG. The name of the charity and its code was kept on A4 lined paper with respective columns drawn to record the receipt, reminder, receipt progress of the individual questionnaire.

On the questionnaire was a direct telephone number to Paul Palmer at the University for enquiries and classification. The telephone had an answerphone attached.

## **2.7 Problems and Response.**

Three telephone enquiries were dealt with in July, all related to question 4 "What is the size of your total organisation in terms of annual voluntary or budget allocation for the current financial year? Please state £\_\_\_\_\_ "

The question they all asked was the same, do you want total income or just voluntary? Despite pilot testing this was clearly an error. A number of completed questionnaires also raised this as an issue but all gave total income. To a certain extent question 6 which asked

sources of finance giving a list of eleven sources with other as twelve and asking 'enter amounts to total as per question '4' helped to resolve this omission. The effect on the survey results would be to depress the total income of the charity. Due to the cross reference with Q6, we do not believe this occurred.

By September 2, 105 finance director's questionnaires and 9 internal auditor's questionnaires had been received. This represented a 49.7% and 47.3% response rate respectively. A second mail out was undertaken on Tuesday 3 September following the same procedure as the first. By 7 October a further 39 finance director's questionnaires and 5 internal auditor's questionnaires had been received: 18.4% and 26% respectively. With less than a 20% response rate from the second mail out from finance directors, it was considered that a third mail out would not be cost and time effective. A further two finance directors questionnaires were received in the next two weeks.

Seven finance directors and one internal auditor returned questionnaires which were not able to be used. This ranged from reasons of time to a direct refusal to be involved in the research. Allowing for these questionnaires the total response rates were 69% for finance directors and 79% for internal auditors. The total number of usable completed questionnaires were 139 finance director's(66%) and 14 internal auditor's(73%).

The finance directors charities profile against the CAF classification and size were:

CAF Fund Raisers	Survey Response		CFDG Members	
	No	%	No	%
Top 20	12	60	19	95

21-100	28	35	38	47.5
101-200	20	20	24	24
201-300	8	8	14	14
301-400	1	1	10	10

The percentage of CAF Fund Raising charities against the response as a whole was 49.6%.(69 charities).

CAF Grant Makers	Survey Response		CFDG Members	
	No	%	No	%
Top 20	3	15	4	20
21-100	1	3.75	5	6.25
101-200	1	1	2	2
201-300	1	1	1	1
301-400	0	0	0	0

The percentage of CAF Grant making charities against the response as a whole was 5.75%(8 charities)

## 2.8 Data Input and Analysis.

The questionnaires was entered into the SPSS programme in batches as they came in. The access programme to the respective SPSS files were designed to ensure that where only a single answer was required only a single response could be inserted. The questionnaire was replicated exactly on the screen with a numerical code to enter the answer. The size of chartered accountancy firm was the only question that required reference to another source. The questionnaire had asked for the name of firm to be given. This name was checked against the Top 100 firms list provided by Accountancy Age in May 1991.

The code number on the questionnaire was the same code number for the individual file on SPSS. Access to the SPSS files was achieved only by knowledge of two passwords. One of which was invisible on the screen.

Questionnaires took between 5-20 minutes to enter into the computer package. A final year undergraduate student studying professional accountancy, whose project was on internal audit, assisted with the data entry.

Once all the questionnaires from both surveys had been fully entered, the SPSS programme printed out the consolidated totals. The SPSS programme automatically gives numbers and percentages of the answers to the questions. The print out from the finance directors gave 29 charities as having an internal audit function. The SPSS programme was asked to provide a complete response from just that 29. The results and analysis of the surveys comprise the next appendix.

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## CHAPTER TWO. - THE DEFINITION DEBATE.

In this chapter we review the respective definitions of charity, the current legal limitations, and the adoption of other definitions. We evaluate the respective debates on political activity, convergence thesis and religious influence. We critically question the Salamon and Anheier hypothesis that the lack of a definition has been the primary cause for the non-advancement of non-profit studies. We evaluate the problem which the lack of a precise definition has meant for statistical analysis. Finally, we conclude that a number of initiatives offer the prospect of resolving the problems we have reviewed.

### 2.1 THE PROBLEM.

The definition of 'Charity', applied to a legal classification, relates to the estimated two hundred thousand charities registered respectively with the Charity Commission in England and Wales, (170,000) the Scottish Claims Branch of the Inland Revenue, (20,000) and an estimated 8,000 organisations in Northern Ireland (Aston, 1994). This definition, however, fails to encompass the estimated 400,000 voluntary bodies (Lane, 1994) in this country, which, while not being registered charities, are viewed by the public and their supporters and members as belonging to the 'Charity Family'. Moreover, these 'non-registered' charities can equally enjoy the exemption from corporation tax that a registered charity normally exercises. Prominent voluntary organisations such as 'Greenpeace' and 'Amnesty' are not charities. These organisations are not registered with the Charity Commission owing to their political activities.

As Quint explains:

"The word 'Charity' has a general meaning in ordinary speech and a special meaning in English law" ( Quint,1994 p1) .

In this study we are primarily interested in registered charities, however, we use this terminology as a generic phrase to include other organisations which we define in the following debate. The problem of a clear definition to encompass these organisations and activity has led to a number of problems. For example, without a clear definition, how do you quantify this sector of the economy? How important is it? How does government determine a regulatory regime? The lack of a definition has engendered, particularly in the last ten years (6, Perri, 1991), an active debate on the need for and attempts to formulate a definition to encompass activities and organisations that do not fall into categories of profit-making or public organisations. A recent contention (Salamon and Anheier 1994,) which we debate in section 1.9, has been that the absence of a precise and conceptual definition is a principal reason for the relative deficiency of academic studies and a distinct body of literature on this sector of activity.

The lack of a precise definition is not an exclusively British problem. Within the European Union a Working Party was established after 1987, by the European Commission in Commission Department DG23, to attempt to provide a legal personality based on the French concept of the 'economie sociale', which refers to associations, co-operatives, mutual and other voluntary organisations.

"However, after recognition of the difficulties involved three separate statutes were produced at the end of 1991. These cover co-operatives, mutuals and associations.

Even now, it is recognised that it is hard to treat 'associations' in particular as a homogenous group of organisations. In the associations statute the Commission has attempted to provide a Europe-wide legal personality for not-for-profit organisations that is based on existing laws in member states rather than providing a brand new law which would have to be negotiated by all the member states". (NCVO, 1992 p3)

The lack of a precise definition has also applied to the United States, where Weisbrod argues:

"The wide diversity in the non-profit sector is both what makes it difficult to formulate consistent and appropriate public policy and an effect of existing public policy".

(Weisbrod, 1988 p162)

The lack of a definition for the 'Charity Family' has exercised and been debated in the majority of books written in this area since the end of the second world war (Bourdillon 1945; Brenton 1985; Butler and Wilson 1990; Gerard 1983; Gladstone 1979; Handy 1988; Hatch 1980; Hatch and Moorcroft 1983; Knight 1993; Mellor 1985; Murray 1969; Roof 1957; Wolfenden 1978) as well as subjected to debate in a number of academic papers (Billis 1989; Deakin 1991; Knapp and Kendall 1991; Paton 1993; Warburton 1993; Perri 6 1991). An even more extensive debate has been exercised in the United States (Powell 1987; Young 1993; Stone 1993), and, from the evidence of papers submitted at recent conferences of the European 'third sector' at Barcelona in 1993 and Hungary 1994, throughout the rest of Europe.

## **2.2 LEGAL DEFINITIONS.**

From the English perspective the debate in Charity Law can

really be said to begin in 1601 with the 'Preamble' to the Elizabethan Statute of Charitable Uses (Gerard 1983; Owen 1965), however, as the Nathan Committee reported:

" That there should be a good deal of pressure for a definition of charity in modern terms is not surprising in view of the fact that no attempt has been made for over three hundred years to set out its legal scope by statute, and even in 1601 as we have shown no definition was attempted". (Nathan, 1952 p29)

The 1601 preamble provided a series of headings which were classified as charitable activity. The tradition of defining charity law in this way, it has been argued by Warburton (1993), is due to the influence of 'Chancery lawyers', who belong to the 'black letter law tradition', which is:

"concerned with the exposition of the law rather than detailed consideration of its effect beyond the actual imposition of duties and obligations on institutions and individuals". ( Warburton, 1993 p5)

Indeed, Warburton argues it was not until 1979, with Chesterman's 'Charities, Trust and Social Welfare', that a different approach was effected by a lawyer. In his book Chesterman places the 1601 Act in an historical context, reviewing the law against the political and economic crisis of the Tudor period. While this may have been the first attempt within the legal academic community to review charity law, critical analysis had already been undertaken (Beveridge 1948; Bourdillon 1945; Cole 1945; Owen 1965; Nightingale 1973) on the pragmatic nature of charity to serve the interests of the state.

The absence of lawyers questioning the definition as opposed to the interpretation of charity is probably responsible as to why Quint can state:

"There is no exhaustive list of charitable purposes, and no strict legal definition of charity, but charitable purposes have been classified as:

- 1 the relief of poverty;
- 2 the advancement of education;
- 3 the advancement of religion; and
- 4 other purposes beneficial to the community.

Every charitable purpose will come within one (or more) of these four categories, but not every purpose which is within those categories is necessarily charitable. Deciding whether a given purpose is charitable depends on legal precedent and analogy from legal precedent. Sometimes, a purpose which was not regarded as charitable in the past will be accepted as charitable as times change. An example of this is the promotion of racial harmony, which was accepted as a charitable purpose only during the 1980s. The opposite can also occur". (Quint, 1994 p1)

The problem with the definition provided by the fourth category, 'other purposes beneficial to the community', is that its very flexibility as an understanding of community is not static. This is discussed later (section 1.3) with political activity and shifting definitions of the charity sector in its relation and role to the state. For example, the Anti-slavery Society founded in the eighteenth century is a charity, while Amnesty International is not, and this has often been cited as an illustration of the inconsistencies of Charity Law. The Charity Commissioners in their 1973 Annual Report gave their rationale for why such anomalies existed, explaining that Parliament, in framing the 1960 Charities Act, was sympathetic to the continuation of charitable status for then existing charities.

" The most basic criticism is that of the absence of a statutory definition of charity. The lack of a definition, it is said, results in apparently arbitrary decisions by the commissioners..." (Charity Commission, 1973 p5);

" Once an organisation has been registered we would not strike it off without positive evidence that its purposes have ceased to be charitable and we would think that the institutions should have the benefit of any doubt there might be in such a case"(Charity Commission, 1973 p7).

The practical problem of the 'community object' is that it is open to an individual judge's interpretation at that time. In their capacity as a 'court of law', a similar charge can also be levelled at the Charity Commission itself. For example, in the early 1960s an implied antithesis to overseas charities and a focus on home charities. Their respective Annual Reports for 1962 and 1963 questioned overseas aid but supported the old 'dole' charity individual payments:

1962- " that it was the taxpayer in the country overseas who was being relieved"

1963 - "happier about dole charities than aid in depth'

(Nightingale, 1973 p223)

This is not to suggest that the Charity Commissioners are inherently conservative and follow a particular government social policy. In 1991 the Charity Commission issued a leaflet to Charity Trustees, 'Charities for the relief of the poor', which gave guidance to trustees:

" to take care not to use the charity's funds simply to replace the States Assistance received by a person because the charity would in effect be relieving the state, not the beneficiary" (Blake Bromley, 1993 p10)

The four headings quoted by Quint derive from the Pemsell case of 1891 and the judgement by Lord MacNaghten.

The MacNaghten judgement in the tradition of English Common Law was in turn based on an earlier judgement by the then Master of the Rolls, Sir Samuel Romilly, in 1804.

The MacNaghten judgement is still in force and represents for the Charity Commissioners the litmus test as to whether they will register a new charity. Its importance was endorsed by the Nathan Committee whose recommendations led directly to the 1960 Charities Act:

"We consider that a rewording of the "definition" of charity is needed and we favour a definition which would allow flexibility in interpretation. We recommend that the existing "definition" of charity by reference to the Preamble to the Statute of Charitable Uses should be repealed and that in its stead there should be put on the statute book a "definition" based on Lord MacNaghten's classification, but preserving case law as it stands". (Nathan, 1952 p36)

This was also the conclusion of the Goodman Committee which in the mid 1970's, under the auspices of the now National Council for Voluntary Organisations (NCVO) (Goodman 1976), undertook a major review of Charity Law. There was, however, dissension from this view with a radical suggestion from the Charity Law Reform Committee who:

"...sought to make charitable status irrelevant by creating a new class of voluntary organisation, entitled to all the advantages of charitable status but without the attendant restrictions on their activities, and open to all organisations which did not exist to make or distribute profit". (Gerard, 1983 p58)

A not surprising distinction observed by the Nathan Committee twenty five years earlier:

" Broadly speaking, the witnesses who were lawyers were against, and those not lawyers began by being in favour of

a new definition". (Nathan, 1952 p32)

A minority report by Ben Whitaker did propose a modern definition of charity:

"I would recommend that the essential ingredient of the modern definition of charity - which should be as simple and clear as possible, yet sufficiently broad and flexible to take account of the changing needs of society - should focus primarily on **the prevention and relief of deprivation (whether physical, mental or social), provided always any resultant benefit is equally accessible to all relevant members of the community who wish to avail themselves of it (irrespective of race, sex, religion, politics or social class).**" Goodman, 1976 p145. [bold in original]).

To avoid the problem of case law, Whitaker proposed creating a tribunal that would be responsible for the interpretation of any new definition. Whitaker's tribunal would be made up in the majority by laymen and women, not lawyers, to avoid:

"If the legal tail is not to wag the Charitable dog again in the future". (Goodman, 1976 p144)

This tribunal would also meet one of the recommendations of the Nathan Committee for an expert lay advisory committee. However, Whitaker controversially recommended that his committee would also have a binding power on the Charity Commission regarding registration.

Another attempt at a modern definition of charity presaged the Goodman Committee by sixteen years. This was proposed by Lord Silkin in the House of Lords debate in 1960. Following an acrimonious debate in the second reading, the Lord Chancellor challenged Lord Silkin to provide a definition that was modern and did not conflict with case law:

"I would just ask the noble Lord, Lord Silkin, to go with an unbiased mind, and to read that part of Lord MacNaghten's speech about the fourth category. I will then set him a short examination in that fourth category alone and will ask him to reduce it into legislative form. If he does that, my immensely high opinion of him will have increased even more" ( Charities Bill, Lords February 1960 36 641).

Lord Silkin responded a month later in the committee stage of the Bill proposing the following new clause:

"For the purpose of this Act a charitable purpose is either-

(i) one which exists for

(a) the advancement of religion; or

(b) the advancement of education, learning, science or research; or

(c) the relief of poverty ; or

(d) the promotion and advancement of social welfare, including public recreation and sport.

(ii) one which otherwise than in paragraph (i) of this section benefits the public generally, whether with or without reference to or limitation within a locality, or within some group or section of the community.

Provided that where the beneficiaries of a trust for any of the objects specified in paragraphs (i) and (ii) of this section are identified by the tie of blood relationship the trust will not be one for a charitable purpose ; and where the beneficiaries of a trust for any of the objects specified in paragraphs (i) and (ii) of this section are identified by some contractual or similar bond of a continuing character, whether as members of an association or as employees of a limited company or other similar organisation, the trust will be one for a charitable purpose; and provided further that the promotion of public recreation and sport shall not be for a charitable purpose unless it is for the benefit of persons who participate in it without financial remuneration". ( Charities Bill, March 1960 Lords 222 no.56 5).

Supporting his clause, Silkin made reference to the often quoted Nathan Report that finally concluded that no definition should be made, by pointing out that earlier

they had considered a rewording of the 'definition' of charity was needed. He admitted that there were problems with his definition but they could be overcome. His definition was based on Lord MacNaghten's classification but preserved case law. In defence, the Government pointed out problems that Silkin had omitted, for example, Lord Saltoun criticised the legal meaning of the words:

" identified by the tie of blood relationships"  
(Charities Bill, March 1960, Lords 222, no 56 15).

The Lord Chancellor's response was to argue that the definitions supplied in the English language changed over time as well as purpose and would be problematic. As an example he quoted the origins of the Elizabethan Preamble:

"... the list which blossoms in the Preamble to the statute of Elizabeth 1 can be traced back to Piers Plowman, which I think I am right in saying is 14 Century:

" and amend mesondrioux therewith:and miseased  
fol helpe:  
and wicked ways wighthy amend:  
and do boke to bridge that to-broke were:  
marry maidens, or make them nuns:  
Poor people and prisioners-find then their food:  
And set scholars to school, or to some other  
crafts:  
Relieve (mem of) religion and rent them better"

(Charities Bill, March 1960, Lords 222, no. 56  
20).

Silkin's clause received considerable support and the Lord Chancellor agreed to look at it and the problem of solving it. On this consideration Silkin withdrew his amendment.

At the Charities Bill report stage in April 1960, Lord Silkin was reported absent through illness and it was agreed to defer discussion on his amendment until the third reading.

At the third reading Silkin was present and had corrected his clause to incorporate sickness and poverty. (Charities Bill, April 1960 222 no. 69 966). He also added a provision that:

" this act shall not affect the validity of instruments executed before the coming into operation of this act "(966) and

"Any charity that was accepted as a charity before this came into operation will remain a charity, but in future charity will be dealt with on the basis of this definition" (966)

The Government, however, had clearly decided not to include a definition, Viscount Simonds presenting the judicial argument against:

"... a definition of legal charity was impossible and that an attempt to do it could cause nothing but confusion"(967)... I do not want to be unduly critical, but I venture to think that in almost every line of it there is some hole; in almost every line of it there is some word which will cause confusion in the courts when they have to interpret it" (968).

Viscount Simonds speaking with the authority of a law lord who five years earlier in a tax case had stated:

" No comprehensive definition of legal charity has been given either by the legislature or in judicial utterance." (Picarda, 1977, p7)

The Lord Chancellor delivered the final blow when he stated that Lord MacNaghten on Pemsel:

" was not attempting a definition of charities; he was making a classification, and nothing more." (971)

Silkin withdrew his amendment, noting that if he had presented the 'Ten Commandments' for approval it would have been changed but also concluding:

" I certainly do not accept that it is impossible to find a definition, and I do not believe that the noble and learned Viscount has satisfied the House that it is impossible to do so." (973)

Subsequent reference to the two learned law texts on charity - Maurice (Tudor, 1984) and Picarda (1977) find that their sections on definition do not mention Silkin's clause or even the debate. Lord Nathan's book on the 1960 Charities Act equally has no reference.

I subsequently wrote to Jean Warburton and Francesca Quint as to their opinions for the absence of comment. They both replied and their letters are attached as Appendix 1. Jean Warburton noted that the proposed definition was narrow and therefore as we comment later from our interview with Mr Peach, the Chief Charity Commissioner 1982-87, it would have actually been detrimental for new charities who are responding to new problems. Francesca Quint, from a Barrister's perspective, believed the definition would not have resolved borderline cases and therefore case law would still have to be relied upon.

For this research both Quint and Warburton acknowledged that neither had seen the definition before, which supports Warburton's own thesis on 'black letter' law. Quint suggests a future research project to actually collate all the various attempts both in England and the Commonwealth countries. Lindsay Driscoll (1994), the legal advisor to the National Council for Voluntary Organisations (NCVO), was also unaware of the Silkin debate.

The 1992 Charities Act has not attempted a new definition, as the 1989 Government White Paper 'Charities: A framework For the Future', explained:

"In considering the question of charitable status the Government have taken note of the deliberations of the Nathan and Goodman Committees, both of which went into the subject in some depth. They have also taken into account the views expressed more recently at seminars which have been held by the Home Secretary and the Charity Commission. These seminars were designed to test opinion in the legal and charitable worlds and were attended, amongst others, by Chancery judges.

The view of the legal experts and of others who were present on these occasions was not, as might be expected, unanimous on all points, but was quite clearly against any substantive change in the present law. The Government incline to agree with this view.." (Home Office, 1988 p5)

Due to the force of argument of existing case law, it is unlikely that a 'new' legal definition of charity will be derived this century. Although two recent developments may lead to revision. The first is the setting up by the NCVO of a commission to review the future of the voluntary sector, part of whose brief will be a definition of charity. Secondly, charity lawyers at Liverpool University who have formed a new 'Charity Law Unit', are attempting to formulate a new legal incorporation structure for charities as opposed to company law (Driscoll 1994). The movement for reform seems to have taken heart from an International Charity Law Conference held in London in September 1994.

In particular, the incompatibility of the concept of trust with the proposed European Association (Sievers and Lowndes 1994), gives a strong possibility that a legal definition may come from the European Union. Knowledge of other European Union laws on their 'charitable sectors' has only recently emerged, beginning with the Fontaine Report in 1987 (NCVO, 1992), which recommended harmonisation of laws throughout the Union for associations. In a major research study of the respective legislation of European Union members to their 'charitable

organisations', by the NCVO in 1992 (6, Perri, 1992), it was discovered that many of the member states did not discriminate their tax concessions on the basis of political activity. Political activities by charities was one of the two areas debated at length in the White Paper, the other being religion. Charity lawyers (Bromley 1994) have raised the issue, that as the European Court of Justice begins to rule more frequently on English Legislation, whether the current restrictions on political activities will be able to be maintained.

### **2.3 THE POLITICAL ISSUE.**

The White Paper (Home Office 1989) was clear in restating that political activity was not a charitable objective, however, in furtherance of their purposes, charities could campaign and present reasoned argument to government. The White Paper laid great stress on cases in the High Court, and in particular, the guidance issued by the Charity Commission on political activities from court cases. There have been numerous pronouncements on political activities by the Charity Commission, an early statement was in its 1969 Annual Report. In 1989, following the Amnesty International Trust Case, the Charity Commission issued a booklet " Political Activities by Charities" (CC 9 1989) as a guidance for trustees. Following an inquiry into political activity by the charity Oxfam during 1993 and a complaint by a conservative MP on the housing charity Shelter in 1994, the Charity Commission has issued new guidelines. It is instructive to compare the two documents as a guide to the changing attitude of the Commissioners, it is also indicative of the changing nature of charitable activity in such a short period of time.

The new guide, for example, begins with a personal introduction from the Chief Charity Commissioner and ends

with a request to send comments to the Commission. It is in stark contrast to the previous document which went without an introduction into what political activity meant. As we explore in chapter three, the historical lack of a 'user friendly public profile' of the Commission, has been suggested, as may be having contributed to some of its problems. (Goodman 1976, p117) The new introduction begins with a liberal social policy sentence that could have graced any social policy lecture on charity:

" Charities in England and Wales have a long and distinguished history of contributing to social reform."  
(CC9, 1994 p2)

Critics who would like to see no political constraints would argue that this is but a public relations exercise. A detailed examination of the guidelines shows a concision on political activities, with specific guidance instructing charities what they cannot do:

"... must not conduct publicity campaigns indicating how individual Members of Parliament have voted on a particular issue as a means of applying public pressure on those members or the government." ( CC9, 1994 p10)

The language being more directive than in the previous guidance note:

".. care should be taken not to overstep..." (CC9, 1989 p9)

ACENVO (Association of Chief Executives of National Voluntary Organisations) has criticised the Charity Commission guidance claiming it is defective for five reasons:

"\* it is not clear whether it is a code of good practice or a set of legally-enforceable rules;

\* the document seems to address recent problems rather than to take a longer perspective;

\* it does not offer a sufficiently robust defence and explanation of the 'political' tasks of charities, understandable to all;

\* it deals with extraneous issues such as research, bias, and balance, which are not really germane to the issue; and

\* it is still too restrictive: " had these revised notes been in operation in past years, many of our most valued charities would never have got off the ground in the first place." (Donoghue,1994 p4).

The character of much charity activity is synonymous with campaigning for change, which inevitably is political. There has long been recognition of the place of charity as a force for questioning government policy and to campaign for change as endorsed by the Chief Charity Commissioner in Political Activities by Charities (CC9 1994). In 1952, the Nathan Committee believed that an active questioning charitable sector was one of the guarantees of democracy:

" Government democracy without voluntary exertion and voluntary idealism loses its soul." (Nathan, 1952 p12)

Rooff in 1957, citing the problem of mental deficiency at the outset of the first world war, gives an early indication of the legitimacy of campaigning activities with the founding of the charity MIND:

"When public opinion was not sufficiently strong to press for action; a period when war and post-war difficulties absorbed much of the attention of administrators in the public services." ( Rooff, 1957 p103)

Cole in 1945, writing a history of voluntary social service, described a third origin of charity as being agitation of campaigning for the state to legislate against a particular wrong. On international issues, for example the slave trade, and on domestic issues, the 'ten hours league' on factory legislation. (Cole, 1945 p 11-30)

More recent studies on politics and charities also argue there is a legitimate role for charities in political affairs (Wolfenden 1978; Gerard 1983; Brenton 1985; Butler and Wilson 1990; Deakin 1994a, 1994b). Quoting a variety of politicians as diverse as Ennals and Blair (Labour) to Finsburg, Jenkin, Patten (Conservative) that voluntary organisations have a valuable role to play in observing and influencing legislation. It is important to note, however, that all the politicians define the legitimate role within the particular lawful objects of the charity.

The term lawful is problematic, as it can be determined by the government of the day as to what is lawful? Henry VIII, for example, had a statute declared in 1532 that Chantries, which were endowments for saying masses for the dead, were unlawful. As we explore in chapter 2, this was the pretest for the subsequent seizure of the monasteries by removing them from the law of charity. The Elizabethan statute subsequently excluded religion. Such inconsistency can also record individual discrimination. Blake Bromley illustrates a case in the 18th Century, when the Jewish religion was still a 'superstitious' use and therefore illegal. A wealthy Jew, Elias de pas, left a bequest to instruct Jews in their religion, this was deemed unlawful and his money was used instead to support Christian purposes. (Bromley, 1994 p27)

The legal proposition that charities are prohibited from having political purposes is relatively new in the history

of charity. Lord Parker's statement in 1917, the 'Bowman' principle, declaring that a trust for political purposes was invalid not because it was illegal to advocate or promote a lawful change in the law but because the court had no means of judging whether a proposed change will or will not be for the public benefit. Lord Simond's reasoning in the Anti-Vivisection Society Case of 1948 upheld this principle but went further and declared that the law was right as it stands. This meant that even if a court was to consider that it was in the public interest, the charitable trust could still not be registered. This principle was upheld in the 1981 Amnesty International Case on the principle that even if a change in the law was desirable, to do so would usurp the function of the legislature.

A correlation can be made with the limitations on political activities and the introduction of income tax. Bromley(1994 p34) asserts that the Pemsel case was completely concerned with whether the purposes stated were charitable for the purpose of income tax legislation. Bromley further argues that while the House of Lords declared in 1972 that fiscal privileges are not to be considered, they have 'hovered in the background of famous cases'. The 1989 White Paper (Charities, 1989 p2) referred to the tax benefits that charities enjoy.

Denis Peach, the Chief Charity Commissioner 1982-88, was extremely kind in granting me an interview. The principal purpose of the interview was to provide clarification on change in the Charity Commission during his period as Chief Charity Commissioner. Mr Peach, however, also commented on the political activities of charities and gave an extremely informative insight into how the Charity Commission dealt with problems of political activities and registration of newer charities.

Peach believed that vigorous campaigning was inherent in the work of some charities and sought to help them to keep within the guidelines on 'political' activity as defined from time to time by the High Court. He tried to be liberal in his interpretation. He believes that the even-handed criticism from the political left and right of the Commission's handling of complaints of 'political' activity by charities was evidence that the Commission had broadly got it right. Both left and right charities were rebuked - or more formal action taken - in his time. But a good deal could be achieved by informal advice, to avert breaches of the 'political' guidelines. (Earlier Oxfam problems on political campaigning had been resolved by informal discussion.)

Mr Peach gave other examples of how the Commission could help in this area. In the case of Amnesty, for example, he had advised them after the High Court ruling, to separate and register as a charity their properly charitable activities such as the welfare of prisoners and their families, and objective research, while leaving their campaigning activities free.

The case of the "Moonies" was an example where the Commission's independence of Government had to be asserted. There was public and government pressure (from the then Attorney General) to 'ban' the Moonies - a matter for Government and Parliament, not the Commissioners. There were over 90 organisations - schools, trading companies, publishers, etc - connected with the Moonies. Only two were registered charities - for the advancement of religion; and both the High Court and the Court of Appeal had held that they were in law religious charities within the broad spectrum of Christianity. None of the many and various complaints about the Moonies' activities went to these two registered charities; there was no legal justification to de-register them and indeed it would have

been an abuse of power to seek to do so.

Mr Peach also commented on the lack of a single statutory definition for charity. He believed the absence of a strict definition was to charity's advantage, particularly in dealing with new or unpopular causes and extending the bounds of charity law. He gave as an example organisations giving counsel and advice to the homosexual community. The Commission had been reluctant to recognise them as charitable. But the homosexual element was a sufficiently large section of the community to qualify under the fourth head of charity: and it was right to recognise counselling and support for homosexuals - e.g. help and advice to those bereaved by the death of long-standing partners - just as it was right for heterosexuals.

He also encouraged the registration of intermediary bodies - organisations not directly working at the sharp end, but giving advice or services to other charities.

The principal problem, however, is the philosophy of the approach. By providing guidelines there is the implied intention that some political activity is not appropriate. Inevitably the issue is where the line is drawn. As the Goodman Committee (1976) noted, the independent line of the Charity Commission to date has been respected by successive Home Secretaries, however, there is nothing legislatively to stop a future Home Secretary intervening. There is also the perception from the Charities themselves as Burnell (1993) comments on the Charity Commission's 1991 inquiry into Oxfam. Charities see major problems resolving their charity status with the need to campaign. In France, this issue has been resolved by guaranteeing voluntary associations a legitimate right to criticise the government in the French Constitution (6, Perri, 1992).

## 2.4 VOLUNTARY ACTION TO VOLUNTARY SECTOR.

In the absence of a legal definition for charitable activity, alternative definitions of 'charitable activity' have arisen, which also have the advantage of encompassing the whole sphere of economic activity that is not in either the private or public area. From post 1945 academia, the starting point is that provided by Lord Beveridge in 1948 in his book, *Voluntary Action*, which he defines as:

"The term 'Voluntary Action' as used here, means private action, that is to say action not under the directions of any authority wielding the power of the state." (Beveridge, 1948 p8).

The problem of the use of the word 'voluntary' is that it fails to recognise that many charities employ paid staff. The Nathan Committee, in the introduction to their report, borrowed heavily on Beveridge's definition in describing the rationale for their appointment:

"The essence of voluntary action is that it is not directed or controlled by the state and that in the main it is financed by private, in contradistinction to public funds. It embodies the sense of responsibility of private persons towards the welfare of their fellows; it is the meeting by private enterprise of a public need." (Nathan, 1952 p1)

The consensus to the Beveridge use of the term 'voluntary action' was beginning to be challenged in the late 1950's, illustrated by Madeleine Roof's definition, which instead used the term 'voluntary organisation' but retaining the concepts of independence of policy direction, as well as some finance not coming from statutory sources:

"The terms 'voluntary organisations', voluntary society, voluntary agency or voluntary association in the context of the social services are used interchangeably to cover those bodies which provide some form of social service, which control their own policy, and which depend in part at least, upon financial support from voluntary sources." (Rooff, 1957 p xiii)

Perri 6, suggests that the change in the use of the term 'voluntary action' to 'voluntary organisation' is in part due to the shift in the nature of government relations to voluntary organisations, with an increase in grant aid, and the advent of contracting:

"As late as 1979, the National Council for Social Service (NCSS, predecessor to NCVO) was using the term 'voluntary sector' sparingly, preferring 'voluntary action'....By the time Brenton was writing in 1985, 'voluntary sector' was in common use, but 'voluntary action' was falling into disuse, perhaps because it had begun to sound stilted. This suggests that the concept of a voluntary sector may have come into currency during the late 1970s and early 1980s when there emerged a much sharper distinction between public and private sectors of the economy: it then became important to see voluntary organisations as another sector rather than as another form of 'action'." (6, Perri, 1991 p3-4)

It is interesting to note that Knight used the term 'Voluntary Action' as the title for his 1993 study. Knight does undertake a detailed attempt to define the synthesis of the term 'voluntary action'. However, his other motive may have also been a misanthropic view of the definitions to date and particularly 'voluntary organisations' such as the NCVO. In Knight's proposals for the future of the charity sector, such intermediaries will have no role (Knight, 1993 p305).

The term 'non-profit' has also acquired a degree of currency in attempts to define voluntary organisations. This has primarily derived from American economists

(Hansmann 1980, 1987; Weisbrod 1988, Steinberg 1993) and has become the wholesale definition in use in the United States. Weisbrod defines the term non-profit as:

" restrictions on what an organisation may do with any surplus(profit) it generates." (Weisbrod, 1988 p1).

This concept of 'nondistribution constraint' ie that any surplus or profit generated can not be distributed to those in control of the organisation was characterised by Hansmann in 1980, and according to Steinberg:

" have been cited over 150 times by articles indexed in the Social Science Citation Index...a definition that has become standard in the ensuing literature" ( Steinberg, 1993 p297).

The term 'non-profit' has not, however, become widespread in the United Kingdom. A recognition of the different national traditions that have conceptualised the respective UK and US voluntary sectors. Recognising these cultural difficulties, there has been a concerted attempt in the United States to widen out the definition by adding additional characteristics, notably by Salamon and Anheier (Salamon and Anheier 1992, 1993, 1994). For the Johns Hopkins Comparative Non-profit Sector International Study, they have used a definition that encompasses not only non-profit distributing but also encompasses concepts of independence and voluntarism.

Termed the Structural/Operational Definition, it comprises five key features:

Formal - Institutionalised to some extent, for example legal incorporation or if not, having regular meetings or rules of procedure;

Private - Institutionally separate from government, fundamentally private institutions in basic structure;

Non-profit distributing - not returning profits generated to their owners or directors, whereby the profits are ploughed back into the organisation;

Self-governing - equipped to control their own activities;

Voluntary - involving some degree of meaningful voluntary participation. The presence of some voluntary input, even if only a voluntary board of directors suffices to qualify an organisation as in some sense 'voluntary'.

As Salamon and Anheier clarify:

"Needless to say, the five conditions identified in this structural/operational definition will vary in degrees, and some organisations may qualify more easily on one criterion than another. To be considered part of the non-profit sector under this definition, however, an organisation must make a reasonable showing on *all five* of these criteria." (Salamon and Anheier, 1993 p184)

Different cultural traditions can partly explain the usage of the term 'non-statutory' that has also been suggested in the United Kingdom. The usage of 'non-statutory' as a definition can probably be primarily attributed to the post 1945 development of the British welfare state, supported by a political philosophy formulated by the Webbs and prevalent until the 1980's, that services should ideally be provided by statutory authorities (Webb and Wistow 1987). In this philosophy, the role of the voluntary sector is to pioneer developments until, as a 'natural process', the state takes over. The 1960 Charity Commissioners Report illustrates this view:

"After the post-war social legislation the traditional objects of charity were largely

overtaken by the statutory services, new and old, which now provides for the welfare of the individual from the cradle to the grave; and the basic question confronting the committee was what remained for charities to do. The answer in broad terms, was that while charity should not withdraw from a field where it is performing a useful service, its peculiar function is to pioneer..." ( Charity Commission, 1960 p5)

Similarly, the Commission's 1991 report reflected the change in the role voluntary organisations are now expected to perform:

"As a major part of the voluntary sector, charities are now recognised as essential contributors to the well-being of our society, meeting needs which neither the state nor the commercial sector can fully address." (Charity Commission, 1991 p1)

A critique of this position has come from Salamon(Salamon and Anheier 1992b) in the United States who regards this historic obsession as damaging a positive relationship that can be developed for the voluntary sector. The United States experience being of course very different from the British, where the political philosophy of a universal welfare state after the end of the second world war was not an issue(Flynn 1994).

The primary non-usage of 'non-statutory' by British academics can be explained by the damning rejection of the term by Wolfenden in 1979:

"(a)it defines the 'voluntary' in too negative a way; (b) it suggests a rigid antithesis between the statutory and the voluntary;(c)since the boundaries of statutory provision are continually moving as legislation is enacted, the distinction as so expressed depends less on a difference of substance than on an accident of time and date; (d)'non-statutory' does not exclude commercial provision, as we wish to do." (Wolfenden, 1978 p11)

A definition in conjunction with the Johns Hopkins comparative study of the non-profit sector project, has been developed (Salamon and Anheier 1992, 1993, 1994) in the United Kingdom by Knapp and Kendall(1991,1993), which encompasses a multi-dimensional model incorporating, a formal organisation that is self governing, independent of government, with finance and labour support from some form of philanthropy and/or voluntary input that produces some external benefits and is constrained by profit nondistribution. The Knapp-Kendall model provides the current paradigm limit of a definition of organisations that otherwise are negatively described as being in neither private nor public spheres. The problem with the definition is of course its complexity and by its very nature, each of the five separate components that comprise the definition have to be defined in turn.

The origin of the Knapp and Kendall definition can be directly traced through Brenton(1985) to Hatch(1980) as representing from the late 1970s the renewed interest in the voluntary sector. The definition debate has been rather like the search for the 'Holy Grail'. There is an implied accord of 'we all know what we mean' but there is still sought a short easily recognised word or group of words that can define and distinguish this form of activity from private and public activity. When Perri 6 described the change in the usage from 'voluntary action' to 'voluntary organisations' he expressed a recognition of:

" The focus shifted gradually from voluntary social practice to, finally, a sector of voluntary institutions."  
(Perri 6, 1991 p3)

## **2.5 THE THIRD SECTOR.**

The concept of a separate sector in the economy has led to

the adoption and widespread usage of the term 'Third Sector', particularly by economists in the United States (Rasul, 1993). The concept of an economy being made up of various sectors rejects a narrow economic view that economies have only two sectors. The expression 'Third Sector' endorses the concept that there are other sectors in the economy, for example, what is often referred to as the 'black economy' or the now more politically correct title against its obvious racist inference, the 'informal economy'. The origin of the term has been chronicled by Anheier and Seibel:

"The term 'third sector' was first used by several US scholars( Etzioni 1973;Levitt 1973;Nielsen 1979;) and the influential Filer Commission(1975) and it is now increasingly applied by European Researchers(Douglas 1983; Reese 1987; Reese et al 1989; Reichard 1988; Ronge 1988). The term has both normative and strategic roots. For Etzioni(1973) the term 'third sector' suggested elements of the then widely discussed convergence thesis. 'Third Sector' was intended to express an alternative to the disadvantages associated with both profit maximization and bureaucracy by combining the flexibility and efficiency of markets with the equity and predictability of public bureaucracy." ( Anheier and Seibel 1990)

Whether the term 'third sector' becomes the common currency term remains to be seen. It certainly has attracted endorsement with the recently formed 'International Society for Third-Sector Research' (ISTR) which at the end of 1993 had two hundred and twenty-nine members in forty two different countries. The ISTR is a multi disciplinary group of academics who have joined together to enhance research in 'a new, international, and interdisciplinary field of study' (Gidron, 1993 p2). The organisers count among them the leading non-profit academics including Gidron, Anheier, Knapp, and Salamon, with support from the Johns Hopkins University in the United States. In England, a popular journal on the charity sector has titled itself 'Third Sector'. The Head

of Research of the Charities Aid Foundation, in her article in the second newsletter of the ISTR, was happy to describe herself as:

" a Third Sector researcher." (Saxon-Harrold, 1993 p4)

Another key supporter has been Barry Knight, who is keen to promote the term third sector for his own revised definition of voluntary activities and organisations:

"The new economy would be regulated, controlled and promoted in various ways, and a key feature of it would be that there would be sufficient coherence to call it the 'third sector'." ( Knight, 1993 p303)

This nomenclature certainly has the advantage of removing 'voluntary', a phrase used in the establishment of the first international academic grouping of researchers, the Association of Voluntary Action Scholars', which became the Association for Research on Nonprofit Organisations and Voluntary Action. However, it does suffer the disadvantage of incorporating within its grouping economic activities such as non-profit 'co-operatives'. In Beveridge's 'Voluntary Action'(1948) the friendly societies were incorporated, which Wolfenden attempted to omit in determining a more refined 'voluntary sector'. This may be a minor and historical criticism, given the trading activities of charities, such as Oxfam, Cancer Research and other top charities which would be included in the Wolfenden pure grouping.

## **2.6 SECTOR CONVERGENCE.**

A criticism of the use of the term 'third sector' derives from the conceptual assumption that there are distinctive divisions in the economy and thereby in the characteristics of organisations between the sectors.

Providing a historic, managerialist perspective, Vinten(1993) suggests that distinctive sectors emerged with the evolution of industrial society. The public sector provided an infrastructure of utilities and services for the benefit of industry and commerce which paid taxes; the voluntary sector filling the gaps between the two. Each sector, having very different roles, developed independently of each other separate characteristics and practices. Notably in the public v private sector, the emphasis on the role of the 'professional' over organisational and managerial authority (Flynn 1993).

There has developed an alternative proposition to the 'distinct voluntary sector' school. The antithesis to the views of Billis and Harris(Billis 1993) is that the distinctions between the public, private and voluntary sectors are now conceptually indistinct and have become blurred(Leat 1993). As Leat comments:

"...there is an increasing convergence of non-profit and for-profit organisations. The reasons for this apparent convergence are complex. On the non-profit side, convergence is related to the growth of contracting (discussed in chapter 2), to new resource dependencies and to institutional isomorphism. On the for-profit side, convergence may stem from growing disenchantment with existing management practices and a new emphasis on quality and other less tangible values both inside and 'outside' the organisation."(Leat, 1993 p49-50)

Leat(1993) still believes that despite these convergence arguments there remain differences between the sectors. She suggests that the key difference in the visibility of for-profit and non-profit organisations may lie at the level of theory rather than practice and that what is needed is a radically different approach focusing on similarities and differences between organisations within and between sectors. For example, she argues within the

non-profit sector the constituent subcategories function with little or no commonality. What have the following in common?

- \* statutory bodies and quangos;
- \* foundations and grant making trusts;
- \* service providing non-profits;
- \* fund-raising non-profits;
- \* trade associations and societies;
- \* sports, social, community associations and clubs.

Instead, Leat(1993) suggests:

"...it may be more fruitful to compare management needs and tasks in for-profit and non-profit organisations with intangible goals and/or a preponderance of professionals/knowledge workers requiring high degrees of autonomy; or the problems of managing non-profit and for-profit organisations with strong traditions of egalitarianism might be considered." (Leat, 1993 p50)

Billis (1993), after reviewing what he describes as the 'impressive' case for blurring, develops a series of arguments from the British perspective against the convergence perspective. He first argues that the British voluntary sector was not invented a feature of the US convergence thesis. The 'deep roots' of the British voluntary sector can draw on a "variety of organisational forms stretching back to medieval times" (Billis, 1993 p245). While government has encouraged the growth of intermediate organisations, so has spontaneously the sector itself developed such organisations. Billis claims that there is an illusion of a unified sector with common views, the reality, however, "is substantially different." The problem he claims is using the word 'sector' to describe an homogeneous group of organisations. Clearly the voluntary sector is not homogeneous, but equally the same can be applied to the respective private and public

sectors which have diversity and competition in them. Billis, however, rejects abandoning the notion of sectors as concepts, believing the metaphor still has utility.

Billis poses and answers three questions for the concept of a sector.

i) What does the Voluntary sector do? - Traditionally, he argues this has focused on its unique role of identifying and pioneering new responses to need. Others have focused on the process of democracy, sensitivity to need while economic arguments have focused on cost effectiveness and, more recently, as part of the government initiative to bring competition to welfare services.

ii) Why does the sector exist? - Negative theories, primarily from US economists have tried to explain the sector. Billis in turn questions that the failure has been in economic theory itself. For the UK, he argues, the terminology does not apply as such negative definitions have never been used.

iii) What is the fundamental nature - the essence - of the social phenomenon under consideration? - While legal definitions have been used, Billis prefers to cite the substantial literature that describes its distinctive features and attributes. For example, the absence of precise market value, voluntarism, distinct resources and service systems, special constituency, legal status and distinctive social character.

Billis turns to the Johns Hopkins Project definition as providing a basis for international comparative perspectives and notes Kendall and Knapp's mission statement of discovering the juxtaposition to entities in other sectors and to 'hybrids' on the border. For Billis, whose own admitted search is for a theory that would

government

association

personal

business

Thus the phenomena of sector blurring can be explained, as the size of these worlds can vary in size and significance in different countries and at different times as a result of political, economic, cultural and social forces. In addition, there may well according to such conditions be crowded zones.

The future avenue for research, Billis suggests, is to define for the core of each sector its membership and parentage. In addition, this should lead on to questions of who can ultimately close the organisation down or sell it off?

Leat (1993) in her study unfortunately does not review the Billis hypothesis, nor to date has there been comment in the voluntary sector journals. The lack of review to-date can of course imply a number of reasons, however, the most damaging is the lack of debate itself, and to date an alternative perspective. In the absence of such comment, the Billis hypothesis does offer an attractive counter perspective to the blurring position for those who support the concept of independent sectors.

## **2.7 RELIGIOUS INFLUENCES.**

Harking back to a definition of charity that would have found recognition in the nineteenth century rather than the debates of the second half of the twentieth, Mullin (1995) defines a charity as:

"an agency which exists solely to make an adequate and relevant response to need within the community". (Mullin, 1995 p18)

Perhaps it is the 'secular' nature of academics interested in the voluntary sector that has ignored the body of religious literature as to the meaning of charity. Since 1945, there seems to be little academic comment. Beveridge, himself in his final volume on 'voluntary action' - 'The Evidence for Voluntary Action', while listing activities carried out by religious organisations (ie: Church Army p315, Salvation Army p316), does not head any section to religion, though he took evidence from many religious organisations (Beveridge and Wells, 1949 p317-327). Beveridge did, however, give a heading to "Women's Organisations" (p307), and the observation reports have a chapter on Holidays and specific notes on Cinema Attendances (p217).

There is a modest modern literature with the work of Ware (1989) and the Gresham Lecture by Professor Ken Young (Lloyd 1993) and two relatively recent doctorates featuring the voluntary sector and religion (Ashcroft 1984, Eyre 1988). However, this is a very limited modern UK religion and charity literature, when the size of the voluntary income of religious charities is considered, estimated in 1991 at £80 million (CAF, 1993 p10) or approximately 5% of the total voluntary income of the charitable sector. Equally the importance of religion in charity as recognised by the 1989 Government White Paper:

"...the very concept of charity is essentially religious in origin" (Home Office, 1989).

One of the few current British academics to consider religious origins has been Vinten, who describes St Thomas Aquinas exposition on virtue:

"Charity is the form of all the virtues" (Vinten 1989 p2)

An alternative explanation as to why religion has not influenced terminology was suggested by Vinten, being the diminishing jurisdiction of the ecclesiastical courts. Beyond statements of the goodness of philanthropy, which tends to be described more in terms of great figures of history theory (Nightingale 1973, Owen 1965), rather than economic and political movements, there does not seem to be much of a literature of definition from religious sources.

The absence of a substantive religious contribution to the definition debate can perhaps be best understood if it is placed in a historical power debate. Blake Bromley (1973) has attempted such an analysis:

" Understanding the societal and historic context in which the legal concept of charity evolved requires that considerable attention be devoted to the attitude of society to the poor in any particular era." (Blake Bromley, 1993 p3).

Bromley describes four phases of philanthropy, each of which has had a different level of emphasis in different historical periods. These are Religious Philanthropy, Reformation Philanthropy, Remedial Philanthropy and Renaissance Philanthropy. The dissolution of the monasteries and the subsequent economic problems of the Elizabethan era, Bromley argues, led to the end of the direction of charity activity by the church and its replacement by the state. The changes in the delivery of welfare services and thereby the regulation of such organisations, was explained in the 1960 House of Commons debate of the 1960 Charities Act by the then Home Secretary, R A Butler. Introducing the Bill, Butler gave an historical account of society needs and the changing

pattern of welfare delivery, explaining the replacement of the Church by the State and therefore, as Vinten cites, the need to replace the authority of the ecclesiastical courts as the regulatory authority:

"In the middle ages the church laid stress on giving by the rich for the benefit of the poor as a christian duty and means of salvation. Indeed, the church undertook to distribute benefits on behalf of those who could not do so in person because they had left this world for another....

In Tudor times the state took over from the Church the enforcement of the founders intentions" (Butler, 1960 409-410)

Another reason is how the church itself reacts and changes to wider movements, as a PhD thesis on Church and State Welfare in Liverpool (Eyre 1988) suggests:

"... the Christian approach to the poor has been variously defined and applied at different times and in different social and political contexts. A historical overview of the development of the welfare state and the evolution of church welfare in Liverpool shows how the Churches' approach to social welfare has changed from an emphasis on individual charity and private morality to to-days corporate welfare programmes stressing the Christian concepts of community (Koinonia) and service (diakonia)." (Eyre, 1988 p2)

This, of course, has to be understood in a United Kingdom context. As the ISTR research forum develops it may well transpire that predominantly catholic countries have a different tradition. A recent review of the American literature offers another explanation for the absence, until relatively recently, of a distinct religious contribution:

"However, in many parts of the scholarly mainstream, religion has ceased to be of central interest. In many ways, the heralded

"privatization" of American religion was reflected in scholarship; religion was relegated to the private sphere, a matter of personal values, psychological motivations, and family life. As a result, the study of churches and religious institutions had largely fallen into the hands of researchers who took little interest in the kinds of organisational and public policy questions that would illuminate the significance of religion to the nonprofit sector.

While many scholars, particularly sociologists of religion, studied religious organisations, their focus was typically on congregations, denominational bureaucracies, or marginal religious movements. The internal dynamics of faith and polity framed most inquiries into religious organisations.

On the other hand, nonprofit researchers, who are just now moving into the scholarly centre, often approached issues of public policy and organizational form with economic and legalistic perspectives; these researchers seldom acknowledge religious factors. This trend, however, recently began to change;" (Hall and Williams, 1994 p87)."

Hall and Williams cite a number of major studies published since 1988 and the "major commitment" of the Yale University Program on Non-profit Organisations to supporting research on religious dimensions to philanthropy, voluntarism and non-profit organisations. An entire issue of 'Nonprofit and Voluntary Sector Quarterly' in 1994(summer) was devoted to studies of religion and the non-profit sector, a number of the contributions exploring the relationship between religious organisations and welfare service delivery agencies.

There is an absence of similar studies in Britain which we can only hope will be remedied as research activity in non-profit studies increases. Margaret Harris at the Centre for Voluntary Organisations in the London School of Economics, for example, is undertaking research into religious groups (Harris 1994).

## 2.8 THE SOCIAL ECONOMY.

The phrase that has been developed to define economic activity that encompasses not only 'social service', but also not-for-profit organisations like co-operatives, trade unions and associations, is the 'Social Economy' and originates from the french 'economie sociale'. This expression incorporates itself naturally into the hierarchical third sector classification and provides a conceptual definition of what should be in the third sector. It has the merit of not incorporating 'voluntary'. It is meritorious equally, because it does not define, as Charles Handy has described, by what it is not rather than what it is:

" There is in fact a sense in which the voluntary sector is defined negatively - by what it is not, rather than by what it is. It is not profit seeking, it is not government-run, it is not owned by anyone." (Handy, 1988 p10)

Paton (1992a, 1992b) describes the 'social economy' in a six sector model based upon the provision of goods and services they offer to society:

### THE CORPORATE SECTOR

large mutual societies(1)

### THE PUBLIC SECTOR

large non-statutory agencies  
small state care units(2)

### SMALL AND MEDIUM- SIZED ENTERPRISES

independent schools

and care providers(3)

informal mutual aid networks (4)

### THE SOCIAL ECONOMY

(value based

organisations)

### THE SUBMERGED ECONOMY

### THE NATURAL ECONOMY

## Notes

- 1) eg building societies, retail co-ops, the Automobile Association;
- 2) eg Large Housing Associations, Barnardos, local authority family centre, a cottage hospital;
- 3) eg charitable public schools, nursing homes (private but professionally run);
- 4) eg baby-sitting circles, mothers and toddlers clubs.

Paton at least is not dismissed by Knight, who has described the previous respective definition contributions as:

"There never has been a good definition. The main writers of the Twentieth century ( Bourdillon, Beveridge, Wolfenden, Gladstone and Brenton) all fudged it" ( Knight, 1993 p5)

### Back to Voluntary Action?

Knight's own contribution to the definition debate is to evaluate what the term voluntary action means, from initially the perspective of 'linguistics' and then he compares it with the sample of voluntary organisations in his study to see its applicability. As such he has returned to Beveridge and begins from the Bourdillon definition. His own definition of voluntary action is finally summarised as:

"a form of energy, stemming from free will, having a moral purpose, and undertaken in a spirit of independence."  
(Knight, 1993 p81)

Knight then lists the criteria against which he has compared his sample and concludes:

"In recognising voluntary bodies, seven criteria were used:

- independent beginnings
- self governing structures
- independence from other agencies
- independent financing
- use of volunteers
- distribution of surpluses not for profit
- worthwhile purposes

In analysing a sample of organisations commonly thought to be voluntary, the organisations matched up well to the criteria. But there was one exception. Statutory funding made many voluntary organisations grant-dependent and it was doubtful whether they could call themselves truly voluntary" ( Knight 1993 p81)

Unfortunately Knight does not then provide a conceptual answer as to how he would resolve this problem, instead relying on providing a revised taxonomy of what should be in his third sector.

The active debate on definitions in recent years has been characterised by (Kazi, Paton and Thomas 1992) into three distinctive approaches:

- \* the residual, or negative approach represented by (Ware 1989) explicitly defines the sector in terms of what it is not.

- \* the categorical approach, based on particular principles, attempts to define the sector in terms of organizations that meet particular criteria. Knapp (1990) and various US writers reviewed by van Til (1988) exemplify this quasi-legal approach.

\* the aggregational approach, which enumerates the sector in terms of accepted sub-categories, using various consensual or implicit criteria. The continental definition of the social economy (in terms of co-operatives, mutual societies, and associations) exemplifies this approach.

The debate of an appropriate definition continues. We are not at the stage as described by J S Mill on value:

"happily there is nothing in the laws of value which remains (1848) for the present or any future writer to clear up; the theory of the subject is complete."  
(Freidman, 1953 p34)

As the definition debate continues, far from a definitive solution being achieved, more questions and problems are 'discovered'. Indeed, it is questionable whether any definition can demarcate the voluntary sector. This is because the sector is never unchanging, continuing to move and have moved its boundaries in the economy as defined by its relationship with the state.

Could a theoretical paradigm of a definition be eventually developed as identified by Kuhn(Kuhn 1962; Chua 1986) for the charity;voluntary; not for profit;non-profit; third sector; 'social economy'? Bourdillon, who started the modern debate stated:

"Definition is a perpetual state of growth" ( Bourdillon 1945 p8)

One approach to definition not identified by Kazi and his colleagues(1992), would be based on a 'dialectic method' (Stace 1955;Arato and Gebhardt 1978; Marcuse 1978;Connerton 1978; Habermas 1979;Chua 1986; Lyon 1994). For example, the application of Adorno's(1978) work on

subject and order:

"The subject and object are irreducible to each other for Adorno. A theory can never fully assimilate its reality because the object (the social worlds in which the subject is located) and the subject are unequal. The object surpasses absolute comprehension, and for this reason, there can never be an absolute, complete, sovereign truth or theory. Thus there was no universal history, and the general can only be found in close study of the particular [Buck-Morse 1977]. By giving priority to the particular in empirical work, Adorno sought to break the vise of conceptual systems that strove to freeze the object. Identity is not frozen for Adorno, but it is in a permanent state of becoming, and, in this sense, meaning and identity are dynamically related in that they are both permanent, yet changing. Thus a dialectical and deconstructionist view of meaning is a process of defining that produces fixed meanings at a moment in time, yet through time, generates an on-going unravelling of meaning, transmitted through traces to an infinity of associations." (Okcabol and Tinker, 1990 p76)

There is an absence of critical philosophical enquiry of the voluntary sector which vividly contrasts with developments in other areas of the social sciences.

Application of a critical theory perspective has been described by Cheryl Lehman on the nature of accounting and the accounting profession:

"By theorising about accounting practice in a social and political vacuum, controversies involving stockholders, managers, pension holders, employers, consumers, the state and others have been misapprehended, silenced, or given anomalous meaning. To balance the debate and to devise policies that are worthy of the professions public mandate, we must move beyond posturing about 'objectivity' and 'efficiency' and examine the social genesis of accounting..... our claim is a more dynamic, interactive, socially constituted view of the subject, one that we call dialectic. (Lehman, 1992 p1&3)

Lehman describes developments in accounting theory, of a tradition of critical theory developed from the late 1970s, that contrasts with the primarily 'descriptive' profession dominated literature (Whittington 1986) and the respective positivist (Watts and Zimmerman 1978, 1979, 1986) and 'interpretative' schools (Chua 1986, Hopwood 1984, 1985).

The work of Gerard (1983), particularly Brenton (1985) and certainly Ware (1989) suggested that the application of critical theory to voluntary sector studies was in an early stage of development. However, to date neither of these writers nor other scholars have developed such work. We have, as identified by Paton (1993), considerable research developing and, in particular, the work of Billis (1992) and colleagues at LSE on distinctive characteristics, are valuable contributions. But we still do not have, from a critical theory perspective, a body of knowledge on the voluntary sector.

One aspect a critical theoretical perspective would adopt would be an analysis of power and independence of voluntary sector agencies to state policy. In appendix 2 an illustration of a theoretical fiscal accountability grid provides an illustration of such a perspective. Developed jointly with Kumar, it offers an analysis for evaluating the portfolio of finance available to the voluntary organisation. The more advanced the organisation is on the grid's 'Y' axis, the greater the independence of the voluntary organisation. The grid also allows for movements over time as the portfolio of income sources changes. I am in no way claiming that this hypothetical formulation fills the vacuum of critical theory perspectives to the voluntary sector. It does, however, provide an illustration of the contribution such a perspective can bring to this complex debate.

We may be accused of presenting too much of a dismal picture on the definition debate. The recognition of a serious deficiency has been identified by the leaders of the Johns Hopkins University comparative study (Salamon and Anheier, 1992, 1993, 1994). The research potential of this study is immense in being able to stimulate future debate. The international forums are now in place for

such discussion to flourish.

## 2.9 THE SALAMON AND ANHEIER PROPOSITION.

The importance of a definition and why in recent years it has caused so much interest can perhaps be attributed to two contentions. Why in the last twenty years has there been a growth of academic interest in the third sector? and therefore the question, why was there not interest before? Secondly, with the growth of interest there has been a concerted attempt in both academia and government to quantify the sector, but without a clear workable definition, how do you achieve that objective?

It has been suggested (Salamon and Anheier 1994) that the very absence of a definition has been the paramount reason why there has not been the same degree of academic interest in the 'third sector' that has occurred in the other two sectors:

"..it is the argument here that one of the most important has been the absence of a sufficiently clear and workable definition of what this sector really encompasses. In other words, we suggest that the lack of attention to the third sector is a function less of the weakness of the sector than of the weakness and limitations of the *concepts* that have so far been used to comprehend and define it. Put somewhat differently, the non-profit sector has not become what Zerubal (1991) calls an 'island of meaning', a cognitive device which groups

together similar objects to facilitate recognition and communication."  
(Salamon and Anheier, 1994 p149)

Salamon and Anheier explore and then reject the arguments that the historic lack of academic interest is due respectively to its diversity, and therefore the difficulty to comprehend it, or to its perception of importance as against the rise of large firms and public institutions.

Salamon and Anheier dismiss the diversity argument by asking how much similarity is there between a hot dog stand and IBM? There are clear differences between small and large firms, as recognised by a whole stream of government reports and academic studies in the United Kingdom from the Macmillan Committee in the 1930s through to Bolton in the 1970s (Samuels and Wilkes 1990), in the same way that a local self help group is different to the Cancer Research Campaign. Their argument against the attention is two fold. First, they argue that the economic significance of the third sector is not insignificant, citing the German non-profit sector as contributing more to the German gross domestic product than agriculture, mining and quarrying combined. Their argument for political and social significance is the challenge third sector institutions have made against the market and the state with the consumer and civil rights movement.

The Salamon and Anheier supposition will be partly tested in the next few years depending on the success or not of the Johns Hopkins University Comparative Non-profit Sector project in twelve countries.

## **2.10 SECTOR STATISTICS.**

A primary question arising from the definitional debate

is, in the absence of a clear definition, how do you quantify the sector?

In 1994, we still do not have an authoritative source of the total income and breakdown of the charitable sector. As we describe in chapter three, a condition that has existed since the completion of the Brougham Commissioners report in 1837. A malady that has been commented on by every single UK report and book we have reviewed on the charity sector. The current sources used to compile financial statistics comprise the latest Charity Trends published by the Charities Aid Foundation ( CAF 16th edition 1993), the Henderson Top 2000 Charities 1994 and the initial findings from the Central Statistical Office (CSO) of their survey of Income and Expenditure of Charitable Organisations in the United Kingdom.

This last source probably offers the best long term hope for reliable statistics, unfortunately, however, the CSO's initial charter into Charity Income is a pilot study conducted by Aston University. Aston were asked to review only 1990 and 1991 and were limited in their terms of reference. This was to limit their scope to charities which are classified to the personal sector for national accounts purposes. This therefore excludes some charities which are classified to general government or to the corporate sector (examples include the British Museum and industrial research organisations). A comprehensive survey for 1995 is currently in pilot stage. This pilot study, interestingly, sees a unique partnership of the four National Councils for Voluntary Organisations with four Universities working together. In addition, another development has been the intention of the Charities Aid Foundation to reorganise their research department into a broader statistical unit to provide information about the sector. These two developments, jointly, should facilitate a more knowledgeable debate about the charity sector.

The limitations of the first CSO survey allowed for, their survey has started to raise some interesting debates on the true income size of the sector.

The first statistics on the charity sector were compiled by CAF and are based on 500 charities randomly chosen for survey by Sheffield University in 1980. There have been subsequent studies, updating the original, by Dr John Posnett of York University in 1985 and again for 1990/91. This last survey was based on the Charity Commission's register, with 649 charities chosen at random with the 800 largest charities on the CAF database. (Posnett, 1987, 1992, 1993). The CAF research team were able to write at the beginning of 1994:

"The best global picture we have of what has happened to the resources of charities in England and Wales in the last five years is a study of the total income of over 171,000 charities registered with the Charity Commission for England and Wales. This shows that total income in 1990 amounted to over £16 billion."  
(Lane, 1994 p3)

**Components of income of registered charities in England and Wales (1990)**

	Total (£m)	Percent %
Donations(including donations from individuals and companies)	3,224.31	19.9
Government Grants	996.52	6.2
Sales	2,454.10	15.2
Fees	6,196.66	38.3
Investment Income	2,485.75	15.4
Other Income	817.93	5.0
Total Income	16,175.27	100

This study for CAF, undertaken by John Posnett at York

University, gives a very different picture from that of the CSO for the same year. The CSO survey found that the sector income in 1990 was £8,427 million and increased by 8% to £9,094 million in 1991. This difference of nearly £8 billion is approximately two thirds explained by the exclusion and inclusion factors of the two surveys and definitions, primarily relating to Housing Associations and Schools which were included in the CAF study. However, that still leaves a difference. It is believed that the CAF survey, which John Posnett had heavily qualified as to its representativeness, is an over estimate. Les Hems, the research officer at Aston who undertook the CSO survey and is now Head of Research at NCVO and co-ordinating the current survey, believes the overestimate was caused by the inclusion of many moribund charities on the Charity Commission data base. Hems' current estimate based now on 120,000 active charities is that the income of the charitable sector is £12 billion (Hems 1994).

According to the CSO survey, the total number of active and independent charitable organisations has been greatly overestimated. The 170,000 charities registered with the English Charity Commission was found to have over 27,000 bodies which were subsidiaries of larger charities, while one in five were moribund. The survey identified a 'revised' population of 97,500 charitable organisations, including respective limiting numbers of the 20,000 Scottish and 8,000 Northern Ireland organisations, with charitable status for the UK as a whole.

The CSO survey did, however, confirm that the size profile (based on income) of charitable organisations is heavily skewed to the largest organisations. In 1990 only 9% of all charities had incomes of £100,000 or more, but this minority accounted for 89% of total income. Legacy income was, as has often been speculated, primarily the preserve of some well known large charities.

The Income Profile according to the CSO survey of the Charity Sector was distributed as follows:

Income	1990	1991
	%	%
Sales of Goods & Services to:	39.0	40.4
Non-charitable companies	4.8	5.0
Voluntary bodies	1.5	1.7
Government	10.9	11.1
Persons	21.8	22.5
Grants, Donations & Core & General Funding:	37.7	36.3
Non-charitable companies	4.1	3.8
Charities' trading companies	0.9	1.3
Voluntary bodies	6.4	5.5
Government	13.0	13.2
Payments from overseas persons	0.9 12.2	1.0 11.5
Legacies	6.2	6.6
Investment Income	16.0	15.4
Disposals	1.2	1.4
<b>Total</b>	<b>100</b>	<b>100</b>

The CAF statistics, however, do provide a very clear picture of the larger charities and most importantly, as they are into their sixteenth year, trends of the sector. With the arrival of the Henderson Guide, there is also the ability to cross check. Though as both use different analytical methods, financial years etc, comparison does require some re-working of figures. The definitional problem as evidenced by their respective listings of the top ten charities by income for 1992/93, is still the major problem.

According to CAF the ten charities with the highest total income were:

Charity	Total Income £000
National Trust	132,355
Nuffield Nursing Homes Trust	106,580
Save the Children Fund	99,603
Barnardos	75,540
Oxfam	73,296
Salvation Army	64,495
RNLI	63,206
British Red Cross Society	60,702
Spastics Society	56,039
Imperial Cancer Research Fund	53,039

Excluded from this list, as CAF assembles this table from fund raisers, is the Wellcome Foundation, which had a total income of £124.7 million and therefore would rank second. The CAF income for Wellcome is for 1992 whereas the Henderson figure below is for 1993. On Nuffield, the two have the same year end of 1992 and agree. The next highest grant maker was the Tudor Trust, with an income, of £21,695,000, and therefore is well down both organisation's lists.

However, according to Henderson the top ten charities by income were:

Charity	Total Income £m
British Council	414
Church Commissioners for England	257
Arts Council of Great Britain	223
Wellcome Trust	199
National Trust	120

Save the Children Fund	113
Nuffield Nursing Homes Trust	107
Construction Industry Training Board	105
British Library	96.4
Independent Living Fund	92.1

Oxfam and Barnardos appear as 11 and 12 respectively in the Henderson Guide. The discrepancy of the two guides further illustrates the dilemma of a lack of a consistent definition of the sector. Therefore, great care must be taken in using statistics to understand the sector.

## 2.11 CONCLUSION.

The absence of a clear definition has multiple implications both in understanding the sector and for the purposes of this study. How do you develop appropriate policies for regulation if you can not define or estimate the size of the sector and institutions you wish to regulate? We have reviewed the major definitional contributions and concluded that the current Johns Hopkins University comparative study provides the most comprehensive description that accounts for international cultural differences to date. The absence of a relative body of philosophical knowledge of the sector is particularly highlighted by the absence of any major critical theorists attention to the voluntary sector and the lack of comment on the Billis (1993) ambiguity hypothesis.

We may be seen to have portrayed a dismissive portrait of charity study. There is, however, some clear indications that this area of study neglected for so long will see change. Internationally, the development of the ISTR and the Johns Hopkins study. In the UK, the commissioning by the CSO of surveys on the sector. The CSO interest is of paramount importance in recognition by government of a separate sector for its economic statistics. The failure of international governments ( Salamon 1993, Knapp 1993) to record the sector

as a distinct sphere of economic activity has undoubtedly been one of the major disadvantages the sector has had as a field for research with a lack of official statistics.

Academically there is a growing interest in the sector by senior professors (Deakin 1991,1993,1994a,1994b, Gambling and Jones 1990,1993). The possibility of an ESRC funded 'collegiate' forum for voluntary sector studies, which would interact the current contributors with the impact of new centres devoted to voluntary sector studies (Aston, City and South Bank Universities), offer exciting prospects for University based study of the voluntary sector to move mainstream. As this activity increases the number of academics interested in the voluntary sector, which has already seen dramatic growth, should further increase. The development of 'voluntary sector' scholars as the masters and doctorate programmes of the LSE, Aston, City, Leeds, East London and South Bank mature will begin to counter the lost years of academic study on the voluntary sector.

The NCVO's new commission on the future of charity, includes as part of its brief, to review charity law. This stimulus for reform to have a proper modern legal definition of charity must be welcomed but also it must be ambitious. Such reform must address issues of political freedom and tax privileges. The lawyer, E Blake Bromley, imaginatively describes what that outcome must be, noting that the determination of such a law must not just be left to the lawyers, he writes:

"A combination of the best of the common law and civilian legal systems is necessary to overcome the cultural, legal and fiscal challenges in establishing a brave new legal infrastructure for the third sector. The civil code needs to recover some of its inductive legal heritage found in Roman law. It will be necessary to have a new interpretative body to shape and guide its further evolution. Common lawyers can bring a

rich heritage of case law and precedent which should inform the development of the law; but should not allow any outdated and narrow traditions to hamper creative initiatives in new directions. Civilians can bring the simple elegant expression of noble principles which should articulate the law; but should not let deductive interpretations deny the potential of inductive reasoning to produce a law more responsive to indigenous realities and values. Tax authorities can bring harsh fiscal realities into the process; but should not allow economic considerations to suffocate or supplant the altruistic impulse. Religious and public policy authorities can speak to values issues; but must not let their proclivity towards excessively sectarian or politically correct positions distort policy." (Blake Bromley, 1994 p38)

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### CHAPTER 3. - SETTING THE SCENE

In this chapter we review the 'spirit of charity' (Cole 1945b) and its relationship to the state as a separate sector in society. This involves a multi-disciplinary analysis incorporating aspects of social policy through historical, political, economic and sociological theoretical perspectives. We explore and reject the proposition that charity is naturally a conservative form of action (Gerard 1983). We critically review the development of the welfare state and the consensus of statutory delivery. Finally, we assess the development of the 'mixed economy' of welfare to 1994 and the current problems of the voluntary sector.

#### 3.1 RELIGIOUS BEGINNINGS.

In chapter one we discussed religious contributions to our understanding of a definition of a charity. We established the importance of religion to charity both historically and statistically in terms of economic size. We also alluded to the political importance that religion still has on charity, by the reference to it in the Government White Paper of 1989 (Home Office 1989) which led to the 1992 Charities Act. A review of the parliamentary debates for the 1960 Charity Act reveals the concerns for religion - of the nine sittings of the House of Lords Committee, all mention religion; the third sitting on the 31 May 1960, debates the independence of religion from state regulation. It is also interesting to note in contrast that in their Lordships sittings in 1960, accounts were never mentioned.

The debate in the House of Commons in 1960 opened by the Home Secretary R A Butler, gives a very clear picture of the decline of the church and in particular the authority of the ecclesiastical courts as a regulatory body.

"In the Middle Ages the Church laid stress on giving by the rich for the benefit of the poor as a christian duty and means of salvation. Indeed, the church undertook to distribute benefits on behalf of those who could not do so in person because they had left this world for another....In Tudor times the state took over from the Church the enforcement of the founders intentions." (Butler 1960 409/410)

A more forthright announcement was made in the 1992 Charity Act debate by Lord Houghton on describing the origin of what he termed the 'charity industry':

" It began with Henry VIII when he dissolved the monasteries... the relief of the poor moved from churches to the charities and that is the origin of our charitable movement" (Houghton 1992 371).

Tigar (1977 p204) describes the seizure of the monasteries by the Tudor Monarchy, which was in serious financial trouble following the collapse of the wool trade. The annual income from ecclesiastical property was estimated at £200,000 by the commission established by the Tudor Monarch. The commission also listed scandals and maladministration leading Simon Fish to urge for the seizure of all church property, which was then estimated to be worth a third of the Kingdoms wealth. In response Thomas Moore echoed a plea for the poor, that was to be an accurate foresight of what was to come and establish Lord Houghton's industry:

"But now to the poor beggars: what remedy findeth their proctor for them? To make hospitals? Nay, ware of that! Thereof he will none in no wise. For thereof, he saith, the more the worse, because they be profitable to priests. What remedy then? Give them any money? Nay, nay, not a groat. What other things then?...[L]et him give nothing to them, but look what the clergy hath, and take all that from them. Is not this a royal feast, to leave these beggars meatless, and then send more to dinner to them?" (Tigar, 1977 p207)

As Tigar explains, the assumption by the radical anti-Catholics had assumed that the Church-maintained schools, hospitals and other charitable institutions would continue under royal auspices. Church lands would be redistributed or let at reasonable rents. This did not happen, instead:

"The lands, as we have seen, passed into the hands of the bourgeoisie. The Hospitals and other institutions were replaced by jails and workhouses designed to encourage the peasantry, driven off the land, to enter the force of wage-labourers." (Tigar, 1977 p208)

Morton's Utopia (1969), which describes the development of English literature, social and political thought from a Marxist perspective portrays these times within the context of momentous changes in economic ownership and social relations:

"The breaking up of the medieval village commune emancipated the serf, but it also destroyed the very basis of his security: in freeing him from his attachment to the soil it created the conditions under which he could be driven off the soil altogether. The creation of a free peasantry implies the development of an economy based on simple commodity production, and this in turn implies the creation of a new kind of landowner, whose power was not based on the multitude of his dependents but on the amount of cash profit he could extract from his estates." (Morton 1969 p47)

Sir Thomas Moore's work 'Utopia' provides the clearest description of the suffering which resulted:

"Therefore that one covetous and unsatiabie cormaurante and very plague of his native contrey maye compasse about and inclose many thousand of akers of grounde together within one pale or hedge, the husband be thrust owte of their owne, or else either by coveyne and fraude, or violent oppression they are put besydes it... by one meanes therefore or by another, either by hooke or crooke they must

needes depart awaye, poore, silly, wretched soules, men, women, husbands, wives, fatherless children, widows, woefull mothers, with their yonge babes...Away they trudge, I say, out of their knowen and accustomed houses, fyndyng no place to rest in...And when they have wandered abroad tyll [all] all be spent, what then can they else doo but steale, and then justly pardy be hanged, or els go about a-beggyng" (Morton, 1969 p48).

A suffering that Moore predicted would not be relieved with the dissolution of the monasteries, left a vacuum in the provision of relief. It is the filling of this vacuum that led to the respective passing of the poor law and the emergence of charity through the Statute of Charitable Uses in 1601. As Kendall and Knapp depict:

"The formalization of philanthropy began in earnest with the Elizabethan Statute of Charitable Uses in 1601. Passed in the wake of the religious upheaval of the Reformation, it marked the beginnings of the secularization of philanthropy (Ware 1989), but in common with the Poor Law passed in the same year, it was also a response to the economic and social upheaval of the period, including the emergence of a class of landless and indigent people." (Kendall and Knapp, 1993 p2)

### 3.2 STATE ENCOURAGEMENT OF CHARITY.

Ware (1989) argues that the reformation marks the point in time from which charity effectively became an agent of the state in social policy:

"...for centuries, charities in Britain have been used as agents of public policy. Until the Reformation charity was largely administered by organisations of the Roman Catholic Church (a Church which claimed a governmental as well as spiritual role), but in later-Tudor England the state bolstered charities as a way of ameliorating the impact of extensive upheaval in the economy. The statute of 1601 was the culmination of these developments. As is argued in Chapter 9, the purpose of this legislation

was to grant privileges to certain kinds of charities, and to provide a means of supervising them, to ensure the effective implementation of the state's social policy, particularly in relation to Poor Laws enacted several years earlier." (Ware, 1989 p16)

Benedict Nightingale is more forthright on the use of charity by the Tudor Monarchs. Using Jordan's (Jordan 1958) monumental work - *Philanthropy in England 1480-1660* as his principal source - he writes:

"The Tudor monarchs, well aware that poverty and vagabondage could create civil disorder, encouraged charity in order to buy off trouble. The merchants and gentry were made to understand what was expected of them, in church as well as outside. From about 1540 there was a 'drumfire of exhortation' in contemporary sermons: formal reminder became fierce injunction, social irresponsibility was denounced, and men were urged to shame Rome by showing how generous a reformed Church could be. The good opinion of his peers, enduring good works and (of course) treasure in heaven was promised to the rich merchants who gave well." (Nightingale 1973 p107)

Professor Jordan's work since publication in 1958 is the authoritative work on the period from 1480 to 1660. The book's 387 pages, including detailed appendices of charitable giving from 1490 to 1660 (p367), combines meticulous statistics of the period culled from parish registers to a political and economic analysis of the middle ages. Jordan was President of Radcliffe College and Professor of History at Harvard University. His Colleague as Gurney Professor of History and Political Science at Harvard was David Owen whose own monumental study of 610 pages '*English Philanthropy 1660-1960*', begins where Jordan ends and continues to the 1960 Charity Act. Both Professors undertook their studies on sabbatical leave in the 1950s and it is an illustration

of the impoverishment of British historical academic study of the charitable sector since the 1960s, that they were the only two authoritative historical texts until 1994 saw the publication of Findlayson's(1994) book with a focus on charity from 1839 -1990. The principal British books on the charitable sector from Nightingale in the 1970s, through Gerard(1983), Brenton(1985), Ware (1989) to Knight (1993), provide some form of historical perspective, all use Jordan and particularly Owen's work as their principal sources.

Stimulated by the 'Voluntary Action History Society' there is now emerging a rediscovery by British Historians of charity history. However, with the exception of Findlayson (1994) for the latter period no modern authoritative charity texts have been published. I have, therefore, used Jordan and particularly Owen as my primary historical sources for the overall perspective. For specific events I have either gone to the original reference for example the Hansard, the Brougham Commissioners Reports at the Charity Commission, the Nathan Report (1952); used references that pre-date Jordan and Owen notably Beveridge (1948,1949), Cole (1945), Rooff(1957); academic works that have not used these sources, notably North American academics Tigar(1977), and Lloyd (1986).

The lack of a contemporary British historical charity literature is perhaps a reflection of the image of the voluntary sector as being unimportant until recently (Smith 1993). A tragedy when there was until the 1940s a grouping of university voluntary action academics (Bourdillon 1945). In my opinion, it is Lord Beveridge (1948) pre-dating Jordan by ten years, who best encapsulates the Tudor period, linking changes in social policy with a political and economic analysis of the time, as the following extract from his chapter on

charitable trusts illustrates:

"The Elizabethan Statute on Charitable Uses is a starting-point because it marks a turning point in national policy. Til the Reformation was felt to be secure there had been a division of views as to charitable endowments. Parliament had feared such endowments as tending to get land into the dead hand of institutions, some of which might be openly or secretly devoted to "superstitious" that is to say Catholic,uses. The Ecclesiastical Courts, on the other hand, which then dealt with wills, favoured bequests for charitable objects, which in many cases put money into the hands of religious foundations. By the forty-third year of Elizabeth, the Reformation was felt to be safe. At the same time the great economic and social changes of the sixteenth century and the threats of war from abroad made it desirable to encourage charity. The Statute of Elizabeth on Charitable Uses was passed at practically the same moment as the Statute for Relief of the Poor and formed part of a concerted social programme for dealing with urgent problems of transition. In future the rich were to be encouraged to give of their superfluity, and so to relieve the payers of rates and taxes." (Beveridge 1948 p187-8)

In 1985, a more generous view of Elizabethan philanthropy was offered by the then Chief Charity Commissioner, Denis Peach:

"The need for increasing state intervention to stem the rising poverty led the Elizabethan middle class of urban merchants and rural gentry to devote a greater proportion of money to socially useful causes, particularly education and the provision of accommodation for the aged poor, rather than the purely ecclesiastical endowments and chantry chapels of earlier times." (Davis, 1985 p41)

### 3.3 MOTIVES FOR GIVING.

Undoubtedly there were those who fit the philanthropy model of giving perhaps best described in the twentieth century by Richard Titmuss (1970) in the Gift

## Relationship:

"In 'The Gift Relationship' Titmuss sought to demonstrate the inter-relationship of social structure, human nature and moral behaviour. He argued that in industrial societies there was a far greater scope for gift relationships than had previously been recognised and that citizens possess considerable potentialities for altruistic behaviour of that kind which can be either nurtured or destroyed under the influence of the dominant values of their society. Titmuss chose blood donorship as his test case because it goes beyond the limitations of family, community and class to encompass the universal stranger, and it is in our treatment of the universal stranger that altruism finds its true and fullest expression." ( Reisman, 1977 pix)

Others, however, are not so well motivated, requiring encouragement or a more complex motive, which Owen describes as:

"the tradition of noblesse oblige, a notion, however rudimentary, of richness oblige... what the age expected of them." (Owen 1965 p16).

A complexity of philanthropy which can be illustrated by the motives of Thomas Coram, the founder of the Foundling Hospital in the seventeenth century:

"Captain Coram, himself a former sea captain who had caught the vision of a great overseas empire, saw his Foundling Hospital as a potential source of artisans for the colonies." (Owen 1965 p15).

However, one must be careful in applying such nonchalant motives to the understanding of philanthropy. The Fund Raiser Redmond Mullin (1995) has recently completed a book with a section on the history of Fund Raising from early Christian times, and provides different criteria:

"My positive point is that, for most funders, their financial backing of a cause is the only way they can participate in service, share in the vision, ideals and mission of the service-provider. Fundraising entails a sharing of values." (Mullin, 1995 p35)

The exhortations to give to charity by prominent persons today - royalty, politicians, business people and show business personalities combined with various fiscal incentives provided by the Conservative Government from the 1980s, can be directly compared to the similar pleadings of the Tudors and Stuarts:

"Before the opening of the period with which this book has to do, English charity had already taken on the dignity of a national tradition. To the formation of this tradition, Jordan suggests, a good many factors had contributed - among them the Protestant social ethic, a new sense of national consciousness and national obligation, a pervasive desire to emulate the charitable acts of others... To give or leave something to the community... came to be expected of the more prosperous Englishman. By the early seventeenth century, Professor Jordan asserts, "the failure of a London merchant to settle some substantial and conspicuous charitable trust or gift was generally regarded as little short of shocking unless there had been a grievous wasting of the estate because of age, ill-health, or commercial misfortune." (Owen, 1965 p2)

A profile of public giving problems in the 1700's and the 1990's would seem very similar. For example, the popularity of some charitable causes over others (Mullin 1995), problems of fund raising events (Bruce 1994) and whether the public give enough, (Brophy 1989). Concerns over fund raising events and financial problems in the 1700s, which lead to contraction of activities are all chronicled by Owen (1965). Hospitals for example were declining in popularity, while donations for those caught by the barbary states were extremely fashionable:

"Apparently hospitals had lost some of the appeal they had held for charitable donors earlier in the century....when the new London Hospital building in Whitechapel opened its doors in 1757, it contained only 161 beds instead of the 350 originally planned, and by 1785 financial pressure was such that six wards with sixty five beds had to be closed" (Owen, 1965 p49)

The financial problems of domestic charities in contrast to the popularity for victims of foreign problems. In 1721, after a treaty with Morocco some 280 persons were returned to England. A ceremony to raise funds for them was held at St Pauls, which Owen (1965 p65) chronicles was so popular that the collection became a disaster and only a small amount of funds were raised.

The principal instrument of donations from the Tudor period was the Charitable Trust (Jordan 1958). While the Trust organisational format was well established, its popularity was encouraged as a means of giving by Elizabeth, who by clarifying its legal status was able to facilitate giving by the wealthy, thus providing the legislative element to its social policy:

"No doubt, by clarifying the legal status of disposition to charity and by stressing the benevolent interests of the public authorities, Elizabeth had something to do with the amazing outpouring of wealth for public purposes that marked the first four decades of the century."  
(Owen, 1965 p71)

In reviewing the preamble to the Statute of Charitable Uses, 1601 it is illustrative to note some of the causes that were deemed as charitable, for example 'maimed soldiers and mariners' clearly reflected the problems following constant wars with Catholic Spain. As Gerard writes:

"In summary, the 1601 statute reflected the

preoccupations of the draftsman of the social legislation of the Tudor period with social unrest, vagrancy and potential disorder. It followed a decade fraught with violence, famine and food riots, and coincided with the comprehensive new Poor Law legislation." (Gerard, 1983 p51-52)

To conclude this section, the establishment of 'modern charity' was primarily due to positive action by the State (Jordan 1958 p98-108). In the absence of any conceivable alternative, after the dissolution of the Catholic Church, the state encouraged charity to meet a crisis which had arisen. A crisis precipitated by the change from a feudal economic system to an emerging capitalist system.

It would be misleading, however, to portray this period as an unfettered rise of charity. In 1736, the passing of the 'Mortmain Act' demonstrated that charity was not entirely popular and the state had a preferred cause over charity - the retention of private wealth through inheritance. The Mortmain Act of 1736 concerned the rights of protecting legal heirs. As a Magazine of that year explained:

" the mistaken Charity of men, who, in such circumstances are apt to hope to compound for the faults of their past life by a fine to be paid by their heirs to some use which they call a religious one." ( Owen, 1965 p87)

### **3.4 THE STATE'S ROLE.**

While the Tudors had encouraged charity to provide a whole host of services, they had not left it completely to charity. Lord Beveridge (1948) saw the statutes of Elizabeth in 1601 being a co-ordinated programme, as he footnoted:

"The Poor Law is cited officially as 43 Eliz., c2; the Statute of Charitable Uses is 43 Eliz., C4. The one intervening Statute, 43 Eliz., c.3, was part of the same programme. It provided for the necessary relief of soldiers and mariners left stranded out of the wars." (Beveridge, 1948 p188)

As Roofff (1957) explains:

"...the Elizabethan Statute of Poor Relief issued together with the Statute of Charitable Uses in 1601, to see that, while statutory responsibility was accepted for the relief of the poor, charity continued to offer assistance to 'aged impotent and poor people'. There was no clear distinction between public and private sources of help. The difference was largely one of range and scope, the voluntary funds serving a greater variety of purposes, whether meeting disastrous situations, providing dowries for poor maids or promoting the education of scholars." (Rooff, 1957 p3)

From the commencement of 'modern charity' a binary system for social welfare was developed, partly as Jordan (1958) explains because it was seen as a form of insurance against social unrest:

"The law, the use of the taxing power, was regarded, so to speak, as a kind of co-insurance against social disaster in the event the economy was overwhelmed by forces too powerful and too abrupt for private charity to master. It was the lively fear that such a period of disaster might be at hand which evoked the legislation of 1597 and which was to result in its first considerable enforcement about a generation later. But there remained the confidence that private charity, with its rapidly mounting resources, could not only bear the burdens of the society in normal times but could raise the level of opportunity throughout the realm so that poverty itself might be prevented. Accordingly, every encouragement was lent by the state through the whole course of the century to properly defined almsgiving, and a second great mechanism of social progress was gradually evolved in the shape of the charitable trust. It is most significant that

the statute codifying and extending the legal meaning of charitable trusts was passed in the same year as the poor law. They were conjoined in the thinking of the legislature just as they were in the thinking of the community of the realm." ( Jordan, 1958 p108)

The respective relationship between state and charity from the onset was established as the state providing the absolute minimum, with charity intended as the principal focus of services. This was to be the pattern of delivery until the advent of the 20th century, and particularly after the second world war to 1979 when this hegemony was seriously challenged. The Nathan Committee, as we explore later in this chapter, observed that the 19th Century was the last great attempt to establish a universal system of welfare based on charities (Nathan 1952 par 44). The role of the respective relationship of state to charity is of course part of a much wider philosophical debate of the role of the state to the individual. A debate that is not unique to Britain, as Young articulates:

"Since de Tocqueville's time, the vitality of the American democracy and economy has been seen to lie in the diversity of its economic and political system, owing in part to the ability of citizens to organize themselves on a private, voluntary basis." ( Young, 1983 p14)

The very nature of the charitable sector is therefore inextricably linked to how much of a role should the state play. As Rooff(1957) articulates on the dilemma for individualists who wish to see a minimum of state action:

"The two conflicting forces, a political theory which seemed to support the natural inclination of men to busy themselves with their own affairs and let others be and the stress of circumstances which called for spontaneous activity on behalf of those in need, had a strong influence on the development of voluntary organisations and social policy in

the 19th Century and on the relation between private and public action in the 20th." (Rooff, 1957 p4)

The impact of a minimalist role for the state was articulated notably by Thomas Malthus. His theory on population growth was published in 1798. The authority of Malthus at the beginning of the nineteenth century was immense as his population theory was widely accepted (Harvey 1983 p503). Owen portrays Malthus' importance on what should be the role of charity in the early 19th Century:

"..the views of Malthus are instructive and influential. His proposal for the gradual abolition of statutory provision for the poor assumed a substantial flow of private charity for their relief" (Owen, 1965 p98).

An importance which Rooff describes as shifting the focus of charity and what the purpose of state relief should be:

"..humanists and philanthropists were caught up in controversy, when charity was uncertain of its aims, and the Poor Law, dominated by the Malthusian theory of population was administered as a disciplinary measure rather than as an instrument for relief." (Rooff, 1957 p3)

The subsequent misgiving charity held by some socialists, notably articulated by Aneurin Bevan (Foot 1972), the advent of a welfare state and the subsequent social policy of the Thatcher Government are moulded by the debates of the 19th Century. A debate between laissez-faire minimalists at one extreme, through to liberals and the emergence of a socialist philosophy committed to state intervention and universal services. Nor are these debates historic. The debate was articulated in the UK in the mid 1970's between the 'right reformists' led politically by Margaret Thatcher and the 'left

reformists' led politically by Tony Benn, with a programme:

"... for large scale nationalisations, compulsory planning agreements and import controls." (Harrison, 1978 p151)

Or as Brenton states on the 'new right's' view of the voluntary sector:

"It can be seen as human a-political small in scale and cheap alternative to our over-developed social services as a means of returning responsibility and freedom to the individual and the community who have become over dependent on the Nanny state." (Brenton, 1985 p2)

The Webbs' v Charity Organisation Society (COS) debates of the late 19th Century have been well chronicled (Brenton 1985, Cole 1945, Fraser 1976, Nightingale 1973, Owen 1965). The COS represented the minimalist role of the state but promoted an efficient network of services, to be provided by Charities. The Webbs on the other side, proposed a universal welfare of services funded and provided by the state, with a supportive role for the charity sector. It is an ironical misinterpretation of the Webbs' view that they were opposed to charity. They were not, what they opposed was the current operation of the 'Poor Law'. The irony was that the poor law was, and had always been, a statutory service. The Webb's antithesis to charity was as long as charity was placed in a hierarchy above the poor law then no reform of the poor law could take place. The personalities of the time should be considered as well. In the 1990s, given the size of academic communities where one sometimes does not know the names of colleagues in the same University, the Webbs and their opponents knew each other personally. The force of such strong individual personalities and convictions would not have facilitated an objective

debate. Cole succinctly summarises both the micro debate on the role of the voluntary sector with the wider political issues:

"The immediate issue between the contestants can be summed up unemotionally as involving the scope and limit of state action on the one hand and voluntary charity on the other. But behind it lay of course, the wider issue between the two conceptions of society. The socialists wanted to destroy the class system; the Charity Organisers, however, benevolent wanted to preserve it. The question between them was not really limited to one of state versus private social services, it involved the wider issue of socialism versus capitalism fought out in a particular field. While the combatants were in this mood the question whether certain things could be best done by the state, and certain others by voluntary societies could never be faced in any objective spirit. It was all or nothing, for both sides; and any sort of accommodation would have been regarded as treason to the one or other cause." ( Cole, 1945a p20)

To conclude, charity cannot be divorced from the state and social policy. The advent of modern charity was in response to a serious economic and political crisis which required the state to take action. Its response was a 'mixed economy of care' with the state providing a minimum level to avoid starvation. The role of charity was widened and developed to provide a multiplicity of services that would enable specific groups in society to improve themselves and specific problems to be met. In the latter part of the 19th Century the efficiency of charity to deliver welfare was questioned. This efficiency debate polarised into two distinct camps. One side was for charity to be the major service provider, the other for greater intervention by the state. The latter camp led by the Fabian socialists we contend has led to the false impression that charity is a conservative philosophy for welfare.

### 3.5 CHARITY AS A CONSERVATIVE PHILOSOPHY?

Professor Cole's (1945a) statement that neither side in the latter half of the 19th century would not consider the others argument, is still relevant today. As long as socialists believe charity is a politically conservative form of social welfare delivery, there can be no constructive debate on what should be the role for charity. We present a discussion in this section which argues that the 'conservative' image of charity is mistaken. While there is a historical foundation to the conservative image, this has been a 'hijacking' of what Cole (1945b) has termed the 'spirit of charity'. Charity or voluntary action can be equally an expression of working class solidarity and self help.

Gerard (1983) provides a conceptual framework to understand voluntary organisations. He classifies two models which he calls 'social order' and 'social change'. The 'order' group he suggests is characterised by a consensus view of society. Order organisations will be conservative in outlook and will emphasise:

" ..authority, hierarchy, equity, compassion and freedom". (Gerard 1983 p35)

Organisations who fit into his model based on 'change' will be characterised by:

"moral relativism, viewing 'good' as dependent on circumstances and will favour change, pluralism and differentiation. It will emphasise secular and material, rather than spiritual, values and will be concerned to identify with those in need. It will be reformist or radical in its view of society and more likely to emphasise democracy, participation, equality, tolerance and individual rights." (Gerard, 1983 p35)

Gerard has produced a useful model to understand the

respective dynamics of voluntary organisations. A paragon which can be extremely useful when applied to understanding the distinctive management problems of the voluntary sector, for example the differences between managing 'War on Want' a relatively small charity with a high profile, centrally controlled politically left and the British Red Cross, a very large charity, with numerous branches throughout the country trying to maintain an independence of politics.

Unfortunately, Gerard goes on to classify his respective organisations in relation to legislative forms instead of applying them to a segmented hypothesis of the charitable sector. He postulates:

"The law of charity, however, being developed to operationalism the norm of beneficence is particularly appropriate to the social-order model of organisations. It recognises and sustains the religious and moral values associated with the model and the conservative view-of-society which accompanies it. It finds it difficult to accommodate the social-change model of organisation based on the norm of solidarity and the reformist, activist method of operation associated with it. Hence, the problems of agencies devoted to social-change which seek to qualify for the privileges of charity whilst rejecting the operational restrictions and perspectives which accompany the definition of charity in law." (Gerard, 1983 p37)

Gerard's image of charity as an inherently conservative concept, we believe is mistaken. We have dealt with his reference to the discomfiture of agencies devoted to social change in the first chapter on political activities. We examined the enshrined freedom of charity to be involved in political activity. From our interview with the 1980s Chief Charity Commissioner, Denis Peach (1994) we noted his view that the lack of a legal definition for charity has to date facilitated 'social change' organisations. This perception of conservatism,

derives primarily from the 19th Century abuses, rather than in Cole's(1945b) spirit of charity:

"The working class movement has... in particular painful memories of the abuse of the spirit of charity." (Cole 1945b,p131)

The abuse of charity was developed in the 19th Century, against a background of terrible social deprivation. In his monumental history of the English working class, the historian E P Thompson, chides his fellow historians for tending to ignore this awful chapter of English domestic history by their reference to improvements in overall wealth of the nation and excusing poverty with reference to wars. The reality, Thompson suggests was devastating misery caused by exploitation by unscrupulous factory owners and landlords(Thompson,1974) .

Direct intervention by the state was seen as the only alternative both by those who supported the emergence of a new political philosophy challenging the whole basis of that society and those who while rejecting the revolutionary aspects of Marxism wished to see radical reform (Pelling, 1965):

"Many from Dickens to Bagehot, from Spencer to the Webbs, were sceptical about charity and the charitable, for their different reasons. On the one hand, there was wasteful management by well-meaning do-gooders; and hence the need for a Charity Organisation Society. On the other, the Charity Organisation Society itself became synonymous with much that was grudging, callous, dogmatic and reactionary. Its support was wide; but it may perhaps be seen as the protestant capitalist's compromise with a conscience that told him that, alas, charity could not be rejected with impunity. It was charity made businesslike; the businessman's attempt to impose middle-class ethics on the working class, and make its members as industrious and thrifty as he.

The emergent socialists, in turn, mistrusted both this utilitarian, quasi-scientific approach and its sentimental opponents, the 'soft-hearted people', in Canon Barnett's words, by whose generosity 'a state of things to make one's heart bleed is perpetuated'. Charity delayed social progress; it was the expression of an unjust society, an attempt to conceal its real nature. Beatrice Webb thought it 'twice cursed, it curseth him that gives and him that takes'; Shaw declared that 'he who gives money he has not earned is generous with other people's labour; and even Wilde argued in his under-rated 'Soul of Man Under Socialism' that it was 'immoral to use private property to alleviate the horrible evils that result from the institution of private property'." (Nightingale 1973 p111)

It is our contention that there is another origin in the 19th Century of charitable and voluntary sector activity. Based in self help activity by the working class, women and disabled people that can be directly correlated to what Knight refers to as 'New horizons' describing the developments in the 1960's and to date of voluntary action re-energised based on self help and determination (Knight, 1993 p23). We review this additional tress of charity in section 2.8 'Rediscovering Charity'.

Cole's (1945b) 'spirit of charity' based upon philanthropic motives has no link with respective party politics. A 'Philanthropic motive' for Lord Beveridge was a:

"desire by one's personal action to make life happier for others." (Beveridge, 1948 p121).

Tudor interprets charity as:

"In its widest sense, the word charity denotes all the good affections that men ought to bear towards each other." (Maurice and Parker, 1984 p1)

Blake Bromley(1994) describes Charity:

"Charity is a universal voluntary expression of a human being's compassion for another who is less fortunate and a citizen's desire to build a better society." (Blake Bromley, 1994 p6).

Actions and affections that were raised by Titmuss (1970) in his book on blood donation:

"Men are not born to give;as newcomers they face none of the dilemmas of altruism and self-love. How can they and how do they learn to give - and give to unnamed strangers irrespective of race, religion or colour - not in circumstances of shared misery but in societies continually multiplying new desires and syndicalist private wants concerned with property, status and power?" (Titmuss, 1970 p12)

The donation of one's blood, unpaid to the British Blood Bank is probably the ultimate altruistic behaviour - there is no gain and the ultimate recipient is unknown. Ware (1989,p14) draws a distinction between two different types of altruism. One type he calls 'personal' and with this, an obligation is formed between the recipient and the donor. It is this 'personal' altruism that was adopted by the COS and which has led to many of the image problems of charity. For it can create a dependency and thereby power by the donor over the recipient. The other type of altruism is referred to as 'impersonal' and subscribes to Titmuss's blood donor.

There are of course other more base reasons for philanthropy, whether to avoid eternal damnation to pragmatic political and personal considerations. The challenge of Titmuss's paper was the very questioning of:

"Why should men not contract out of the social and act to

their own immediate advantage?" (Titmuss 1970 p11) - a question that has been termed 'the paradox of giving' (Forder and Kendall,1993,p6). Another example Titmuss could have used would be the rationale of people who volunteer in the Lifeboat service. The volunteers, who in all weathers and irrespective of who is on the ship they are going out to rescue, risk their lives.

This problem challenges the fundamental economic theory of wealth maximisation and has led to the generation of considerable debate by economists who have interested themselves in non-profits (Steinberg and Gray 1993; Rose-Ackerman 1990; James 1990; Knapp 1990; Weisbrod 1988; Hansmann 1980, 1987). Some economists have attempted to explain this paradox by explanation of rationality, that most people do not try to maximise their income or assets, as they have a substitution satisfaction. Other rational explanations have focused on a theory of 'utility' or private benefit incentives, particularly giving by companies. A third and probably the most authoritative approach has been an explanation by Hansmann of nondistribution constraint. Steinberg and Gray(1993) noting that Hansmann's 'The Role of Nonprofit Enterprise'(1980) has been cited over 150 times in the Social Science Citation Index. This market information efficiency perspective has been favourably commented on by two of the most authoritative figures in American finance Fama and Jensen (James 1990; Archer and D'Ambrosio 1983).

Hansmann's(1980) hypothesis is the lack of information about a product will lead consumers who cannot objectively evaluate, to place their trust in organisations which are non-profitmaking. Similarly trust is more likely with staff and managers in non-profit than for-profits. A problem for Hansmann is to accommodate the existence of voluntary non-profits when the government

provides services. Weisbrod(1988) accommodates this problem by his own hypothesis for non-profits existence which he argues have arisen as a consequence of unsatisfied demands(Young 1983). Certain activities are not profitable and the public would not trust for-profit organisations to undertake them:

"Private sector cannot be relied upon to undertake activities such as pollution control, consumer health and safety protection." (Weisbrod, 1988 p5)

The problem for economists however, is how to explain non-selfish behaviour. It is in this arena where the importance of Titmuss's paper in the US particularly by economists has been noted by Weisbrod(1988). Weisbrod further registers that the attitude of US policy makers to for-profit bloodbanks changed to legislation to curtail their activities.

Margolis (1982), suggests that individuals have not one but two 'utility functions'. One is the conventional selfish own needs, the other is for 'group ends'. A rational distribution process occurs with The 'G' focusing on guilt after the 'S' - self needs have been allocated. A variation of this theme has been developed around a sense of duty to give. Based on the Kantian theme of duty, maxims of action and the moral law (Korner 1955,pp130-142). This perspective allows for both individuality of action and an expectation of how others will behave. A moral duty to give as facilitated by church or state.

While these two theories attempt to offer an explanation within economic theory of altruistic behaviour there is yet, according to Forder and Kendall(1993), no substantive empirical evidence to substitute or refute these various hypotheses. They also suggest that

economic theories still appear to be in an early stage of development on why people give. An interesting and still speculative hypothesis has been developed by Knapp and Kendall of some possible links between giving behaviour and proximity to social cohesion (Forder and Kendall, 1993 p13).

Owen (1965, p166) from his analysis on the complexity of Victorian philanthropy describes five very different motives - sympathy and compassion; religion; concern for the stability of society; social pressures and own ambition.

The expression for such action for the Victorians to the present day has been the formation of charitable societies as opposed to charitable trusts to advance a cause (Owen, 1965, p5). The formation of voluntary societies is envisioned by Bourdillon (1945) as follows:

"The habit of forming voluntary organisations for every sort of social purpose is widely spread and deeply rooted in this country. Quite naturally in Britain when a man has a new enthusiasm he buys a twopenny notebook, prints 'Minute Book' carefully on the first page, calls together some of his friends under the name of a committee - and behold a new voluntary society is launched." (Bourdillon, 1945 p1)

The formation of voluntary societies, the obtaining of charitable status where appropriate is in itself neither revolutionary or conservative. It is the purpose to which the founders of such societies determine, which gives them a political flavour. Many of the charitable societies founded in the first half of the 19th Century were there to agitate for change, for intervention by the state for example the Anti-Slavery Society and the 'Ten Hours league'.

The leader of this last organisation, Lord Shaftesbury is

an example of how one individual can be described in relation to charity from different perspectives. Knight describes Shaftesbury as "the greatest of the reformers", apologises for him being an aristocrat by adding "though not a wealthy one" and lists his substantial contribution to factory reform and other issues such as mental health and working class housing. The motive for Shaftesbury's good work? Knight quotes Shaftesbury himself:

"...do what I would, I was called to another career, and now I find myself at the end of a long life, not a philosopher, not an author, but simply an old man who has endeavoured to do his duty in that state of life to which it has pleased God to call him." (Knight 1993 p9-10)

Lord Beveridge's own substantial section on Shaftesbury from which Knight above culled most of his segment, cites the campaigning aspect of Shaftesbury:

"Shaftesbury was continuously associated with legislative action for the improvement of the conditions of the working class." (Beveridge, 1948 p158)

Compare this image of a campaigning philanthropist for the poor against the same Shaftesbury who, as Beveridge also refers, stood as a candidate for the anti-reform party in 1831. Or, as Rooff, who again after praising Shaftesbury, exclaims:

"Shaftesbury stands apart from his contemporaries, however, both in the breadth of his interest and the narrowness of his vision.... He remained to the end an opponent of democracy." (Rooff, 1957 p10)

Shaftesbury was opposed to the reforms requested by the Charity Commission in 1881 and his leadership of the 'Ragged Schools' movement which was paternalistic and kept working class education at the most primary level:

"No one could find much distinction in the education offered by the Ragged Schools. Their problem, as they and some of their critics saw it, was not that of achieving scholastic excellence. It was rather to resist the temptation to social-climbing that has been more or less characteristic of educational institutions. "Stick to the gutter", Shaftesbury exhorted them, and on the whole the Ragged Schools kept the faith. When Children seemed to be rising above the most primitive educational or social level, they were encouraged to transfer to a pay school or to enter some such trade as shoeblacking. Nothing must be allowed to interfere with the missionary and religious purposes of the Union Schools, not even education, as Shaftesbury repeatedly stressed. This was Christian indoctrination of an elementary sort, and it was, in Shaftesbury's view, far preferable to secular learning. In 1870, while the Education Bill was passing through Parliament, he lamented that "the godless, non-Bible system is at hand; and the Ragged Schools, with all their Divine polity, with all their burning and fruitful love for the poor, with all their prayers and harvest for the temporal and eternal welfare of forsaken, heathenish, destitute, sorrowful, and yet innocent children, must perish under this all-conquering march of intellectual power". Conscience of the Victorian Age that he was, friend of the outcast and the downtrodden, Shaftesbury's humanitarianism was unmarred by any democratic taint." (Owen, 1965 p149-150)

The 1870 Education Act which created 'Universal' elementary education is seen by the socialist movement as one of the milestones in the development of the working class. As Cole (1945) describes the paternalism of philanthropy, was never more exemplified than by the ability to learn to read and write. Shaftesbury epitomised the movement that supported literacy only for the purpose of reading the bible and for nothing more. Once the ability to read was provided universally to the working class, the opportunity for organised working class voluntary organisations was increased:

"But now we have reached the point at which

these inferiors begin to play a significant part in looking after themselves and creating associations of their own instead of receiving passively and as individuals the benefactions of the well-to-do." (Cole, 1945 p16)

Shaftesbury also suffers from another misdemeanour in the make-up of the early socialist hatred of the charity philanthropists. The 'bible' for most 'young socialists' is Karl Marx's 'Capital'. Shaftesbury has the dubious honour of being personally vilified by Marx for his opposition to the repeal of the corn laws and his rationale for factory reform:

"The time just before the repeal of the Corn Laws threw new light on the conditions of the agricultural labourers. On the one hand, it was to the interest of the middle-class agitators to prove how little the Corn Laws protected the actual producers of the corn. On the other hand, the industrial bourgeoisie foamed with sullen rage at the denunciations of the factory system by the landed aristocracy, at the pretended sympathy with the woes of the factory operatives, of those utterly corrupt, heartless, and genteel loafers and at their "diplomatic zeal" for factory legislation. It is an old English proverb that "when thieves fall out, honest men come by their own", and, in fact, the noisy, passionate quarrel between the two fractions of the ruling class about the question, which of the two exploited the labourers the more shamefully, was on each hand the midwife of the truth. Earl Shaftesbury, then Lord Ashley, was commander-in-chief in the aristocratic, philanthropic, anti-factory campaign. He was, therefore, in 1845, a favourite subject in the revelations of the 'Morning Chronicle' on the condition of the agricultural labourers. This journal, then the most important liberal organ, sent special commissioners into the agricultural districts, who did not content themselves with mere general descriptions and statistics, but published the names both of the labouring families examined and of their landlords. The following list gives the wages paid in three villages in the neighbourhood of Blandford, Wimborne, and Poole. The villages are the property of Mr G Bankes and of the Earl of Shaftesbury. It will be noted that, just like

Bankes, this "low church pope" this head of English pietists, pockets a great part of the miserable wages of the labourers under the pretext of house-rent." (Marx, 1974 p632)

The above sources all portray a different view of Shaftesbury and by the nature of their divergence also display the problem of understanding philanthropy, which is the heart of charity:

"To classify men's charitable acts into neat categories according to the impulses assumed to have prompted them would be dangerous and absurd. Human behaviour rarely exhibits such helpful sightedness of motive." (Owen, 1965 p36)

To dismiss the motives of Shaftesbury and other philanthropists as being driven by some belief of self interest or preservation is too simplistic. They were few and completely estranged from the dominant philosophy of the day of Utilitarianism and Self Help as portrayed by Jeremy Bentham and Samuel Smiles:

"Until the 1870's individualism dominated thought and Laissez-Faire was widely accepted as the proper role of the state....The indifference of a society dominated by laissez-faire was broken into by the vigorous and the persistent enterprise of the few." (Rooff, 1957 p6)

The origin of suspicion to down right hostility of charity from the labour movement can be dated from the 19th century with the emergence of an urban working class.

"Nevertheless, when every caution has been made, the outstanding fact of the period between 1790 and 1830 is the formation of 'the working class'." (Thompson 1974, p212)

A number of different themes against charity developed. We have from Marx a rejection of the whole capitalist system, his empirical research on the condition of the working class both highlighted the inhuman nature of capitalism and to demonstrate that working class agitation in alliances could obtain some social progress. Such alliances the working class needed to be aware were single issues and were motivated by others own interest. In the case of factory reform the alliance was clearly, for Marx in the interests of the landed aristocracy against those of the middle class. A battle between the two that had been raging with the ending of the feudal system (Jordan 1958; Tigar 1977; Mishra 1979). For a Marxist analysis based on an historic critique of the rise and fall of societies, charity is seen as a product of a market society:

"the middle-class society is likely to develop a 'residual' system of welfare. In the early stages of industrialisation neither state nor enterprise welfare is favoured. Instead, friendly societies, voluntary organisations, charities and market responses to the various problems and needs are encouraged." (Mishra, 1979 p35)

A second theme has been developed by Cole (1945a) for the antithesis of charity to socialists. This second theme is the provision of universal services over ad-hoc services. Universal provision being the nucleus of the traditional left, Labour Party approach to welfare services. Michael Foote's biography of Aneurin Bevan(Foote 1972) provides a clear insight into the dismissing of charitable services in favour of universal services 'as of right' being the core of Bevan's belief. The debate for the 'labour side' was led by the Webbs, who had a major influence on the 'social democratic' side of the labour movement as Marx had for the socialists(Pelling 1965). The debates in the latter half of the 19th Century were divided between the Webbs arguing for a view of

universal welfare services provided by the state and the views of the Charity Organisation Society which stood:

"for a strongly individualistic gospel of self help and for 'voluntaryism' as against the extension of state aid." (Cole, 1945a p19)

The antithesis of the debate can now only be read in the respective accounts of Beatrice Webb's autobiography, the papers of the Charity Organisation Society (available from the Director of the Family Welfare Association, which the COS became in the late 1940s) and historical accounts( Brenton 1985; Bourdillon 1945; Fraser 1976; Gregg 1973; Lloyd 1986; Owen 1965; Roof 1957). As we noted earlier debates that took place in a limited rarefied atmosphere of late 19th Century intellectual society. The importance of the debate and its hostility was noted by Cole writing in 1945:

"Social democrats and charity organisers hated one another with a fury based on principle; and the echoes of the conflict can be heard still." (Cole, 1945a p20)

The image of the role for charity as being for the 'deserving poor' while the state provided a bare minimum through the 'poor law' for the 'undeserving' to avoid starvation, was summarised in the famous Goschen minute in 1869. The minute issued by George Goschen, President of the Poor Law Board, authoritatively determined the respective relationship of Charity and State for aid for the poor:

"The oft-quoted Goschen minute ruled in effect, that the Poor Law should be concerned with the wholly destitute while charity should be reserved for those who had some but insufficient means...the relation between charitable effort and public responsibility was generally interpreted as a distinction between the deserving and the undeserving, the

reformable and the unrepentant or the helpable and the hopeless." (Rooff, 1957 p19)

The minute provided the official endorsement of charity for the deserving poor, a charter for middle class philanthropists to impose their morals on the 'respectable unfortunates'. As we mentioned earlier, motives for philanthropy are not simple but accounts of the methods of housing pioneer Octavia Hill can be read as imposing middle class values on her terms, as she offered the only alternative to the 'poor law' and unscrupulous private landlords. Her working class tenants having no choice but, to follow her personal codes of conduct imposed on them, to object would mean eviction (Owen 1965 p389; Darke 1979 p15). Hill like Shaftesbury, was an old fashioned individualist with her opposition to the provision of universal old age pensions proposed by Charles Booth. Her appearance at the Aberdare Commission - a Royal Commission of 1893-4 on the issue of the aged and poverty - provides a clear insight of the 'we know best', paternalistic image that socialists so despise and correlate with the name of charity:

"A number of witnesses, of whom Octavia Hill was the best known, held high the banner of individualism...she was at her most offensively doctrinaire, bristling with moral superiority and censoriousness, more than ever the self appointed school mistress of the lower classes. She and her C.O.S. associates alone held the key to the problems of the poor, young and old." (Owen 1965,p508)

Not that Hill was alone in her attitude to the 'correct way' to provide for the respectable working class:

"The management of Peabody dwellings was equally paternalistic; tenants had to have an employer's reference, had to be vaccinated, to be in by 11pm., were not allowed to do various types of work at home, including laundry and various offensive trades, and were not allowed to decorate their rooms. These rules, and the

relatively high rents, effectively excluded the poorest families." (Darke, 1979,p15)

A hundred years on, discussions on philanthropy should be able to assimilate the complexity of motive and place them within an historical social context, we should not judge behaviour by 1994 standards with those of 1894. The behaviour of prominent persons is important to understand if an effective system of regulation is to be applied to charity. A system of regulation which does not strangle the innovation of the founders of many charities and proponents of voluntary action today. It is therefore disappointing to read Barry Knight's report on 'Voluntary Action' who offers a description of Octavia Hill introduced as:

"It is instructive to look at a sample of these individuals to get an insight into how they thought, and what voluntary action meant for them." (Knight 1993,p9)

and then proceeds with a nine line description that could have come from the 'lady bird' series of famous historical figures:

"Octavia Hill was the youngest daughter of a corn merchant and banker. After her fathers death, she lived with her mother and three sisters in Marylebone, supporting themselves by running a girls school, and at the same doing various kinds of social service. Her main work was in improving housing management with the help of money from John Ruskin. She was also associated with the beginnings of several other forms of voluntary organisations, in particular the Charity Organisation Society, the Commons Preservation Society formed in 1865, and the National Trust for the Preservation of Places of Historic Interest or Natural Beauty founded

in 1894." (Knight, 1973 p10)

A further testimony to this historical negative image of charity has been its depiction in novels and plays written by 'left' writers. One such work is the play 'An Inspector Calls' by J B Priestley. The play depicts the home of a prosperous manufacturer whose family is about to enjoy a celebratory dinner on the announcement of the forthcoming marriage of the daughter, when a 'Police Inspector' calls. The play unfolds a tale of the respective involvement of each member of the family with a young woman, who made pregnant by the son and unable to find help, commits suicide. In one of the most moving and final scenes of the play the young woman has sought the help of 'The Brumley Women's Charity Organisation'. She is denied help by the chair, the mother, Mrs Birling on the grounds of her 'gross impertinence'. The young woman's crime being to give herself the same name as Mrs Birling. This depiction of a decision made by personal whim is as damaging to charity's image as the political debates highlighted above. The absence of accountability of the charitable organisation, its manipulation by an individual and the absence of any alternative to charity. The play was published in 1947, the same time as the advent of an alternative to charity, a statutory welfare state. The importance of this work has been its exposure not just as a play, still running in the London 'west end' in 1994, but its adoption as a 'set book' by school examination boards, a feature film and adaptation for television.

The image created by one generation of charity workers often becomes the 'liability baggage' of the next as reflected by Roof's book published ten years later in 1957:

"What remains of hostility to voluntaryism in some

quarters today, owes much to the false values which attended the misuse of charity in the past." (Rooff, 1957 p25)

An image can change as Hatch and Mocroft(1983,p31) in their study of social services and politics discovered. In Islington they found that the 'new left' which did not have a political base in the trade unions looked to the voluntary sector for support. However, it was probably citing a better known past, that Brenton can comment in 1985:

"Support for charity and philanthropy as a principle of social action has a long history in the Conservative Party. The formation and running of voluntary organisations have been a characteristic response to social need and a badge of social responsibility, particularly for underemployed conservative women."  
(Brenton, 1985 p140)

Of more importance is Brenton's assertion that it is the respectable middle class led charities who receive the greatest proportion of funding. This has implications for the whole question of 'who benefits from Charity?' which we discuss later. Heginbotham(1990 p82)) has attempted to depoliticise the image of charity from party politics. He calls for Labour to reject its old statist notions while he also argues that people do not want for-profit organisations providing care. Instead he calls for a serious dialogue to take place, where the voluntary sector can assist in devising a new shared morality. To support his arguments, he characterises a view of the voluntary sector from respective leading theorists of the left and the right:

"The 'new right' view is that voluntarism is the 'true' expression of Welfare. Hayek(1960) suggested that volunteering is the only legitimate form of welfare. The left, as exemplified by Tawney, would probably argue that the only 'true' welfare is egalitarian

social organisation. Tawney described socialism as 'a community of responsible men and women working without fear in comradeship for common ends all of who can grow to their full stature,....That will mean voluntary action to help each other.' (Heginbotham,1990,p30)

To conclude the 'negative' image of charity was developed in the 19th Century. In part self-inflicted, the other by its perceived inability to meet the problems of an emerging industrial society. For non-Marxist socialists and liberal social reformers, intervention by the state, directly providing services was the answer to meet the terrible poverty and social deprivation identified by both public health officers and later the social surveys by Booth. Through universal services notably sanitation for public health; education for social improvement; old age pensions and national insurance for poverty could such problems be eradicated on the scale that a 'modern industrial society' had produced. For orthodox Marxists, charity was and always will be part of capitalist society and therefore the argument we have propounded will be rejected. For other Marxists and socialists, the supportive and emphatic characteristics associated with the voluntary sector are aspects to be found in 'Utopia'.

### **3.6 THE WELFARE STATE AND THE ROLE FOR CHARITY.**

A consensus existed on the welfare state from 1945 until the late 1970 (Mellor 1985; Lloyd 1986; Webb and Wistow 1987; Deakin 1994a, Flynn 1994,). An assumption which pervaded the natural order of social welfare in Britain was the provision of welfare services, by the state with a subsidiary role for the charity sector. This consensus was adopted by professionals in social welfare (Rooff 1957, Brenton 1985, Webb and Wistow 1987; Flynn 1994) and was justified by the 'scientists of society' (Cotgrove 1972) who developed a functionalist perspective to

explain how institutions develop.

A theoretical legitimation provided by the principal functionalist theorists, who comprise some of the leading figures in the development of sociology and social policy - Durkheim influencing Parsons and Merton (Giddens 1972). Further Rein (1976, p260) argues that all social scientists use the theory of function, at least part of the time to explain why institutions act as they do. Mishra (1979) describes the functionalists view of the development of welfare services from primitive societies to industrial societies as a form of scientific development - the decline of religious organisations, the proliferation of voluntary organisations and then to meet increasing needs the development of state social services.

The functionalists have also developed (Merton 1938) the concept of 'dysfunction' to take into account any unintended consequences of a particular social policy. An example of this is the effect of a local authority housing policy as identified in the classic studies by Young and Wilmott (1957), where the improvement of housing conditions for the working class also resulted in the disruption of the extended family and kinship.

The importance of the functionalist philosophy in the UK was its intellectual justification for the proposition that there is a natural order of events for welfare services to be provided by statutory services, a perspective adopted by Owen in the 1960s:

"An underlying theme of the present study has to do with this dual importance of private charity - on the one hand, its role as a pioneering force, pointing the way to action by the state, and, on the other, its ultimate inadequacy when measured against the requirements of industrial urban-society."  
(Owen 1965, p6)

An historical analysis is developed to explain phases of development that naturally flow into each other:

"In summarising the principal developments in social provision over the last two hundred years it is possible to identify four main phases. The first which we will call 'the last phase of paternalism', lasted until 1834. The second which we will call 'the era of state deterrence and voluntary expansion', covered the years 1834-1905. The third, marked by the emergence of statutory social services occupied the next forty years. The final phase, which runs from 1945 to the present day, we describe as 'the consolidation of the welfare state'. (Wolfenden, 1978 p16)

A perspective that was given authority by Professor Cole at the beginning of the welfare state:

"Evidently the historical tendency has been for the state to take over the material task providing either in cash or in kind for basic physical needs, and for the voluntary agencies, as this happens to strike out along new lines of community service on the educational and social plane." (Cole, 1945a p27)

An official position is adopted that legitimates the perspective that large scale welfare was beyond the scope of voluntary organisations. The Nathan Committee (1952 par 44) described the attempt to create by private effort a series of universal social services as one of the magnificent failures of our history.

There is one very good example of a universal voluntary service involving life and death which during this period few seem to have considered - The Lifeboat service which was founded in 1824. According to Owen (1965 p177) only once, in the 1890s has there ever been consideration to 'nationalise' the RNLi which is a voluntary organisation. It has received government financial support only between the years 1854-69, otherwise all its expenses have been

met by public subscription. As Lord Saltoun stated in the 1960s House of Lords Charity Debate:

"The lowest point that the Royal National Lifeboat Institute ever touched in its history was in the third quarter of the 19th century when it was receiving a government grant. When that Institution repudiated the grant, refused it and put it aside, the public took the institution to its heart and it has never failed since then." (Saltoun, 1960)

Lord Saltoun, however, did not go on to say that the financial saving of the RNLi has been due, on numerous occasions in their long history, to certain disasters involving loss of life, to which the public generously responded. The real irony, however, is that the US equivalent is the Government coast guard service. Owen (1965 p177), an American professor, said Americans could not understand why semi- socialist Britain could leave this important service entirely in the hands of a charity. The United States from early beginnings had supported a government service.

Beveridge (1948), the architect of the welfare state had argued for a major role for the voluntary sector, particularly for the use of the friendly societies and national insurance (the opening chapter of his book 'Voluntary Action', being devoted to this cause). The decision for a statutory welfare state was based on a political philosophy and pragmatism which we have seen was distrustful of the voluntary sector:

"A subsidiary but important part of the drive towards statutory social services represented a deliberate move away from voluntary provision not least within the Labour Party. Faith was invested in statutory services as a way of guaranteeing provision that was comprehensive and universal, professional and impartial, and subject to democratic control. The immediate post-war implementation of social policies marked an attempt decisively to move away from

social policies that was partial in scope, socially divisive in action, and socially controlling in intent. Voluntary organisations were regarded with not a little suspicion in the process." (Brenton, 1985 p20)

A political consensus was developed on the welfare state:

"By 1949 it was accepted that Britain was a 'Welfare State'. The phrase was widely used, outside Britain as well as inside, and inside Britain it was always used in tones of approval; liberals and Conservatives pointed out that their parties had also played a part in building the Welfare State." (Lloyd, 1986 p288)

There is no 'scientific' rationale for why the state should have become both a financier and deliverer of welfare services. The welfare state evolved for a variety of different reasons and it did not happen overnight:

"The balance did not shift abruptly or conclusively, nor was there sudden and general acceptance of the notion of state responsibility for welfare ..... A more direct influence in turning public opinion towards a positive social policy was the growing accumulation of data on the condition of life of the lower classes." (Owen, 1965 p503)

The stimulus to the state taking the major role was probably the result of the effects of war. The importance of war in the development of direct intervention by the state in welfare has recently been underscored in the US. In her recent book, Skocopol(1993), has re-written the assumption that state American welfare programmes began in the mid 20th Century. Skocopol has researched the government budget expenditure between 1880-1910 and noted over a quarter of its expenditure was on pensions for civil war veterans and their dependents.(Pollack, 1994 p74)

The importance of war as a stimulus to state intervention is underlined by Rooff(1957) who remarks on the reforming

Liberal Government of 1906 which signified the beginning of direct welfare service provision by the state:

"The role of the state as junior partner was not acceptable to a vigorous liberal government. The changing political theory, the rising standards of living, the advance in knowledge of social problems and their causes, the vitality of some of the municipalities and, perhaps most potent of all the shocks of the Boer War had combined to make the demand for statutory services more urgent." (Rooff, 1957 p20-21)

At the beginning of the 20th Century, the shock of the Boer War had been the discovery of the poor health of the nation (Lloyd 1986 p15). If England was to continue to be a strong nation then social reform was required.

The sacrifice of the second world war involving rationing and the conscription of women led to British society becoming more egalitarian (Lloyd, 1986 p25). Social interaction, comradeship during adversity, all led to a spirit of not wishing to return to the pre-war years.

Acknowledging the importance of the second world war, Hobsbawm (1969, p264) offers a further dimension to the universal acceptance of a welfare state:

"By the middle 1930s Laissez-faire was therefore dead even as an ideal, except for the usual financial journalists, spokesmen for small business, and the economists....Two economic policies therefore faced each other, both equally remote from John Stuart Mill. On the one hand there was socialism, based essentially on the aspirations of the working class movement, but greatly strengthened by the experience of the USSR, which impressed even non-socialist observers by its apparent immunity to the great slump. It contained little by way of precise policy except the ancient demand for the nationalization of the means of production, distribution and exchange and the slogan of 'planning' which the Soviet Five-year Plans made extremely fashionable. On

the other hand there were those-mainly economists who came from Liberalism (like J.A.Hobson) or who still remained Liberals (like Keynes and Beveridge) - who wished to save the essentials of a capitalist system, but realised that this could now be done only within the framework of a strong and systematically interventionist state; or even through a 'mixed economy'. In practice the difference between these two trends was sometimes hard to discern, especially as some Keynesians abandoned the liberalism of their inspirer for socialism, and as the Labour Party tended to adopt the Keynesian policies as its own, in preference to the more traditional socialist slogans. Still, broadly speaking the socialists favoured their proposals because they were for social equality and justice, the non-socialists theirs, because they were for the efficiency of the British economy and against social disruption. Both agreed that only systematic state action (whatever its nature) could rid of and avoid slumps and mass unemployment." (Hobsbawm, 1969 p244-245)

The emergence of welfare services run by the state as opposed to voluntary agencies was therefore not part of some inevitable scientific process. As Brenton declares, a different policy could have emerged:

"The state could have taken on a major role in the late 1940s by a conscious decision to assume responsibility only for financing and regulating the social services, leaving their actual delivery to non-governmental bodies." (Brenton, 1985 p19)

This was the pattern of service delivery that had emerged in the inter-war years as both Rooff and Beveridge describe:

"The first world war marked the division between the old philanthropy and the new. Lloyd George's budget, 1914 made possible the first extension of payments to voluntary organisations providing certain services, but the new pattern emerged after the war. After 1919, however, payments for services rendered on an agency basis formed an increasing

proportion of the grants to national organisations." (Rooff, 1957,p23)

"The state policy between the two world wars was to encourage the formation of voluntary associations for dealing with the housing shortage in co-operation with public authorities." (Beveridge, 1948 p102)

An alternative stated policy, of the state providing strategic direction and resources but not direct service provision did not emerge. Instead charities as service providers were seen to be unimportant, it was assumed that they would wither away and were ignored by public authorities who were more concerned with resourcing their own services. (Brenton 1985; Webb and Wistow 1987). As Murray, a senior civil servant in social services, commented in 1968:

"It is salutary to recall that in the light of the massive social legislation after 1945 many voluntary organisations thought that they would no longer have a place." (Murray 1968,p6)

To survive, charities it seemed would have to develop a new approach to justify themselves and their continuing existence. As the new Chief Charity Commissioner in the Charity Commission Annual Report for 1960 commented:

"After the post-war social legislation the traditional objects of charity were largely overtaken by the statutory services, new and old, which now provided for the welfare of the individual from the cradle to the grave; and the basic question confronting the committee(Nathan) was what remained for charities to do. The answer, in broad terms, was that while charity should not withdraw from a field where it is performing a useful service, its peculiar function is to pioneer; its resources should remain at the disposal of the voluntary movement and in the view of the government the necessary co-operation with the statutory services should proceed on the basis

of partnership not subordination" (Charity Commission, 1960 p5).

The role for the voluntary sector was to be pioneering and supplementary, and by 1960 it was defined as a partner with statutory welfare services. The concept of the voluntary sector having aspects of a pioneering and innovative nature is not challenged. Clearly the history we have reviewed to-date demonstrates this tradition. Indeed given the minimalist aspect of the state until the latter part of the 19th century, it would have been impossible for parts of the voluntary sector not to have been innovative. Equally other parts of the voluntary sector were reactionary and against change.

Ascribing the voluntary sector these pioneering characteristics has, 'become legendary' (Knapp, Robertson and Thomason, 1990 p206), but how justified is this portrayal?

Brenton (1985,p185) is far from convinced that the voluntary sector is naturally innovative. She felt there was a tendency to both rely on past glories as well as individual voluntary organisations to 'over inflate' their claims on innovation. Equally many statutory organisations she cited use voluntary organisations to undertake innovation. Knapp and colleagues(1990,p206) develop this by correlating the theme of flexibility and innovation. In their review of the literature they find no evidence of either the statutory or voluntary sectors exhibiting the respective less bureaucratic more bureaucratized form. Instead Knapp and colleagues postulate that the respective relationship of the two, (citing Brenton above but also a US study by Kramer of four different countries), may have been complementary. A public agency not wishing to be locked into long term delivery using an 'arms length' relationship to innovate.

For Knapp, Robertson and Thomason(1990), perhaps signposting some future research studies, raise the notion that statutory sector sources of funding may be counterproductive to the innovations seen in the past. They speculate that short term funding may incline voluntary organisations to pursue traditional projects on the other hand, security could remove the necessity and impetus to innovate. Publishing at the same time Krashinsky (1990) shares much of Knapp, Robertson and Thomason pessimism, however, there are indications from the Canadian experience that voluntary agencies "have been quite aggressive in resisting government attempts to dictate policy" (Krashinsky, 1990 p50).

The voluntary sector has actively maintained a dual policy of presenting itself as an innovative provider of services(Bielefeld 1992; Wilson 1992; Bruce 1994). Whilst also arguing for the natural pattern of its work to achieve some form of either statutory recognition or takeover of services (Taylor 1988). The rationale for many working in the voluntary sector is to see a legitimate campaigning role to get the state to take over or provide new services. For example, the Family Planning Association's clinics, were incorporated,(after active campaigning by the charity), into the National Health Service in the 1970s. The following quotation provides a historical description to date, which illustrates this campaigning aspect, their innovative role and a functional explanation of the role for voluntary organisations:

"Five distinct phases can be seen in the nearly sixty years of the Family Planning Association's life. In our first decade, up to World War 11, we were bravely pioneering the availability of birth control with a small staff paid to travel around the country gathering local groups to start clinics. After the war, in the 1945-55 decade, we were building up the organisation to gain recognition for services by then described as

family planning. In 1955 the late great, Ian Macleod, when Minister of Health, gave us that recognition and started the third phase: there followed twelve years of entrenchment and steady growth in numbers of clinics, training, clinical trials and information work. The fourth phase began in 1967, the year of Edwin Brooks MP's NHS (Family Planning) Act (as well as David Steel's Abortion Act). The Brooks Act set the scene for a seven year phase of wildlife growth as hundreds of new FPA clinics were established through an agency scheme offered to local authorities by the then head of the FPA, Casper Brook. In the same years we were launching the parliamentary campaign for full integration of family planning into the NHS, which was victorious in 1973." (Service, 1988 p4)

As late as 1987, the seminars organised by NCVO and RIPA on the voluntary sector discussion, still focused on:

"Once a voluntary organisation has demonstrated new ways of providing service, should it not be trying to ensure that the state takes on this responsibility." (Taylor 1988,p5)

The legitimisation of the 'pioneering role' for the voluntary sector was also incorporated into the mainstream political thinking of the time. The 1949 House of Lords Debate on 'Voluntary Action for Social Progress' defined the Labour Party's attitude as accepting the voluntary sector (Brenton, 1985 p22). In addition to this pioneering role another part was awarded to the voluntary sector. Voluntary organisations were accorded an historic and continuing function in evolving the 'democratic character' of Britain. Lord Pakenham (now Longford) who gave the official Labour Government blessing to the voluntary sector in the 1949 debate elaborated this 'mystic' nature of the voluntary sector in the 1960 House of Lords Charity Bill debate :

"I would say now that the welfare state without voluntary

action loses its chance of realising its vision of national welfare in freedom." (Pakenham, 1960 col 639)

The role for the voluntary sector after 1945 can also be understood by the economic position of Britain in the post war years. After the war, the British economy was characterised initially by relative austerity and high taxation. Some food rationing was still in force in the early 1950's while the standard rate of income tax did not drop below 40% until the 1959 Budget (Lloyd, 1986 p356). The climate for giving to charity for welfare services against the ideology of a universal welfare state funded by high taxation was therefore not favourable. This, however, can only be a macro economic observation.

Unfortunately, we do not have the financial information about the voluntary sector in the 1950's that we have today. The Charity Commission reports only provide a social and financial policy overview from 1960, when a register was established. The financial statistics of the Charities Aid Foundation were started only in 1977. There is therefore considerable opportunity for further research. For example, the accounts of some of the older charities, and those emerging since 1945 are available. Despite the accounts not being in the proposed modern SORP format which will facilitate comparison, they should be able to offer some insight into patterns of individual giving as well as sources variation. The charity Income and Expenditure Account will show whether income was rising, falling or static by source and also expenditure decisions. The charity Balance Sheet can indicate whether the charitable reserves were increasing or declining and how these reserves were constituted. From my own research of the leading charities in 1991, professional accounts of these charities were being compiled despite the absence of a legal compulsory audit:

"One surprising and reassuring finding was that 100% of those who answered the survey had external auditors (98.6% being chartered firms) even though only 57% of the sample required this because they were incorporated charities." (Palmer, 1992 p6)

### **3.7 WELFARE STATE PROFESSIONALS AND CHARITY.**

Another reason for the voluntary sector being rationalised as having a secondary role for service delivery may be due to the increasing professionalism of welfare workers in the 1960s. Brenton (1985, p22) suggests that one of the reasons for the 1945 Labour Government willingness to accommodate voluntary organisations was their expertise and the relatively low esteem that welfare work had.

The rediscovery of poverty, meant the universal welfare state was failing, ( Coates and Silburn 1973, Townsend 1979), new policies had to be developed to explain what could not happen:

"To assert that there remained a widespread problem of poverty was to challenge an integrated set of myths and pieties which had become so widely accepted as to be taken by many people, as axiomatic. Poverty among substantial sections of the working class was supposed to be non-existent." (Coates and Silburn, 1973 p179)

Labour and then Conservative Governments from the 1960s to the mid 1970s, adopted a strategy of increased funding for personal social services, though as Webb and Wistow(1987) point out from a very low base. Respective governments also supported a professional model of social administration. There was the emergence of the professional training of social workers as developed by higher education and social administration as a discipline distinct from sociology (Brown, 1977 p18). The focus for the 1966 Labour Government and enacted by the

1970 Conservative Government, was an extended role for larger and more professional local authorities, with new Social Service Departments providing a universal system of personal social services (Webb and Wistow 1987).

The Younghusband (1959) and Seebom (1968) reports on social services and in particular the training of social workers, acknowledged a role for the voluntary sector but recommended professional training and co-ordinated statutory social services. The expanded training of social workers and their employment in large Social Service Departments followed local government re-organisation. (Byrne, 1981 p154). These reports, unintentionally contributed to a statutory service professional ethos that looked down on 'amateurish' voluntary organisations.

The concept of the voluntary sector having a pioneering role was taught as part of the new social administration degrees and in the textbooks that accompanied them at the time:

"Many new and fascinating approaches to care and treatment can be worked out in the voluntary setting and provide a base for constructive criticism of statutory provision and a fund of enthusiasm for change. In this as in so many fields of social service the voluntary contribution can be great both in a pioneering sense and in the steady provision of research, public education and good facilities." (Brown, 1977 p200)

An earlier commentator on voluntary organisations had noted this trend for social administration in the late 1960s:

"Too often they are considered only as an appendix to other important statutory activities. They tend to be tacked on to the end of descriptive chapters of books on social administration." (Murray, 1969 pv)

What can also not be ignored, in addition to professional indifference, was downright hostility by some statutory services to the voluntary sector during these years:

"But there were also examples of indifference or self complacency when the medical officer of health had no opinion of the work of voluntary organisations, or felt that health visitors could do all that was necessary. The hostility of a medical officer might prevent a recommendation to the local authority to grant aid a voluntary organisation or to make use of its experience on an agency basis." (Rooff, 1957 p71)

A situation that Murray was to comment on eleven years later:

"Some authorities are said to be more doctrinaire than others about refusing to use voluntary organisations even when consideration of expertise and staffing justify their use." (Murray, 1969 p13)

This hostility was motivated by a variety of reasons including political outlook, the view that voluntary organisations were unprofessional and thirdly that they were resistant to change, many still following the policies of their founders (Wrong 1945,pp31-56). In 1945 the NSPCC for example;

" has given little help to the nursery school movement" (Wrong, 1945 p49).

The ignorance about voluntary organisations is also in part due to the lack of a modern literature until the late 1970s, on the charitable sector. The few writers on voluntary organisations have attempted to counteract this negative image with a number of strategies. These feature around a definition and the employment of professional staff. Bourdillon writing at the beginning of this period in 1945 begins this tradition. As we explored in the

first chapter on definitions, this approach has been undertaken by every writer on voluntary organisations to date. It would be useful to give the Bourdillon definition as it has set the style to date:

"A generation ago 'voluntary' was normally used to denote 'unpaid'. A 'voluntary worker' was someone who gave unpaid service to a good cause, and the group which was formed to run this good cause came to be known as a 'voluntary organisation'. The group took its name, in fact, from the outstanding characteristic of the workers upon whom it depended. In recent years there has been a significant shift of meaning here. Nowadays many of the most active voluntary organisations are staffed entirely by highly trained and fairly well-paid professional workers. The distinctively 'voluntary' character of such bodies is the product not of the kind of workers they employ, but of their mode of birth and method of government. A voluntary organisation properly speaking is an organisation which, whether its workers are paid or unpaid, is initiated and governed by its own members without external control."  
(Bourdillon 1945 p3)

A perceived hostility to the voluntary sector by statutory sector workers over conditions of service has been made by other writers (Brenton, 1985 p137). From the perspective of organised labour, particularly trade unions, voluntary organisations were seen as a threat (Beach 1994). Such an issue is strong if both in reality and perception pay and conditions in one sector are worse than another. The absence until recently of statistical information about the pay and conditions of voluntary sector staff may have fuelled such antagonism. In reality, as we come to know more about the voluntary sector, we discover that many voluntary organisations working in the field of personal social services have followed public sector pay scales and have pension schemes that are part of the public sector transfer scheme (Cornwell 1994).

It is perhaps ironic that as the effects of Community Care legislation take effect and many former local authority staff take up appointments in the voluntary sector, there is a move away from centralised pay bargaining. The irony of the trade union movement's hostility to voluntary sector pay in the past, may have been based on ignorance. In the future with clearer statistical information on pay and conditions, it may now be based on truth as a direct consequence of contracts, which may drive salaries down.

### 3.8 RE-DISCOVERING CHARITY.

Lord Beveridge accompanied 'Voluntary Action' with a second volume - 'The Evidence for Voluntary Action'. Its 343 pages (Beveridge and Wells 1949) list numerous voluntary organisations and the scope and size of their activities. For beyond the 'voluntary hospitals', there was no large scale 'nationalisation' or 'municipalisation' of charitable activities. Combined, however, with the decision to have a social insurance programme run exclusively by central government services as opposed to Beveridge's preference for an expansion and renewal of roles for the Friendly Societies; the most visible and the largest segment of welfare services to the majority of the population was run by the state.

There remained, however, a considerable volume of services with the voluntary agencies. The charitable children homes of Dr Barnardo, The Church of England Children Society and others continued. The majority of children in care were in their homes as opposed to Local authorities (Brenton, 1985 p24). As Brenton notes on the report data of the 1959 Younghusband Committee on Social Workers:

"What the Younghusband data do suggest, however, is that there remained in the mid-1950s, a considerable residue of voluntary agency activity utilised and part financed by local authorities ..." (Brenton, 1985 p27).

Services for the blind, the deaf were still left with the charities (Rooff 1957). Even the social administration textbooks of the 1970s still refer to the substantial role the voluntary societies had in certain welfare areas (Brown 1977,p139). As Crossman, the Labour Secretary for Social Services in the late 1960s, commented:

"One of the things I learned as a Minister was the staggering extent of voluntary activity in our welfare state." (Brenton, 1985 p21)

The charitable sector's role in social welfare continued after 1945, it did not wither away, and was substantial in some areas as it had a virtual monopoly in others, for example the blind and the deaf (Rooff 1957).

The 're-discovery' of charity in the 1960s is often alluded to as referring to alternative organisations that emerged in the 1960s who actively campaigned for change. Organisations such as Shelter(1965) and the Child Poverty Action Group(1966) or grass roots organisations representing special problems such as Spina Bifida(1966), emerged in response to the failure of the welfare state.

This emergence concept seems to ignore the history of the voluntary sector that had agitation for change as one of its origins. The campaign against the slave trade, the Ten Hours League on factory legislation and the founding of the NSPCC in 1884 are all examples.

An argument could be developed that the difference between these 19th Century charitable organisations and

the movements of the 1960s was the former were founded, organised and led by the middle class. In response one would argue that leaders of Shelter and CPAG such as Des Wilson and now Labour MP Frank Field or another Labour MP Peter Hain, the leader of the Anti-apartheid campaign against the South African tour in the early 1970s, were not working class. These organisations are organised political campaigns that can be correlated to 19th Century campaigning charities for better welfare and against slavery.

Perhaps more damaging, is the perception that charity in the 19th Century was a middle class preserve (Eyre 1988). Professor Cole in 1945 depicts a very different history of 19th Century voluntary action involving working class men and women in numerous forms of self help community activity. In his paper on 'Mutual Aid Movements in their relation to voluntary social service', Cole(1945b) provides an example of the 'Womens Co-operative Guild of 1883' which:

"was from the first essentially a body of working class women managing their own affairs, with no such infusion of middle-and upper-class leadership in its local branches as went to the making of the Women's Institutes." (Cole, 1945b p122)

The origins of many national charities commence from humble beginnings:

"The Royal National Institute for the Blind was started by a group of blind men led by Dr Armitage, who lost his sight and was appalled by the inadequacies in re-education, industrial training and employment around him. It began as an exercise in enlightened self-help." (Nightingale, 1973 p330-331)

There is an alternative perspective and history to the voluntary sector, not concerned with the 'great philanthropists' which needs research. As the 'Voluntary Action History Society' develops it will hopefully

provide a stimulus for such research.

### 3.9 TO THE 'MIXED ECONOMY OF WELFARE'.

The post war years to 1979 was a reverse of the relationship established in the Tudor Age of the state acting as the junior partner, supplementing voluntary action. Instead the local authorities for personal social services and new local health organisations under the National Health Service were to have the major responsibility. The voluntary sector continued in many areas to be major suppliers of welfare services. Particularly in the area of personal social services, which as Webb and Wistow(1987) point out:

"The personal social services were added as the 'Fifth Social Service' only at the beginning of the 1970s. That they were coherently organised some twenty five years after the first four state social services..."(Webb and Wistow, 1987 p5).

The 'classical four' statutory services equally avoided privatisation on the return of a Conservative government.

Brenton's observation that there were few compensatory developments for voluntary welfare organisations during the 1950s, (Brenton, 1985,p24) excludes a number of areas where the charity and voluntary sector was developing. The most visual was overseas aid where the voluntary sector became a major player philosophically if not economically. The pioneering and educational role of the charity War on Want, founded in the 1950s shifted the concept of emergency overseas aid to an understanding of the needs of developing nations.

The relationship between the state and the voluntary sector during these years to Wolfenden in 1978 was never clear. as the observation studies by Hatch and Mocroft (1983) illustrate. By the time of the Wolfenden Report

(1978) there was a consensus that the voluntary sector and statutory services should be working in partnership. Brenton (1985) argues that this consensus derives in the mid 1970s not because there was a shift in Labour Party thinking to welfare pluralism but because of the economic problems of the British state. The Labour Party needed to curb public expenditure and a convenient method was to promote a decentralised society (Brenton 1985, p136).

Beach(1994) has recently challenged the perspective that the Labour Party in the 1940s was naturally hostile to the Charity Sector. A view at the heart of Brenton's proposition based primarily on the Labour Ministers, Aneurin Bevan and Richard Crossman. Beach argues:

"Much of our understanding of Labour's attitude to voluntarism during the formative years of the welfare state is shaped by the image, built up by Richard Crossman amongst others, of Labour's hostility to 'the do-good volunteer'. The volunteer was portrayed as amateurish, indeed, the opposite of the professionals and trained administrators who it was envisaged would staff the socialist welfare state. Voluntarism essentially meant Philanthropy which itself was narrowly interpreted as, in Crossman's words, an 'odious expression of social oligarchy and churchy bourgeois attitudes'. We detested voluntary hospitals maintained by flag days', he says, 'We despised Boy Scouts and Girl Guides'. These words, spoken to an audience by a lecturer looking for an impact, were phrased more for effect than for posterity, yet this retrospective interpretation of Crossman's has nevertheless, assumed a certain credence and authority. Its black and white rhetoric too often has been taken at face value and, perhaps, we have been misled"(Beach, 1994 p4-5).

On Aneurin Bevan's position on the voluntary hospitals, the egregious perspective is his opposition to the voluntary hospitals. Yet Beach argues it was Bevan's belief in the importance of universalism that precluded the maintenance of voluntary hospitals and also led Bevan to question the viability of local government in a memorandum by Bevan as Minister for Health, records:

"...Under any local government system - even if modified by joint boards or otherwise - there will tend to be a better service in the richer areas, a worse service in the poorer. Yet all the population will be paying the same national rates of insurance contribution and will expect the state to see that an equally good service is available everywhere." (Beach, 1994 p6)

A re-evaluation of these years indicates that Labour's attitude was not as transparent as Brenton depicted. Rather, as we argue from our participant observation of charity and local government in the 1980s, Labour has a multi-faceted and evolving policy where no single element is representative of the whole.

Brenton's analysis of the economy by the 1970s is not disputed. The basis of the British welfare state from 1948 had been on continuing economic growth and full employment. By the mid 1970s the British economy was in a very poor state. Sterling lost 23% of its international value in the twelve months up to October 1976 and billions of pounds had to be borrowed from the International Monetary Fund (Lloyd, 1986 p464). The conditions laid down by the IMF for that loan were for considerable cuts in public expenditure.

It is, however, in my opinion too simplistic an analysis to totally rely on political pragmatism for Labour's claimed change of heart. One of Brenton's quotes for her argument was the Labour Secretary of State David Ennals' attitude to the voluntary sector and his famous 'pound for pound a better buy'. Ennals had suggested to health and local authorities that they should consider increasing grants to voluntary organisations rather than directly providing the same service. A suggestion that became official Labour Government advice as the following Department of Health and Social Security circular in 1976 illustrates:

"...support for voluntary effort and encouragement of self help schemes may represent better value for money

than directly provided services..." (Vinten, 1989 p11).

My problem with Brenton's perspective is based upon my work with David Ennals and Labour local authorities for six years. As we discuss in the section on research methodology the use of 'expert witness' to both support and question perspectives, particularly when they derive from secondary sources is a legitimate technique in social science research.

From 1983 until 1989, I was the Secretary and Finance Director of a National Charity and David Ennals was the Vice Chairman. We worked together very closely on a number of campaigns and so his political commitment to certain issues both past and present became well known. Unlike other prominent Labour figures who joined the Social Democratic Party in the 1980s Ennals did not. David Ennals was out of parliament from 1970-1974 during which time he worked in the voluntary sector for the mental health charity MIND. I believe his support for an active and productive partnership with the voluntary sector was genuine. I am not that naive however to accept that when in power he did not make pragmatic speeches. Nor was his commitment to a voluntary sector partnership with the statutory services based upon the replacement of a universal welfare state by the voluntary sector. He was still committed for example, to a national health service run by statutory authorities.

From this 'expert witness' perspective, I in part accept Brenton's (1985 p140), other observation that the Labour party conversion to welfare pluralism was not absolute, particularly at the local level.

As the Finance Director of a national charity, I was responsible with the Chief Executive for property and long-term revenue negotiations with local authorities. The Charity was pump primed, with central government development finance to open drug rehabilitation centres outside of London. There were four contrasting Labour local authorities, which we worked with - South Tyneside,

Liverpool, Sheffield and Lewisham - each offer in their distinct ways a variety of attitudes to the voluntary sector:

South Tyneside was a traditional labour authority in the North East of England. Upon meeting the Chair and Vice Chair of the Social Services Committee, the introduction was prefaced with 'Mary closed down the last poor law workhouse in Jarrow'. The relationship with the local voluntary sector was quite paternalistic and was led by the local authority on a funding basis. The rationale for the local authority involvement was a pragmatic decision to sell a former old social services building. I was left in no doubt that a traditional attitude to the charity sector existed, but this was tempered with an interest in working as partners and a recognition of the specialist expertise of the charity.

Liverpool City Council negotiations commenced during the mid 1980s when Derek Hatton was the deputy Leader of the Council. The rationale was similar to South Tyneside for discussions with a national charity on the basis of attracting some central government funds for specialist problems. The contrast was in the overt sense of control by the local authority over the charity. The charity management structure was to have local management committees. In the case of South Tyneside this was to have the chair and vice chair of social services committee on the local management committee as participant observers. The Liverpool approach was to demand that two council representatives would be present for every one representative of the charity, with controlling votes. The attitude to the voluntary sector was an overt political strategy of attracting resources through the voluntary sector, with direct control by the local authority over the charity. Needless to say the charity did not proceed with these negotiations.

Under the title 'Tension between the Voluntary and

Statutory Sectors in Liverpool' a chapter of Anne Eyre's doctoral thesis of welfare in Liverpool in the 1980s reflects the strain in the city from 1985:

"On an ideological level, the City Council Crisis in Liverpool represented a serious threat to the ideal of partnership between the statutory and voluntary sectors."  
(Eyre, 1988 p401)

The third local authority was Sheffield. A special meeting of the council's drug and alcohol forum, however, gave an indication of what Brenton refers to as the 'antagonism at the local level by Labour councils to the voluntary sector' (Brenton, 1985,p138). This council forum discussed the 'municipalisation' of drug and alcohol services at an appropriate date and the respective strategies to combat any hostility from local and national charities. The commitment to a monolithic welfare programme was still very strong at the local Labour Party level.

The fourth Labour authority where the charity had a centre was the London Borough of Lewisham. This Labour local authority had a profile to the voluntary sector similar to the one described by Hatch and Mocroft (1983) in Islington to the early 1980s. There was support from the council for the voluntary sector with considerable formal and informal communication. There was emerging a policy of partnership working with the local voluntary sector with formal policies.

A study by Taylor and Lansley (1992) also commented on Sheffield, Liverpool and London local labour authorities attitude to the voluntary sector which accords with my personal observation. A feature of their research was the adherence particularly in the Northern cities to what has been termed 'Municipal Socialism'. The picture in the mid 1980s of, at a local level a more ambivalent attitude

to the voluntary sector, accords with Brenton's observation. Is this still true today? Taylor and Lansley (1992) and Deakin (1994a) cite a number of commentators who believe at the local level a change in Labour's more traditional attitudes has occurred. Observing that a combination of electoral defeats and the replacement of councillors over time has led to less ideological support for municipal socialism.

It is the adherence to welfare services based on a statutory mode of delivery which is the principal problem with Brenton. Brenton (1985) regards the acceptance of pluralistic services by the Labour Party leadership as accommodating a crisis in capitalism. She therefore ignores that there may have been other reasons, just as legitimate for the Labour Party's acceptance of a pluralistic welfare system. This is of course because her book is a critical analysis of the proposals for the reversal of the welfare state provision of services. Her own view following her analysis of both the US and the Netherlands is that the voluntary sector can not replace statutory services (Brenton, 1985 p206).

Brenton's critical challenge is to accuse left liberal pluralist's that they have adopted the agenda of the right and the failure of their thinking has not been to have explored or considered a reform of existing state welfare (Brenton, 1985 p213). With this as her salient message her conception of a role for the voluntary sector therefore does not advance the literature. Her endorsement of Kramer (1981) therefore signifies the indigence of her position, at best she can only entreat a traditional role for the sector of advocacy.

Brenton raises the issue that a statutory welfare state need not have been the path of welfare services from 1948 but that is the limit of her critical enquiry. She rejects any consideration that it may have been the British welfare state that was the accident of history,

which we referred to earlier as being stimulated by the universalism of the second world war. Or consideration of other perspectives for the evolution of state welfare services (Fraser, 1976 p222), for example, that the style of the welfare state of the 1940s was a consensus for a particular type of delivery of welfare services and that this consensus of state delivery of welfare services began to disintegrate from the mid 1970s (Deakin 1994).

A critique of the traditional Marxist explanation of the rise of a statutory welfare state has been raised by Orloff and Skocpol(1984). They question the assumption that social spending on welfare is the necessary response to the needs of a capitalist economy; why did state welfare emerge in England but not in Massachusetts? Massachusetts having a socio-economic profile very similar to Britain. Orloff and Skocpol(1984) dismiss a traditional response that liberalism held in the US as opposed to Britain by pointing out the considerable lasting influence of laissez-faire. They correlate the increasing liberal interventionist movement with the American Progressive movement. Therefore, they pose the difference between the two must be attributable to other factors. Their solution to the problem they pose is a statist perspective. Thus they cite institutional precedents, in Britain the poor law and respective administrative capabilities as facilitating the development of a state welfare system in Britain.

A similar view has been suggested by Beach(1994) who suggests that the moves towards statutory services were supported by the civil service and the treasury in particular. For the US this did not happen, owing to federalism, lack of a civil bureaucracy and established political parties making the establishment of a public welfare programme less feasible.

The strength of this perspective is to critically

question broad universal theories for the development of particular social institutions or a style of welfare. It therefore allows for pragmatic and contingency reasoning. An excellent example of this form of reasoning applied to the voluntary sector is demonstrated by Blake Bromley(1993). In his description of the evolution of various forms of philanthropy he sets out a potentially worrying future which he describes as 'Retrenchment Philanthropy' (Bromley,1993 p13). The characteristic of the partnership between the state and charity to date has been, he argues a partnership between citizen and the state. The future could be one of partnership between charity and the state where the citizen has been excluded.

Another example of creative thinking for an explanation and a future for the voluntary sector has been provided by Knight(1993). Knight argues that the consensus for a monolithic welfare state was rejected by a sizeable sector of the British population and suggests that instead a 'public services' sector could evolve. Flynn(1994) argues that there is still considerable support for public services citing successive public opinion polls. A 'post-Fordist' attitude to public sector services, however, has developed with supporters of public services (Brenton 1985, Flynn 1994) suggesting that more democratic, customer orientated improved service be the model. The recent Commission for Social Justice exemplifying this approach:

"Fairer treatment within the health service itself, however, can be assisted by giving patients clear and enforceable rights. A choice of doctor, information about treatment, access to second opinions and limits on waiting times are all important. So also are principles of consent and confidentiality. The patient's charter has better defined these rights, but only to a limited extent, since it is not law. Generally, people should have a right to the fair distribution of all health and social services, with decision-makers under an explicit duty to treat people equally and consistently, aided by clear rights of access,

appeal and complaint" (Social Justice, 1994 p291).

The election in 1979 of a radical Conservative Government and its subsequent policies of privatisation, was fuelled by an economic theory that rejected state intervention and placed market forces as the determinant of survival. There was an emphasis on the individual taking responsibility for personal spending ie lower taxation and thereby limiting the role of the state.

The 1979 Conservative Government saw the voluntary sector as enhancing this role and therefore increased funding, in real terms to the voluntary sector. At the end of the 1980s according to the Charities Aid Foundation, central government funding increased by 90% over the last decade in real terms, though they noted this was slowing down (Charities Aid Foundation, 1989 p5).

The Government also curbed the power of the local authorities and then radically changed the whole philosophical thrust of welfare delivery that had been developing since the commencement of the century with the social insurance and old age pension state scheme of the 1906 Liberal Government. The abolition of SERPS and the encouragement of private personal pensions.

No longer was the delivery of welfare services to be provided by the state. Instead the state was to be a resource provider in 'partnership' with both existing voluntary agencies, the private sector and new organisations that were hybrids with characteristics of all three. To date these organisations incorporating the universal services, of education and health into contracted out schools and national health trusts.

The enactment of these social policies can not be underestimated, as the case of public housing illustrates. Forest and Murie (1988 p91) for example, estimate that the sale of council houses was financially

the most important in the privatisation programme raising more money than any nationalised industry. Seventy years of local authority public housing is being replaced by a mixture of policies that combined sales into the private sector, wholesale transfers into either existing housing associations or the creation of new housing trusts and new 'social' housing to be funded through the Housing Corporation, a quango. 'Social Housing' financed by a combination of public money from the corporation and private money raised on the capital markets by the Housing Associations themselves.

The revolution of these changes has created what has been referred to as a 'mixed economy of care' in which the barriers between the providers are blurred. It has also meant that there are major issues in both social policy and micro management to be considered. As Knapp and colleagues with the following definition demonstrate:

"The voluntary sector sits in an increasingly complex mixed economy. The variety of producers grows, the funding sources multiply, and different regulatory styles proliferate. Although it is still possible to distinguish four basic production or supply varieties - public, voluntary(nonprofit), private(for-profit) and informal -, the margins between them are blurred. Some behave in a manner fully consistent with the maximization of either profits or managers' salaries, and a growing number of public agencies are developing direct labour organisations and all the trappings - but without the benefits - of a commercial enterprise." (Knapp, Robertson and Thomason, 1990 p184)

The agenda for the 1990s and into the next century for voluntary organisations poses both opportunities and considerable threats. The creation of a mixed economy of welfare in which the voluntary sector will play a substantial role is a bipartisan policy of the main political parties. Both Labour and Conservative have published guidance of the nature of the partnership between the state and the voluntary sector. However, Deakin (1991) claims 'these discussions lack a

dimension':

" - the context that defines the nature of the space the voluntary sector is now being asked to fill, how it came to exist in the first place, the ways in which it is likely to change - and how the pace and direction of change can be influenced. These processes will define the environment in which voluntary organisations will operate and the range of functions they will be called upon to perform." (Deakin, 1991 p12)

Deakin places this context in the reforms of the Thatcher Government of 1979-1990, some of which he believes are of potentially lasting significance. The creation of next step agencies and the managerial disciplines imposed on government agencies and local government in particular. The changes he argues are in essence rationalistic but there is also the introduction of essentially commercial methods and values into 'public sector transactions'. The 'customer is king' ethos being exchanged into individual empowerment as one transacts for welfare services. A problem however, is that the transformation from public sector monopolies into private sector ones creates benefits for senior staff and those facilitating change but is there a gain for the actual consumer?

Deakin questions whether the respective values of each system are compatible. The characteristics of rationalistic public sector management which stress order stability and control are closed, while market based features of variety, choice and freedom are open. The binding force to date has been a 'confident exercise of authority' but this requires centralised power. Centralised state authority he notes has been the characteristic of the Thatcher administration. The outcome of this centralising tendency has been first to limit the possibility for innovation that would go against the centres orthodox and in addition has pushed to the periphery or removed considerably various checks and balances. The removal of directly elected representatives on health authorities for example. The

managerial revolution with a business ethos has similarly removed the former ethos of public sector professional decisions making based on professional judgement. The biggest loser, Deakin cites are the local authorities who have all but been excluded from the execution of policy and at the same time have been subject to intense monitoring on their activities.

It was therefore going against this trend that the new Community Care Act did provide a role for local government (Deakin, 1994b p7). A role that was against the policy paper on Community Care by the right wing Adam Smith Institute who saw no role for local government. Pirie and Butler (1989) instead envisioned a service based upon an expanded private sector with people paying for such care:

"Government can, by providing very modest encouragement to the private sector, help it grow with that rising demand. It can, by means of incentives to personal saving and personal provision, make it easier for most people to provide for their own care needs in retirement." (Pirie and Butler, 1989 p32)

There was also allusion, though not expanded upon, of a role for the voluntary sector. The concept of those able to pay for welfare has not just been proposed by right wing 'think tanks'. As Hugh Mellor comments:

"I was young in the 1940s. I was inspired by Beveridge's call to tackle the 'giants' of disease, ignorance, squalor, idleness and want. I believed then, as I still do, that government has to play a major part in tackling them. The essence of the welfare state approach as I see it is that certain needs will be met, irrespective of ability to pay, and that a duty is laid upon the state to guarantee this. With 'the overriding principle' that services should be universal, I concur, for without it we shall be in danger of lapsing again into the 'two nations' situation of pre-1939, with relatively good facilities for the well-to-do, and second best for those who do not have the means to pay for them. Many of us felt that we had seen the demise of that situation in the years following the war and do not want to see it return.... On

the other hand the economics of today may make it sensible for there to be a limited degree of 'selectivity', whereby people pay something for certain services if they can afford it, and do not receive certain public services if they could afford to buy them elsewhere." (Mellor, 1985 p2-3)

The resourcing role for local government as opposed to the previous provider role has lead to what has been termed the contract culture(Deakin 1993). In this market of care the intention is to provide a degree of choice for the consumer while the economics of market forces should enable the best value for money. Those wealthy enough either through insurance or enriched by home ownership are 'means tested' out. The contract for care issued by the local authority can be to either a non-profit or profit making organisation.

The implementation of a 'contract culture' has caused considerable debate in the voluntary sector with some questioning whether the voluntary sector will lose its specific identity. (Burt 1992; Deakin 1993,1994b; Leat 1993; Gutch 1993; Harris 1993) In addition, at the prescriptive level there has developed a series of best practice books (Adirondack and Macfarlane 1990) and from the NCVO, specific publications as well as a series of headlines that questioned the whole process:

"Community Care in Crisis" (NCVO News March 1992);

"Raising funds, lowering values" (NCVO News, July 1992);

"The Price of Independence" (NCVO News, July/August 1993);

"Signing your life away" (NCVO Contracting In or Out, Summer 1991);

Management Crisis threatens (NCVO Contracting In or Out, Summer 1992).

The often attributed characteristics of the voluntary sector of flexibility, innovation, advocacy it is suggested will be placed at risk as voluntary organisations will have to adopt a business oriented approach to win contracts. A more conservative approach will follow as they will be reluctant to upset funders. Constraints on funding and the dictation of the funds by statutory authorities will mean services will become less innovatory. The changes in charity law to a regulatory regime encouraging efficiency (chapter 3, section 3.6) in the charity sector combined with the government 'putting its own shop in order' with an Efficiency Scrutiny of the ways government departments work with the voluntary sector (Home Office 1990) are cited as examples of promoting the 'business ethos' of the voluntary sector.

A Crisis in Charity Finance (Demos 1994 ) is also cited as the expected increase in giving by the public and business following tax incentives of the 1980s have not materialised and government funding has been cutback. It is suggested that as competition between voluntary and private sector organisations occurs, then calls by the private sector similar to that in the US of unfair competition will increase (Steinberg 1994) and the tax concessions of voluntary organisations should be abandoned.

All these concerns led to the talk of crisis in the sector, will it be able to cope with the new demands of the post Thatcher era (Billis and Harris 1992). Or are we being too pessimistic?

As we discover more about the real size and competition of the voluntary sector, we know that over 90% of charitable organisations have incomes of less than £10,000 and employ no staff. The debates cited above perhaps have no reality for the composition of the majority in numbers but not income of the charity sector. Voluntary and charitable organisations such as local

Womens Institutes or self help mothers and toddlers groups are relatively unaffected. Indeed, it may well be that such groups may acquire resources for the grant system favoured a relative few voluntary organisations who actively networked with statutory authorities. It may well be that all our views on the voluntary sector are focused on a relatively small number of active fund raising service delivery charities who are affected by these changes. A recent report from Loughborough University has indicated that a few fund-raising charities receive most media exposure.(Fenton, Golding and Radley 1993)

Manley (1994), criticising the convergence thesis perspective in particular offers six rationales as to why arguments for the voluntary sector's demise may be illusory.

i) The non-profit sector is an enormous pyramid and there is a tendency to focus attention on those organisations at the apex;

ii) New charities are created(currently 4,000 a year) because the founders perceive a gap in community action or existing services are not meeting need. Such organisations are unlikely to be influenced by commercial or contractual influences;

iii) While there is plenty of interchange of ideas and people between sectors such communication and transfers have been primarily into the voluntary sector, thus Manley asserts:

" I do not believe that there is anything like a similar flow of people or ideas from the non-profit sector into the for-profit sector. Transculture stimulation is therefore largely one way." (Manley, 1994 p10);(A perspective also shared by Wilson 1992)

iv) The contract culture debate about polarisation and loss of independence is over-exaggerated. Against the whole range of non-profit activity it is only where the statutory sector and NPOs overlap is there likely to be scope for contracts;

v) Many charities are jealous of their individuality and integrity and will not contemplate becoming involved in a competitive tendering situation, particularly if it would erode their voluntary base.

vi) Non-executive management brings a unique dynamic by its interface between trustees and executive management and staff. The power of founder/trustees to exert influence over direction should not be underestimated.

Manley writing from the practitioner perspective after twenty five years of financially managing Barnardo's offers an alternative perspective to more younger leaders of the sector, notably Etherington (1994b) and academic commentators. It is perhaps to academics that his criticism is most directed, urging them to understand the 'inner dynamics' of the voluntary sector rather than impose a policy interpretation. It could be equally claimed that Manley is offering a personal perspective which has been focused by large traditional charities which have not yet come to terms with change.

The advocacy and innovation role attributed to the voluntary sector could be stimulated in the new funding environment not weakened. The charity 'War on Want', for example, survived on the basis that its profile and supporters on its covenant data base was so individually identified to its political perspective that many of its supporters continued to give through its problems. The French overseas aid organisation 'Medcins Sans Frontieres' may be a model for overseas aid charities to follow rather than as the Charity 'Save the Children Fund' have recently achieved by the treatment of the

lesbian comedian Sandy Toksvig. By dropping her from an event for fear that it would damage the organisation's fund raising and image, the charity has damaged itself much more (Eisenstadt, 1994 p9).

The often announced pressure on the existing charitable trusts bemoaning their fate as they are called on to take on a greater role can perhaps be turned round to asking why is our society not creating new charitable trusts from the many new millionaires? If charitable trusts were to be actively promoted and in the driving seat of development, of taking the lead rather than following developments then new ones might be created? As David Carrington, the Director of the Barring Foundation, noted:

"Carnegie had put libraries on the Map. 'New maths' was developed by Nuffield. Right or wrong, that sort of philanthropic vision did not depend on the voluntary sector. It involved intervening in the mainstream. Isn't *that* our role, to create and fund the grand vision?" (Carrington 1994)

Weisbrod (1988) has written of the impact Titmuss's (1970) book on blood donorship had on US academics, particularly economists in making them rethink fundamental values on universal applications of for profit activity. He has further developed his economic theory of the voluntary sector to incorporate that for certain services the public trust voluntary organisations over for-profit organisations. Throughout Taylor and Langan (1994) have recently challenged this perspective. Their ability to quote as yet primary research in this field is more worrying for the voluntary sector and an agenda to take action. For as the Junior Minister of Health has recently stated on the voluntary sector:

"...will win contracts and gain support where its distinctive approach means it has something extra, something special to offer. It should not expect to be given preference where there are others particularly in the private sector,

who can do the job just as effectively."  
(Bowis, 1994)

The challenge for voluntary organisations is perhaps rather than trying to copy business, the voluntary sector should be developing its own strengths and developing a public trust in the voluntary sector. For example, as Wilson (1992) suggests building on the co-operative aspects of the voluntary sector and developing joint ventures rather than competitive strategies. To deliver services that are responsive to individual need with organisations that are accountable to the people they serve and who fund them. To see services as not being just for the poor and deprived but charity as a vital and cohesive part of society providing a universal range of services to the entire community.

As we discover more about current voluntary organisations and find our assumptions about charity in the past are being challenged, it may well transpire that the 'crisis' problems of the mid 1990s are but a blip in a continuous history of change. At one extreme determined by relation with the state but also a constant existence determined by charities themselves at the other. We have reviewed a number of crisis for charity, how different is this one? For example, in the 1950s the 'crisis' was should charity exist? Charity clearly has and it is perhaps instructive to consider the Nuffield Report of 1951 on why it would, for providing a context for debates in the last part of this century:

"Those who look forward to the complete abolition of private charity do so usually on the grounds that public action must increasingly supplant private actions. But this view implies an unrealistic conception of the community as something static, with a finite field of beneficial action within which the state takes over in turn all the activities which were once private and individual. Such arrangements are no more realistic than those of the 17th Century French economist Colbert who held that there is a finite amount of world trade, the capture of part of which by one country

automatically deprives others of their share. Communities, like trade, change and expand with the revelation and satisfaction of new needs. To this vital process charities have in the past contributed greatly; and in the future they can continue to play a necessary part if modern charity is not hampered by archaic limitations upon private charitable objects or by a passion for fruitless administrative tidiness" (Nathan, 1952 p166).

### **3.10 Conclusion.**

We have reviewed the main developments of the voluntary sector since the 16th Century to 1994. The role of Charity has been determined in large part by the state. However, we must be careful in being too deterministic for the rationale and motivations for philanthropy as the reasons people give are complex. We have challenged a number of commonly held assumptions about the voluntary sector in particular that charity is naturally a conservative philosophy, the 'scientific' consensus of a statutory based welfare state.

The economic problems of the British state since the mid 1970s and the election of a radical conservative government has formulated a 'crises in welfare' that has focused on a revised role for charity. We have questioned that broad generalisations of charity's role must be tempered with the size and composition of the charity sector. While the economic size and profile of the fund raising charities is large, their numbers and activity measured against the overall charity/voluntary sector is relatively small.

I do not contest that there are serious problems for the major charities and their future role. Indeed the core of this thesis is that the increased regulation with its focus on the trustees of larger charities poses a real threat to the continuation of the voluntary tradition.

I therefore, totally endorse the view of Blake Bromley (1994) that perhaps we have reached a four hundred year

cycle. The statute of Elizabeth in 1601 defined a new role for charity now has the time come again? However, such a definition must be all encompassing as we concluded in chapter 1. The debate to date has tended to be microscopic on those problems. There has been an absence of discussion on the wider philosophical issues. It is seeking a solution to these extensive questions that the new Director of the NCVO believes the newly established Commission on the Voluntary Sector must work to. Stuart Etherington uses bold and adventurous words:

"I am not going to talk about redefining charity in the sterile, semantic, charity and taxed based way which seems to have dominated the debate in recent times. What I am going to talk about are the issues which will have profound implications for our society and our sector into the next millennium." (Etherington, 1994a p8)

The challenge for the NCVO's Commission is that it does not become a 'Wolfenden' which equally with bold words declared its mission:

"...to review the role and functions of voluntary organisations in the UK over the next twenty-five years." (Wolfenden, 1978 p9)

An agenda that shortly after was dramatically changed with the election of a radical conservative government.

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## **CHAPTER FOUR - THE DEVELOPMENT OF CHARITY REGULATION, CURRENT PRACTICE AND ACCOUNTING STANDARDS.**

In this chapter we initially provide an historical account of charity regulation. The historical perspective reinforces the relationship of charity to state that we discussed in chapter 2. We argue that the various regulations on the charitable sector correlates with the importance of charity as an instrument of social policy. Our historical perspective starts with Tudor times in the first section to the establishment of the permanent Charity Commission. We critically examine the Commission from 1853 to 1987 and the respective themes which led to criticisms at the 1987 Public Accounts Committee hearing. How much was the Commission itself to blame? We appraise the development of regulation to the 1992 Act, including the application of 'regulation' theories to the charity sector. We review the 1992/3 Charities Acts, the recommendations of the 8th De-Regulation Task Force and the current system of monitoring. We then undertake a review of the development of accounting standards; the development of the Charity SORP; a review of current accounting theories and their applicability to the charitable sector. Finally, we compare these developments in England with the rest of the European Union.

### **4.1 FROM TUDOR TO THE BROUGHAM COMMISSIONERS.**

We established in chapter 2 the relationship of charity to the state. The encouragement of charity was a cornerstone of Tudor social policy, following the dissolution of the monasteries, to meet the problems of the age. Jordan (1958, p122-116) asserts that the whole thrust of the Tudors' policy was to mould charities to secular ends and to assist donors in creating charitable institutions. Prior to the Tudors, most charitable trusts were established for religious purposes and therefore came under the jurisdiction of the 'Ecclesiastical Courts'. The 1601 statute resolved the twin problems of encouraging giving and the protection against abuse; its lasting importance, unintended, was

to define charity to the 20th Century:

"The statute of 1601, as we shall date the law, secured the enforcement of charitable uses by instructing the Chancellor to appoint commissions to inquire into abuse, to take evidence, to impanel juries, and to hand down decisions subject only to his review. There remained as well the possibility for a complainant to take a direct appeal to Chancery against the abuses, though this method gradually became disused. Though ostensibly concerned with no more than the correction of existing abuses in charitable trusts and the encouragement of future donors to raise up such charitable institutions, the statute became in fact a great landmark in the development of the law of charitable trusts." (Jordan, 1958 p113)

Charity regulation was introduced to ensure that the purpose or purposes for which a trust was established were adhered to and that a body of commissioners or the court of chancery had authority to investigate and make judgements. The importance of charity to the Tudors and the protection the state afforded to it cannot be underestimated:

"We have frequently noted that the poor laws were given full effect only very gradually and unevenly during the course of our period. In contrast, charitable trusts were lent formidable and most effective protection during the whole of the Tudor period and were subjected to periodic and competent review after the statute of 1601 had carefully delineated an impressively orderly scheme of commissions of inquiry." (Jordan, 1958 p116)

It can be no accident of fate that the next major regulative legislation for charity occurs in the 19th Century with the reform of charitable organisations to meet the problems of the industrial age (Butler, 1960). The 1960 Charities Act takes eight years to come to legislation after the Nathan Report (1952), perhaps reflecting the importance of charity to the age. It is not a regulatory Act as we explore later, rather its primary purpose is to supplement aspects of the statutory welfare state.

The 1992/93 Charities Acts have more importance, for charity as we reviewed in chapter two is to have a more prominent role. The public and private corporations are encouraged to give, public confidence in charities is therefore a paramount issue. There is a clear correlation between the importance of charity to the state and the emphasis of regulation.

As Jordan cites the form of regulation enacted by the Tudors was effective in preventing abuse, its clear purpose is to view effective charity regulation as being part of a strategy for the encouragement of giving:

"...inquisitions into 'frauds, breaches of trust, and negligence' could be instituted in a great variety of ways. Most commonly, responsible inhabitants of a parish simply complained of malfeasance to the bishop of the diocese, to a commission already in being, to the Lord Chancellor or Lord Keeper, or and not infrequently, to the Privy Council. In other cases the institution of complaints has been noted from such persons as the clergyman, the vestry, the overseers, the municipal authorities, or a local justice of the peace. There are a number of instances, too, when descendants of the donor filed a complaint, and not a few in which a single and evidently humble petitioner set in motion the effective machinery of investigation. Finally, if a whole community was so negligent and dull as to fail to protect its self-interest, these commissions of inquiry could and did ferret out malfeasance and more often simply rural incompetence by regional inquiries designed to review the current status of all known charitable funds. The consequence was that charitable funds were on the whole administered with quite astonishing probity and skill and that a tradition of the highest fidelity in the discharge of duty was quickly established. This fact in itself lent powerful encouragement to substantial men considering benefaction and accounts in no small part for the huge sums vested in charitable trusts during the last two generations of our period." (Jordan, 1958 p116-117)

Some characteristics of Tudor regulation are still part of charity regulation today. Most notably reliance on members of the community to report any abuse in charity. Though how effective this has been as a system is unknown both historically and to date. In my interview with the current Chief Charity

Commissioner, he commented that the Commission had not felt that people were reluctant to bring suspected abuse to the Commission's attention. The Commission had improved its accessibility for complainants with designated phone lines to staff. Concern over 'whistleblowing' by charity employees, mirroring concerns in the wider economy has prompted ACENVO to support new research in this field (Dalton 1993), though the Charity Commission at the present moment has no plans for a whistle blowing line(Fries, 1994).

Secondly, the promotion of high standards of probity by trustees which we discuss in chapter 4. A third theme from Tudor times was the protection immortalised of the 'testor's' wishes. When someone left or gave money to charity they could be assured that it would be spent on the purposes intended. The important aspect of charity regulation has been ensuring that a breach of trust has not occurred. Where the purpose of the gift cannot be applied to its original intention then a 'Cy-pres' scheme may be sought. 'Cy-pres' is Norman French for 'as near as possible' and, until the creation of the permanent Charity Commission, required the authority of the Chancery Court for a scheme to be made.

The creation of charity commissions is not new. Henry V had passed a statute to protect charities by creating a charitable commission which could be established by the ecclesiastical authorities to 'secure such corrections and reparations as might be needed' (Jordan, 1958 p114). The fact that by the time of Elizabeth I many medieval charitable institutions had decayed was to be a manifestation of the future. The use of commissions was quite common, the Brougham reports 1818-1837 (held in the current Charity Commission offices) estimated that from 1643 to 1746 some nine hundred and sixty-one special commissions were held. However, after this date their use became infrequent with only nine commissions formed between this date and the first Brougham Commission in 1818.

Why the special commissions fell into disuse and there was a

failure to introduce replacement investigation machinery is not clear. Owen (1965) suggests that the contributing reason may have been the outcome of any commission inquiry. Inevitably this was referral to the 'Court of Chancery' which was both time consuming and very expensive. The last special commission, Owen (1965 p85) notes was in 1787 but the Lord Chancellor did not make a decision until 1817. The expense of chancery was so great that the entire endowment of the trust being protected could be lost in legal costs. The only alternative to the Court of Chancery was in common law to the Attorney General who could act if a charity had been abused. The only problem with this measure was that the legal costs of the court case would be borne by the complainant, a considerable disincentive.

While court costs and delays must have been a major factor in dissuading the formation of commissions there must be other reasons. Clearly this is an area requiring further historical research. One method of inquiry would be to review the perception of charity against the economic, social and political conditions of the time. The latter half of the 18th Century saw the advent of the industrial revolution. Between 1750 and 1840 the population of England and Wales multiplied by rather more than two. (Hobsbawm and Rude 1973). Domestic production of grain covered 98% of British consumption. While there was undoubtedly hardship as Thompson (1974) has recorded, the majority of the population was fully employed. In particular, in the agricultural communities where the vast majority of charities were sited. Britain was also perpetually involved in a series of wars, though they were now all overseas.

Charity may have been seen as requiring no reform because the purposes it was there to serve were considered as being met. The Brougham Commissioners' later findings that charity resources were being used to subsidise the poor rates would suggest that there was little encouragement in the country to press for reform. It was only after the end of the Napoleonic wars, that perhaps economic crisis, the fear of the new industrial working

class and the agricultural rising of 1830 combined with the domination of political economy philosophy, prompted the state to reconsider the role of charity. This was certainly the view of Butler (1960), when as Home Secretary, he introduced the 1960 Charities Act by reflecting on 19th century reform:

"Between 1801 and 1831 alone, the population rose from 11 million to 16.5 million and by 1851 half the population was urban. So it was against this background that the previous big legislative step was taken...it is to meet a new social situation that the law of charity has to be revised in our day...At that time charity law could not keep pace with the revolutionary changes taking place in the country."  
(Butler, 1960 p408)

The interest by the state in charity regulation was renewed in the 1780s. The intellectual stimulus for reform was provided by the early political economists, Adam Smith, Thomas Malthus and David Ricardo (Roll 1973). The influence of these early economists with a philosophy of laissez-faire, and a minimum but efficient public expenditure led to revisions in the poor law. One of the requirements placed on overseers for the first time was to maintain statistics on poor law expenditure between 1783-85.

The Gilbert Act is an example of the relationship of state to charity. Thomas Gilbert introduced a charity Act that was designed to complement the new poor law legislation. His Act required ministers and church wardens to furnish data on charities for the benefit of the poor. Of the thirteen thousand returns expected, only fourteen were said not to have made a return (Owen, 1965 p86). The findings, however, showed that information about charity was hopelessly imprecise or incomplete. For the political economists this was a scandalous state of affairs, as it meant the country was not receiving the best value for money from charity and therefore the poor were having instead to rely on the state. The incompleteness of the returns, believes Owen (1965), was the ammunition required by the reformers to

demand change and he comments:

"One can think, fairly enough of the Gilbert Returns as the first step toward a more rational and responsible attitude on the part of the state." (Owen, 1965 p87)

Charity reform was now on the agenda, linked of course to the desire by Malthus and his supporters for charity to take on an ever greater responsibility for the poor thus allowing a reduction in the state's responsibility. The problem was to encourage private charity and thereby confidence in the administration of charity. Two Acts were passed in 1812 to improve regulation. The first, the Charitable Donations Registration Act, required the central listing of all endowments. This Act, Owen remarks, was 'honoured more in the breach than in the observance' (p182-183).

The second was the Charities Procedures Act, which was the work of Sir Samuel Romilly. In chapter one we mentioned Romilly as providing a legal classification for charity in 1804 which was the precedent for Lord McNaughten's four heads of charity. Romilly's act was designed to expedite and reduce the cost of chancery proceedings and provide a summary remedy. The Act, however, failed to avoid the recourse to the chancery court as an Attorney General later remarked:

"Summary must be interpreted according to the glossary of the court of chancery." (Owen, 1965 p183)

More dramatic reform was required if charitable abuse was to be curbed and the champion for that cause was found in Henry Brougham.

#### **4.2 THE BROUGHAM COMMISSIONERS**

The reform in Charity Law movement was fuelled by what Owen (1965

p183) terms 'Scottish-Whig-Utilitarian'. This perspective embraced the economic theories of Adam Smith and the political philosophy of Jeremy Bentham and its leading principal utilitarianism (Gregg, 1973 p276-278). Brougham was initially driven to reform by the need for an education system that supported the growing industrial power of Britain. Brougham saw the jumble of educational trusts and their inefficiency as being a barrier to providing that workforce. In 1816 with himself as Chairman, Parliament approved a select committee to investigate the education of the poor in the metropolis. Owen (1965 p184) describes in detail the transfer from this modest committee to the establishment of a commission which was to meet from 1818 to 1837 and produce a report covering forty volumes.

The commission was approved and in 1819 its terms of reference were expanded outside of education. The commission resources were also increased to twenty persons of whom ten were paid. A commission was constituted by two commissioners. The style of the commission was reflected by a contemporary author Thomas Love Peacock (1828) in his book, 'Crotchet Castle'. Peacock satirised the Brougham commissioners through his mouthpiece Dr Folliott (the full encounter in the book is attached as Appendix 4). The Commissioners would arrive in a parish and interview the local minister and other worthies. Peacock's book gives an indication of the lack of powers the commissioners had, for after finding the good doctor guilty of having a pound lumped into his salary which was intended for charitable causes all they could do was to 'admonish' him.

At least the commissioners met with a reply, for as Owen notes:

"The Commissioners were constantly learning of lost records or of records alleged by their custodians to have been lost, and occasionally were met by a flat refusal to produce documents, as when the Dean and Chapter of Lincoln barred a commissioner from materials relating to the scandalous conditions of the Meer Hospital." (Owen, 1965 p189)

A photocopy (from the Brougham records) of the Meer Inquiry is

attached as Appendix 5. On the records page 396, the Report says of the warden:

"but of late years the true source of his income has been the fines on renewals of leases. Some of these are specified in the sequel. In the meantime, however, it may be stated that they are extremely profitable; and from the date of the above arrangement to the present day have gone exclusively into the pocket of the warden."

On the records page 398, the total sum was estimated between the years 1819 to 1834 to be £13, 428 4s 1p. The conclusion of the Commissioner, John MacQueen, was:

"Notwithstanding the obstacles thrown in the way of this Inquiry by the Cathedral dignitaries, sufficient materials have been collected to render it indispensable that the case of the Meer Hospital, under all its circumstances, should be certified to the Attorney-General, and the same having been submitted to a General Board of the Charity Commissioners, has been so certified accordingly."  
(record page 399 in Appendix 5)

If the abuse was so great then it could be, as in the Meer case referred to the Attorney General, and indeed some four hundred charities were. Given the lack of powers, Owen concludes on the Brougham Commissioners:

"This was essentially a fact finding enterprise, an inventory of the nation's charitable endowments rather than a procedure for correcting their abuses." (Owen, 1965 p190)

However, it is not an entirely dismal picture on the ability of the Commission. Their inquiries did have some positive effect by the presence and publicity which probably abated many abuses.

The value of the Brougham Commissioners today is the volumes which list the resources and activity of charity between 1818 - 1837. As an historical archive it provides not only a contemporary picture of charity but also a valuable chronology on the development and activity of a charity. In modern charity

research, issues such as why and how charities develop, problems of management and success, merger and failure are still at a primary stage (Cornforth, 1994). The Brougham records as illustrated by the Meer extract (Appendix 5) provide meticulous descriptions of origin and problems. The records would provide a useful sample for comparative management oriented research. For financial charity research they provide a wealth of statistics on the assets and income of charity. They also demonstrate a profile of small to large charities which is not too dissimilar to the income profile in the 1990s which we described in chapter one. Of the final total of 28,880 charities, 3,331 had an income of less than £5 per year while 1,749 had an income of more than £100. The animal image of charity having a very large head and a very very thin, but extremely long body, has been consistent.

The work of the Brougham commissioners was very thorough. By 1834, Owen (1965) notes some 26,751 charities had been dealt with. Outstanding was half of Wales and six English counties. To expedite the work, Parliament voted further resources and set up a select committee. The final reports were published between 1837-1840 and the Commission had cost £250,000. Compounded using the Retail Prices Index since 1915 and Burnet's 'History of the Cost of Living' this was estimated by Stephen Williams (Senior Lecturer in Accounting at South Bank University leading the CSO study) to be in today's value £8.2 million. In context, until 1988 this sum was greater than the yearly running costs of the entire Charity Commission.

On one level, the conclusions of the commissioners were gratifying for charity as they found relatively few examples of outright abuse. Their primary observation was the encumbrance of the legal regulation of charity which made any reasonable management of the country's charity resources virtually impossible. An example of this as we mentioned earlier was the use of 'dole' charities. The inconsistency of their application meant they were used in some cases to reduce the poor law costs

in a parish.

Action to remedy abuses and to co-ordinate charity to ensure its resources met the needs of society was required. Recommendation was made by the select committee for the establishment of a permanent charity commission which would:

"Superintend the scale and exchange of charity property, scrutinise charity accounts, appoint and remove trustees in certain circumstances...suggest schemes for the government of charities and the correction of abuses in their constitution and administration." (Owen, 1965 p191)

Given the scale of the Brougham Commission's findings and the consensus for reform, Owen (p197) remarks it is intriguing as to why it took another fifteen years for a Bill to reach the statute book. He suggests that it was simply inertia and more pressing business taking precedence, with occasional maliciousness by special or local interests on particular Bills, that delayed its implementation. The Nathan Committee (1952) pre-dating Owen's published book by thirteen years was more forthright:

"The delays in the passing of this legislation were due partly to the accidents of the Parliamentary timetable, partly to changes in government, but more than anything else to resistance to the setting up of an independent board to look into the doings of trustees." (Nathan, 1952 p21)

The final spur was a Royal Commission in 1850 investigating a case of malpractice which led to the Charitable Trusts Act of 1853.

#### 4.3 THE CHARITY COMMISSION TO 1987.

The Charity Commission founded in 1853 was to have three paid commissioners, two of whom were to be Barristers of twelve years standing. Their investigative powers allowed for examination of trustees under oath and a requirement for documents to be

produced on request. The act pre-dating the Charities Act 1992 by one hundred and twenty two years also required trustees to send annual accounts. The Act was deficient in the main recommendation of the select committee which was to avoid the need to have to use the legal process for the appointment of trustees and in particular the use of 'cy-pres'. Where a 'cy-pres' scheme was insufficient and a more general re-organisation was necessary the approval of parliament was required.

From Owen's (1965) detailed description of the early years of the Charity Commission, a number of themes emerge which illustrate tensions and problems that have been a part of the Commission throughout its history. These are:

- 4.3.1. The legal culture.
- 4.3.2. Insufficient power.
- 4.3.3. The accounts failure.
- 4.3.4. Insufficient resources.
- 4.3.5. A reactive approach.

To these I have added:

- 4.3.6 The Commission's Accountability.
- 4.3.7 The Commissioners.

We look at each of these in turn, and compare comments made in the respective 1987 reports on the Charity Commission with those of Owen and his early history of the Charity Commission to 1900 and in the 1950s with the comments of the Nathan Committee.

#### **4.3.1. The Legal Culture.**

The most often heard criticism of the Charity Commission is that it is a department of lawyers. Both the 1975 (Expenditure Committee) and 1987 (Committee of Public Accounts) Parliamentary Accounts Committee encounters with the Chief Charity Commissioner cited this image. Owen comments on the first Chief Charity

Commissioner, Peter Erle:

"In the two decades Erle served as Chief Commissioner he was the guiding hand of the board, and he was at least partly responsible for its heavily judicial and legal...approach to charity problems." (Owen, 1965 p203)

"They regard themselves as an independent quasi-judicial body."  
(Nathan, 1952 p40)

My respective interviews with Denis Peach, the Chief Charity Commissioner 1982-87 and Peter Mimpriss, partner of solicitors Allen and Overy and Chairman of the Charity Law Association, confirmed that there was a dominant legal culture in the commission. An example Mr Peach cited was the regulation of new charities, with him having to encourage the lawyers to use the fourth head more liberally.

The commissioners do meet as a court, a power that they have fought over the years to acquire and strengthen. The power of 'cy-pres' enables them to deal with many charity schemes promptly in comparison to the courts. Mr Mimpriss valued highly the commissioners' powers in this regard. He estimated the savings in costs to the government and to charities to run into many millions of pounds. It was also the first point for Woodfield (1987 p10), who saw this as the reason why the Commission was established and why it should continue. Both as a justification for its existence and its prestige the 'court' authority of the Commission is important. Has that authority, however, detracted from the Commission taking a more active stance?

The evidence (Nathan 1952; Owen 1965; Nightingale 1973; Goodman 1976; Expenditure Committee 1975; Gerard 1983; Public Accounts Committee 1987) suggests that the commissioners' legal authority has made the Commission oriented towards legal affairs rather than a policy direction. The Chief Commissioner, in his evidence to the 1987 Public Accounts Committee, remarked:

"We are not a political department, we are an extension of the High Court rather than of the executive." (Public Accounts Committee, 1987 p2)

He also pointed out that the scope for redeployment of staff within the Commission was limited because of these legal responsibilities. The government had given powers to the Commission to undertake statutory tasks which the Commission in the first instance had to deliver.

There is an underlying theme in the Woodfield Report (1987) that the commissioners had overstated their legal responsibilities. On land transactions, for example (p36-37), the deployment of staff and the reluctance of the Commission to use existing powers to reduce the need for consent. On their sitting as a court:

"The Commissioners need occasionally to sit as a board when acting as an extension of the High Court, but separate arrangements can, without breaching the spirit of the statute, be made for management questions." (Woodfield, 1987 p15)

Woodfield (1987 p10) was decisive in recommending that the quasi-judicial functions of the Commission be not taken away from it. The 1982-87 Chief Commissioner felt that the problem was the lack of resources:

"... either one legislates and reduces some of our functions to enable staff to be redeployed-and the Scrutiny team have entirely endorsed the need for us to give advice as the only authoritative body outside the High Court which can do so-or one simply has to make more staff available to do the tasks which have been imposed on the Commission." (Public Accounts Committee, 1987,p5)

This is also the view of the current Chief Commissioner, Richard Fries (1994), who has seen a dramatic increase in the Commission's resources including a doubling of staff since 1987 (Home Office, 1993).

#### 4.3.2. Insufficient Power.

The Woodfield Report (1987, p26) drew specific attention to the inadequate and doubtful powers of the Commission. Owen comments on the Commission in the 1850s:

"It was only gradually that the commissioners came to sense the weakness of their position, especially their lack of power necessary to carry out significant reforms" (Owen, 1965 p204)

"...position has remained unchanged since 1860...in two respects it has regressed." (Nathan, 1952 p26)

Robin Guthrie, the Chief Commissioner from 1987-92, noted in the Commission's 1987 Report:

"We have in the past drawn attention to our lack both of sufficient resources and adequate powers to act quickly to deal with abuse." (Charity Commission, 1987 p1)

Mr Guthrie is quite correct to say his predecessors had drawn attention to the lack of resources, however, on the issue of power there is less emphasis. His immediate predecessor, Mr Peach, in 1986 did make a call for greater power but this was on page 11 of the Annual Report. There does not seem to be the same prominence of the Commission emphasising its lack of powers. Indeed, as late as 1982 the Commission reported:

"Our regulatory and investigative functions under the 1960 Act are also important; but they amount to a very small proportion of our work." (Charity Commission, 1982 p6)

Woodfield (1987, p28) noted recent reports by the Commission had requested powers to be strengthened. From a review of the Commission's Annual Reports since 1960, prior to Mr Peach's Chief

Commissionership 1982-87, the Commission had not given emphasis to its lack of investigative powers. Indeed, it is back to 1963 to find the Chief Commissioner on page 12 (Charity Commission, 1963) commenting that it had only the power of chancery in compelling charities to register.

A conclusion has to be that the Charity Commission, only in the 1980s had really started to publicly declare a deficiency in its powers. In part this comes about due to:

"The work of investigating complaints about charity administration increased by more than one third over the previous year." (Charity Commission Annual Report, 1982 p27)

Woodfield (1987) believed the inadequacy in the Commission's powers was not the lack of them but the type and flexibility. In particular, a major omission the report believed was the lack of preventive measures, for example, the Commission could not stop someone they had removed from trusteeship becoming a trustee of another charity. There was also inadequacy in the Commission ability to intervene as the government White Paper explained:

"At present the Commissioners' powers under sections 20(1) and (2) of the 1960 Act are exercisable only when they are satisfied, after an inquiry under section 6, that there has been misconduct or mismanagement in a charity's administration and that it is necessary or desirable to protect charity property or secure its proper application. The Woodfield Report concluded that the requirement to be satisfied that there had been mismanagement or misconduct and that it was "necessary or desirable" to act to protect charity property seriously restricted the Commissioners' ability to act where abuse was suspected. It recommended instead that the Commissioners should be empowered to act where one or other of these conditions was satisfied." (Home Office, 1989 p27-28)

The problem of the Commission's powers had been debated at length by Nightingale (1973) who believed that there were also other reasons for the Commission's hesitant use of its powers:

"If the trustees' inaction amounted to 'mismanagement', the Commissioners could remove them, freeze the assets and appoint new trustees. But nothing of the kind seems to have been seriously contemplated, and there are two main explanations for this. First, the recalcitrant charities were usually small, perhaps providing an income of under £5. Second, compulsion or harassment now might deter people from becoming trustees in the future, and the cause of charity would suffer." (Nightingale, 1983 p19).

From Colin Davies' (1985) study on the Charity Commission and regulation, there is a more damning comment:

"What appears to have been lacking is the will, not the means." (Davies, 1985 p88)

A view we explore in greater depth in section 3.3.5.

The defect in the scope and flexibility of the Commission's powers identified by Woodfield (1987) has subsequently been rectified by the 1992 Act.

But neither Woodfield nor the subsequent White Paper (Home Office 1989) dealt with the trustee issue raised by Nightingale. Or the type of dispute which the Commission referred to in 1984:

"We are statutorily precluded from acting in the administration of a charity and our powers are therefore limited when complaints relate to questions of policy, or to differences among trustees or members." (Charity Commission, 1984 p13)

It is likely to be these type of problems which may come to dominate the charity agenda (Palmer and Harrow 1994). The challenge for the Commission will be how to use their powers in relation to trustees. In clear cases of fraud or misapplication there should be no problem, but against 'honest' trustees it will be more problematic. As Palmer and Harrow comment:

"Trustees, as volunteers, cannot be exhorted and

cajoled into proactivity or harassed or embarrassed into assessment of the charity's long-term aims and critical evaluation of its impact. Similarly, to assume that trustee training is the answer to ensuring that charities operate at full efficiency and with integrity (to refer to the Charity Commission's dual concern) may be to miss the point that there are limitations on the extent to which volunteers may be trained before they cease to represent a volunteer input. It may also be a mistake to place a great deal of faith in an activity which is done to people, rather than in one which people choose for themselves." (Palmer and Harrow, 1994 p105)

#### 4.3.3. Accounts Failure.

Woodfield (1987, p22) noted that less than 10% of charities sent in accounts. Owen records for 1853:

"Although they had hopefully looked forward to receiving accounts from forty thousand charities, the first year total was a disappointing ten thousand." (Owen, 1965 p204);

While Nathan comments: "...the accounts of less than a third of all trusts thought to be on the Commissioners' books are received each year." (Nathan, 1952 p46)

The enigmatical attitude of the commissioners to annual accounts was perhaps best summarised in the 1970 Annual Report:

"It seems reasonable to assume that in requiring charity accounts to be submitted to us, Parliament intended that we should more than simply file these accounts when we receive them, and we are anxious to resume a systematic scrutiny of charity accounts as soon as circumstances permit." (Charity Commission, 1970 p21).

In 1965, the Charity Commission undertook a pilot exercise on the scrutiny of accounts "...to discover the problems likely to arise and to show what the staffing requirements would be" (Charity Commission, 1996 p25).

The intention was to undertake a five year review in which during

that period all charity accounts would have been scrutinised. However, in 1967 the Commission reported:

"A periodic scrutiny of the accounts of all charities requires a considerable number of staff, who need to be trained for the work. Our experience of the results achieved by this work in the past two years has not convinced us that the effort and expense involved is fully justified" ( Charity Commission, 1967 p25).

The Commission did say it would review accounts as and when required and that its inquiry section was to continue. Nightingale (1973, p279) questioned "was this one wonders a wise statement?" For Nightingale (1973) the Commission was sending all the wrong messages. He suggested, if nothing else, it would not have taken much resources to demand annual accounts from all charities and simply put them on public file.

In 1973, the Commission announced it was again going to resume a systematic scrutiny of charity accounts. However, on the issue of a qualified accountant, the Commission stated:

"The absence of a qualified accountant on our staff has, however, been cited as evidence that we are not properly equipped to undertake this work. We think this criticism is based on a misconception of what is involved." (Charity Commission, 1973 p7)

During the year the Commission reported that the new section had looked at nearly 8,500 charity accounts. They concluded that the examinations had not revealed any major shortcomings. However, in a few cases payments had been made for purposes which were not covered by the trusts of the charity. The Commission's report also commented on advice they had given to improve administration. The Commission positively concluded for 1973:

"The main benefits of the year's work are, on the one hand, that it will now be becoming apparent that charity accounts will be subject to periodic inspection and, on the other hand that in a substantial number of cases we now have up-to-date information about the finances and activities of

charities which would not otherwise have reached us"  
(Charity Commission, 1973 p33).

The 1974 Charity Commission Annual Report, however, records that only 6,500 accounts are checked:

"...partly as a result of staff shortages and partly because the section temporarily assumed responsibility during the year for the task of issuing requests for the accounts of national charities in order to relieve the pressure of work on the registration division in London" (Charity Commission, 1974 p26).

The Commission declares it intends to ask for more resources for this work and is reviewing training for staff on the section. In 1975, the Commission announces that training has been provided by the then Liverpool Polytechnic.

The debate on accounts should not be viewed in isolation. Nightingale (1973 p279) had been critical of the Commission's failure to check accounts. The Goodman Committee's Report in 1976 made specific recommendations on charity accounts and the role of the commissioners:

"(b) That there should be statutory requirement of professional audit of accounts where the income exceeds a certain figure; for smaller incomes, the audit should be independent.

(c) that the staff of the Charity Commissioners should be sufficient at least to enable the accounts of all new charities to be examined for the first three years of their existence and of all charities to be examined not less frequently than every five years.

(d) That the Charity Commissioners should have sufficient staff with accountancy skills to advise whether the system of preparing accounts is adequate to give related information to the public." (Goodman, 1976 p114)

The Goodman Committee was established under the auspices of the then National Council of Social Service, now National Council of

Voluntary Organisations. Its remit was to examine existing legislation and to suggest improvements which will benefit the work of voluntary organisations (Goodman, 1976 p1). The membership of the Committee, notwithstanding Lord Goodman himself, was an impressive collection of charity executives, Queens Counsels, Chartered Accountants and a former charity commissioner. Also at this time was the 1975 Review of the Charity Commission by the Expenditure Committee.

While acknowledging the respective reports in its 1977 Annual Report, the Commission seems to have done little else. The Commission, in 1979, does however issue a set of guidance notes for trustees which can be used as a checklist and two new forms for accounts presentation. One for charities with an income of less than £500 and one for greater than.

It is not until 1984 that accounts are mentioned again. In part this may be due to the fact that, as the Commission reported in its 1979 Report, that the Annual Report is meant to provide an illustration of the Commission's work rather than a comprehensive review. The other side of the argument, however, must be that the accounts scrutiny function was not at the forefront of the commissioners' concerns. By 1984, however, the Commission does express concern over the inadequacy of this work by a two page prominent feature at the beginning of the report.

A similar concern is also raised in the 1985 Report and by 1986 the Commission has become almost bellicose on the accounts issue:

"Nevertheless, the failure of many bodies of trustees to submit accounts and the lack of our resources to enable them to be called in and questioned on any significant scale, suggest that there may be a need for the accounts of all but the smallest charities to be professionally audited; a need for those charities which raise funds from the public to be made more accountable to those who contribute to them; and a need to penalise (personally) those trustees who fail to submit accounts." (Charity Commission, 1986 p12)

The subsequent reports of Woodfield (1987) and the Public

Accounts Committee (1987) did place accounts scrutiny at the top of the agenda. The 1992 Charities Act incorporates many of the Goodman (1976) recommendations. The Commission does seem to be guilty of an irresolute attitude towards charity accounts until the mid 1980s.

#### **4.3.4. Insufficient Resources**

The Chief Charity Commissioner in the 1984 (p6), 1985 (p6) and 1986 (p2) Reports of the Commission complained about the lack of staff resources. Historically a problem from its inception:

"...under the terms of the early Acts they were entitled to only a modest establishment. Successive Acts, which imposed additional responsibilities on them, brought no comparable increase in staff" (Owen, 1965 p302);

"...the commissioners have from the start suffered from the serious disadvantage of being understaffed." (Nathan, 1952 p28)

There is little debate that by the mid 1980s the Commission was seriously under-resourced and the then Chief Commissioner, Denis Peach, had made this very clear in the Annual Reports which we cite above. As we illustrate later (Home Office, 1993), the Commission has subsequently seen a doubling of its resources in terms of numbers of staff. In addition to this real increase the Commission has also seen some functions of its work disappear, notably the Official Custodian. The Commission is also subject, like all government departments, to the annual budgetary review where it has to justify the use of its resources. The expansion has been in the areas of information technology with some focus on facilitating monitoring via computerisation of the central register. In addition, the monitoring and investigation section was increased to now comprising nearly a sixth of the Commission's establishment. There remains the historic issue as to how the lack of resources emerged and could the Commission have done more to resolve it?

The Commission's concerns about insufficient resources in the modern era are announced in 1964. However, this refers to the constraints of limited resources and as such has to be read against a later report which stated:

"Between 1960 - 1965 our staff was more than doubled, but since then there has only been a slight increase although the volume of work continues to grow." (Charity Commission, 1970 p5)

A major blow for the Commission in the late 1960s was the decision to open a Liverpool office. This decision was imposed on the Commission by the Government as part of its policy to move parts of the civil service out of London. Undoubtedly for a department as small as the Charity Commission this was a major drain on staff resources, particularly management time. It must also be understood against the office technology of the late 1960s and the resources available to a small government department.

By the 1970s the Commission was sending signals that it required more resources in its Annual Report. However, to the 1975 Expenditure Committee the Chief Commissioner, in his evidence on staffing, states:

"I think, for what we are trying to do at the present time, we have enough staff." ( Expenditure Committee, 1975 p30)

It is perhaps not surprising that with the election of a Conservative Government in 1979 committed to a cut back in public expenditure, the Commission's staff were reduced from 395.5 in 1976 to 330 at the end of 1981 (Charity Commission 1981). There may also be an element of bad timing that the arrival of a reforming Commissioner in 1982 is set against a cutback in resources both in the Commission and public expenditure as a whole.

As we discuss in the next section on reactive image, the

Commissioners did little to promote themselves as dynamic leaders with innovative ideas which would have attracted attention and resources. Nor, within the resources they had, did they take a pro-active stance to marshalling them to the best effect:

"By its own admission it has been slow to develop the resource management systems necessary to control deployment of its limited staff resources to best advantage. We note that, in contrast to the Commission's view, the Treasury thought there was scope for better deployment of existing staff through improved resource management systems." (Public Accounts Committee, 1987 pviii)

Throughout the Comptroller and Auditor General's Report to the Public Accounts Committee (1987), he draws attention to and rejects the Commission's defence of resource limitations.

The Woodfield (1987) Report took a more conciliatory view to the Commission on resources. Noting as we discussed under insufficient powers, the Commission was constrained by having some statutory duties. These duties which were important twenty seven years before in the 1960 Charities Act were no longer paramount. Other issues such as accounts scrutiny, however, had come to the fore, particularly for fund raising charities.

The Commission was understaffed, particularly by the early 1980s. However, by this time it had also been instrumental in causing its resources problem, by its failure to adopt a more critical attitude to its activities.

#### **4.3.5. A reactive approach.**

The Comptroller and Auditor General's Report (Committee of Public Accounts, 1987 pv) on the Charity Commission concluded that the Commission had adopted a passive attitude. Historically, there is a lack of action by the Commission:

"They became increasingly content to operate as a government office dealing with routine matters in a routine fashion" (Owen,

1965 299);

"..it has always been open to the commissioners and the ministry to adopt a policy of positive and frequent intervention in the administration of trusts or a policy of interviewing only when something serious is brought to light. In the event they have adopted the latter course." (Nathan, 1952 p45)

This last state of affairs and the themes above developed after what Owen (p213) described as:

"early decades of enthusiasm that waned with both the lack of resources and perhaps most importantly the disappointment the Commission constantly had when Parliament refused them extra powers." (Owen, 1965 p329)

The commissioner's reports from 1960 do acquire a more propitious approach, the previous reports primarily detailing schemes and accounts. The 1963 Report has the commissioners proposing to take the initiative and 'track down' those charities which had yet to register and once registration was completed to ensure it is kept up to date.

In 1968, the Commission proposes to the National Council for Social Service a Working Party on fund raising. Nightingale (1973, p287) suggests this was because the Charity Commission can say nothing about the quality of a charity. From the public perception of the Commission they are often criticised as not taking a more pro-active approach. Yet as Nightingale (1973) observed the Commission is a government department and is constrained from taking what could be interpreted as a political view. Indeed, given the sensitivity of the independence of charity from both the political right and left as well as the whole issue of religious freedom, the Commission walks a thin line. As Lord Nathan observed in the 1960 House of Lords Charity debate on wishing the Commission to be more pro-active on social affairs:

"The Bill has given the Commission no power of initiative."

(Nathan, 1960 col 578)

A lack of initiative in the Commission was the conclusion of the 1975 Expenditure Committee, who reported:

"We consider that the Commissioners have failed to put themselves across to those concerned with charitable and other voluntary activities as an effective instrument for the promotion of charitable resources. We feel that in living up to their self-imposed image of benevolent family solicitors they have given perhaps too much to their legal duties as opposed to their responsibilities in other spheres. They failed to convey to us any impression of dynamism (as opposed to dedication), imagination, innovation or management efficiency." (Expenditure Committee 1975 pxxix)

This conclusion was after the Committee had noted that in their dealings with the commissioners they had been co-operative and expeditious. In part, the Commission's public problems culminating in 1987 can be dated from this encounter. There were other events in between which signified this negative image of the Commission. The most important, however, may have been their tepid attitude to the Goodman Report (1976). The Commission, in their 1979 Report, rejected its major proposals and stated that no changes were required. Beyond the change on very small charities amalgamating which found its way into the 1985 Act, the recommendations of the Goodman Committee were ignored. As we cited earlier in section 3.3.2, the Goodman committee was composed of leading figures both in charity and from professions.

The inadequacy of the Commission over scrutinising accounts, the failure to update the register and its hesitant attitude to investigation were the principal indictments of the Comptroller and Auditor General's Report (Public Accounts Committee 1987). The language in the report of 'ineffective', 'passive attitude', 'widespread failure' and 'complacent' were used against the Commission.

The response of the Chief Commissioner to these observations was

in part to see them as unfair. As we comment in section 3.3.7, the then Chief Commissioner Denis Peach had been introducing reforms and there is certainly a view within the Commission and outside that he personally 'took the flack' for the Commission's past failings. Within the limited resources he now had, Mr Peach had been rectifying the serious shortcomings in the Commission's performance. There is also the view (Peach 1994) that the National Audit Office inquiry was unnecessary due to the Woodfield investigation. The NAO report was overshadowed by this more embracing scrutiny, as Vinten (1989) comments:

"The second major examination was carried out in the well-worn tradition of the 'Rayner' scrutiny...The report was able to draw on the earlier report, and it is instructive to have juxtaposed an audit report with a 'Rayner' scrutiny on the same subject. The scrutiny is more radical, thorough-going and managerially based, and represents the ideal response to an audit report, rather than the more superficial response emanating through examination of a department in the Committee of Public Accounts." (Vinten, 1989 p33-34)

Woodfield had asked and answered the question - Do we need a Charity Commission? - with a positive answer. If the Treasury through the NAO had been considering disbanding the Commission, it now had a major problem. For to do so would question the integrity of the Woodfield Report and Sir Philip himself!

There is, however, general agreement that the Commission was guilty of taking too passive an attitude both in modernising its internal management:

"For whatever reason, the Commission seems to have found it more than usually difficult to modernise its methods of work and secure better value for money." (Woodfield, 1987 p14)

and the Commission's attitude to the charity sector, particularly on investigation from 1960, when in the Act they were to:

"...have the general function of promoting the effective use of charitable resources by encouraging

the development of better methods of administration, by giving charity trustees information or advice on any matter affecting the charity and by investigating and checking abuses." (Charities Act, 1960 S.1(3))

The issue for the Commission in the mid 1990s is how to avoid 'slipping back' into a passive attitude now the 1993 Act has come into law and the various components have been enacted. It may be that the structure of the Commission and its accountability have been the root causes of the Commission's problems, both of which remain unchanged.

#### **4.3.6 The Commissioners Accountability.**

This point was raised by the Nathan Committee (1952) as to reasons why the Commission had not been more pro-active:

"they have been severely handicapped by having no one in a position to champion their cause in Parliament." (Nathan 1952 p28)

The Charity Commission was set up as an independent body reporting to Parliament through an appointed member of the government. This method proved unsatisfactory and led in 1887 to the establishment of the 'Parliamentary Commissioner', a senior back bench MP who would represent the Commission in Parliament. Until 1960, the reports of the Commission were addressed to the Sovereign.

The Nathan Committee (1952) believed this had been a major cause of the Commission's resource problem. To deal with this problem it was recommended that the Charity Commission become responsible to a ministry. It was eventually decided this was to be the Home Office. The new Chief Charity Commissioner in the 1960 Report provides an eloquent description of the Commission's creation and what the 1960 Act meant for the Commission:

"It was a favourite constitutional device in the first half of the 19th Century to establish statutory independent commissions to apply to individual cases

policies laid down by Parliament. In order to preserve their independence, no power was conferred on any authority to give them directions, but they were required to report their operations to Parliament annually, so that Parliament might judge whether their duties were being carried out in an acceptable way.... Our decisions in individual cases thus remain subject to review only in the courts. The Home Secretary, however, has been made responsible under the first schedule for the appointment and remuneration of the commissioners, he will make any statutory instruments required under the Charities Act; and he will defend the Charity Commissioners' Vote in Parliament; and will thus be answerable for the general efficiency of the Charity Commission as a public department." (Charity Commission, 1960 p7)

The clarity and support the Chief Commissioner expected from the Home Secretary was questioned by the 1975 Expenditure Committee, who noted:

"...the responsibilities of the Home Secretary in regard to the Charity Commission are extremely tenuous...It is not regarded as the Department's responsibilities to edit the Annual Reports of the Charity Commission which are submitted to the Home Secretary. Not one of these has ever been debated in the House." (Expenditure Committee 1975 - Education, Arts and Home Office Sub-committee px-xi)

The tenuousness of this relationship may, however, in part be due to the Commissioners themselves, as the evidence to the Committee of the Chief Charity Commissioner illustrates:

"I have, for instance, made it my business while I have been Chief Commissioner, to go twice a year to see the Permanent Under Secretary in the Home Office, just to tell him what we are doing and to have a little talk with him." (Expenditure Committee, 1975 p30, paragraph 164)

The Chief Commissioner's reply to the question on initiatives from the Home Office certainly gives the impression that the Commission did not wish a closer relationship:

"No, I think that we would discourage any initiative from the Home Office side. We would feel that they were trying to

interfere with what we were doing." (Expenditure Committee, 1975 p30 paragraph 165)

What damage did this distancing have? A 'backwater image' was identified by the Expenditure Committee (1975, pxxix). Did the distancing contribute to the lack of resources to the Commission?

Mr Peach (1994), the Chief Charity Commissioner from 1982-87, did not believe the special nature of the Commission relationship affected the resource question. This is because prior to the Financial Management Initiative of the mid 1980s (Likierman 1988; Fry 1988, Flynn 1994), the Home Office and Home Secretary had no involvement. The Charity Commission's vote was submitted direct to the Treasury. Mr Peach did believe that the FMI system, if it had been operating earlier would have secured the Charity Commission greater resources. The Commission's account's outturn and plans do confirm a dramatic increase in resources:

Year	Total Income (m)	Staff Numbers
87/88	7	332
88/89	8	346
89/90	10	406
90/91	14	456
91/92	18	572
92/93	22	686
92/93 plan	21	731
93/94 plan	22	750
94/95 plan	23	728
95/96 plan	24	722

Source: Home Office Annual Report 1993, p94-95 (Cm2208)  
(London:HMSO)

Would a direct approach to the Home Secretary have obtained

greater resources? Mr Peach never did approach the Home Secretary direct - it would have been a 'sneaky thing to do'. More important, while significant to the Commissioners, the amounts involved were miniscule in relation to the Home Secretary's public expenditure programme. And given the

priorities at that period of constraint (for example, police, prisons, the voluntary sector at large) it did not in common sense at that time (in Peach's view) justify an approach to a busy Minister. The change in the P.E.S.C. system improved matters. But the watershed in Peach's view was the Woodfield Report, which meant that even intransigent junior Treasury officials had to show sense. We therefore can only speculate. A short term gain, however, at the cost of infuriating the Treasury?

Did the independence of the Commission and its going against certain government Minister's requests have an effect on the Vote? In the case of the 'Moonies' in the early 1980s, when certain government Ministers demanded that the Commission ban them, the Commission pointed out that the activities registered were charitable and therefore asserted their independence. Mr Peach did not believe this had any effect on the Vote. It probably, however, did not help the Commission either. It may have also contributed to the behaviour of certain conservative MPs at the 1987 Public Accounts Committee interview of the Chief Commissioner.

Nathan (1952) had concluded that the Commission without a champion in Parliament had been weakened. The Commission becoming responsible to the Home Secretary did not on its own overcome this problem. In part this was because of the desire to ensure the freedom of charity; the 'independence' of the Commission was to be maintained. The resource allocation process until the 1980s meant the Commission was 'on its own' in its requests to the Treasury. With cutbacks in public expenditure from the mid

1970s, the Charity Commission must have been a relatively easy target for Treasury restraints with no Minister directly defending or promoting its cause. The Commission itself though has to shoulder considerable responsibility, for by the evidence of its own chiefs it had in turn kept the Home Department at arms length. As Mr Peach advised the 1987 Public Accounts Committee on how often he had met the Permanent Secretary and Ministers in the Home Office:

"As far as Ministers are concerned, half a dozen times in the last three years. As far as the Permanent Secretary is concerned, apart from socially, only once. Broadly speaking we are day by day independent of ministerial control and so the occasions in which I would normally expect to meet Ministers or Home Office colleagues are fairly few and far between."  
(Public Accounts Committee, 1987 p11)

The relationship with the Home Office is tenuous and as Goodman (1976) noted:

"It is evident from the Act that the Home Secretary can take the Commissioners to task. Their seeming immunity from intervention may be related rather to successive government's view of their work than to any lack of powers on the part of the Home Secretary" (Goodman, 1976 p122).

The Commission's reluctance to have an advisory council as suggested by Nathan (1952, 1960), or an independent charities board as suggested by Goodman (1976), must be questioned. Woodfield (1987) was against an independent advisory council, though he did not disclose the reasons why. The Woodfield solution was for the Commission to appoint two part-time commissioners as available to them under the 1960 Charity Act. Woodfield saw these two part-time commissioners as the equivalent to non-executive directors. In addition, using managerial solutions to resolve problems in the public sector (Flynn 1994) Woodfield (1987) recommended the establishment of a top management board.

The International Freedom Foundation, a right-wing think tank, believed the Commission to be totally unaccountable. Its report (Gordon, 1991) attacked the Commission for its inactivity on political abuse by charity and repeated the criticisms of Woodfield (1987). In particular, the report noted:

"This veil of secrecy covers many other areas of this public body's work. In the compilation of this report, the Charity Commission Press Office refused to give background details regarding the Commissioners as they felt that "such information had no bearing on any possible study of the workings of the Commission". Not only is the Commission registrar, judge and jury, but its court hearings are in private." (Gordon 1991 p12)

The report went on to recommend that the time limit on commissioners employment should be restricted to five years; that more new blood and outside ideas be encouraged primarily from the business world and most interestingly that the Commission should no longer be responsible for complaints investigation against charities. The report recommended that an Ombudsman for charities be established who would have this role.

In our conclusion, we return to the commissioners and this question. In particular, should the Chief Commissioner be a hands-on manager or a high profile figure in the forefront of charity development? As we now discuss, the Chief Commissioners since 1960 have adopted different styles.

#### **4.3.7 The Chief Commissioners**

Owing to the small size of the Charity Commission and its distance from normal Ministerial control, the role of the Chief Charity Commissioner has much more importance than the equivalent head of another civil service department. From my visits to the Commission and discussions with staff, it has been conveyed to me that the character of the Chief Commissioner has set the style of the Commission both externally and internally.

Owen (1965, p203) describes the first commissioners in depth. He

concludes as a group they were capable and notes that some of them were distinguished equity lawyers (p303). The system of appointing the third commissioner who would work himself up to Chief Commissioner was also established with only one notable exception - that of Sir Seymour Fitzgerald who was appointed directly to the Chief Commissioner's post in the 1870s. It may be somewhat ironic that the Chief Commissioner in the recent history of the Commission in the late 1970s also had the surname FitzGerald. Owen (1965, p303) notes the Pall Mall Gazette comment on Sir Seymour was "one of Lord Beaconsfield's bad jobs". A similar view was expressed by Commission staff about Mr FitzGerald who was 'aloof' from affairs.

The Nathan Committee suggested that the board of the Charity Commission should be widened:

"...the board itself should be comprised not of officers of the civil service nor necessarily of lawyers, but of men and women of standing, selected primarily for their experience in public and charitable affairs." (Nathan, 1952 p95)

The Nathan Committee recommendations were rejected by the Government for the 1960 Act and were latterly rejected by the Goodman Committee (1976 p119). Goodman did however recommend the setting up of an independent charities board to advise the Commission on general policy. Woodfield (1987 p15) rejected the idea of an independent advisory council. Woodfield did recommend that the provision in the 1960 Charity Act for two part-time commissioners be enacted, to provide input on policy making. In addition, we have noted from two past Chief Commissioners evidence that the relationship between the Home Office and the Commission is ethereal. The Chief Commissioner once appointed, therefore has considerable autonomy within the Commission.

Owen records by the beginning of the 20th Century:

"The sanguine and aggressive zeal with which earlier

commissioners had entered upon their work was conspicuously lacking, and their late-century successors seemed inclined to accept their situation uncomplainingly." (Owen, 1965 p329)

The tone of viewing the Commission as a quiet backwater for civil servants was echoed by Lord Houghton in the 1992 House of Lords Charity Debate:

"Who has regarded the Chief Charity Commission job as suitable for an undistinguished civil servant reaching retirement age." (Houghton 1992)

Was this a true assessment? Using the Charity Commission Annual Reports; interviews with Charity Commission staff; an interview with Mr Peach and an interview with Peter Mimpriess, the Chair of the Charity Law Association and a partner with solicitors Allen and Overy, we present the following assessment:

The Chief Charity Commissioners, all men, since 1960 have been:

1960-65	C.P.Hill
1965-75	T.C.Green
1975-82	T.Fitzgerald
1982-88	D.Peach
1988-92	R.Guthrie
1992-date	R. Fries

The Chief Commissioner appointed in 1960 was Christopher Pascoe Hill who broke the tradition of previous appointments by being a civil servant who had not previously been a charity commissioner. He had, however, been in the Charity Commission for the last four years on secondment from the Home Office preparing the 1960 Charities Bill. The Charity Commission Report of 1960 compared to 1959 could not be more different. The 1959 Report beyond one page which refers to modernising alms houses with bathrooms, the number of charities that sent accounts to the

Commission and the amalgamation of army trusts, has no management commentary. It is simply a list of schemes and the accounts of the Commission.

The 1960 Report has seven pages of social policy comment with one section entitled 'Relations with Voluntary Bodies'. The report describes the new reporting relationship with the Home Office with the comment that it should assist in the passing of new legislation 'or to embark on the new activities which current developments called for" (Charity Commission, 1960 p6).

The social policy theme of the commissioners reports are continued into Mr Green's period as Commissioner. For example, in 1971, the Report comments that charities need to be kept up with the times and gives an example of homes for children being no longer sex-segregated. During Mr FitzGerald's tenure as Chief Commissioner, social policy commentary is not so prominent though comments are still made, for example, the 1977 Report comments on Wolfenden. The last three Chief Commissioners, including the current Chief Commissioner, have all expanded the social policy aspects in the introduction. There are however major problems with using the Commission's reports as a benchmark on attitude, particularly of the Chief Commissioner. The Commissioners' reports, as the 1979 Report advised, 'give an illustration rather than a comprehensive picture of the Charity Commission's work'. To construct a chart providing some chronological or numerical analysis of the reports is therefore of little value. It is also not until 1992 that the introduction is signed off personally by the Chief Commissioner. Until 1992, all the Commissioners' names appear.

Confidential interviews with staff provide a useful oral history and background to events and persons but are fraught with methodological difficulties as we discuss in the research methods chapter. A general impression, however, was conveyed that the Chief Commissioners, up to but not including Mr Peach, were very much in the mould depicted by Lord Houghton.

The method of appointment of the Chief Commissioner provides a more objective assessment. Prior to 1960, the appointment was by Royal Warrant on the recommendation of the Prime Minister for life. From 1960 to 1981, the appointment was made by the Home Secretary not in open competition and was permanent until normal civil service retirement. Mr Peach was appointed from open competition within the civil service. Both Mr Guthrie and Mr Fries have been appointed from external advertisements.

Mr Guthrie was then Director of the Joseph Rowntree Foundation. Mr Fries has come from the Home Office. For Mr Fries, the post has been limited to five years though re-appointment is available.

Mr Peach's period as Chief Commissioner is marked by the respective reports of Woodfield (1987) and the National Audit Office (Public Accounts Committee 1987). The consensus both within the Commission and outside was that Mr Peach was active in introducing reforms and indeed by bringing problems in the Commission to public attention enabled subsequent reforms. There is primary document evidence to support this contention:

In the 1987 Public Accounts Committee Report (1987 p6), Sir Gordon Downey the Comptroller and Auditor General, confirmed that Mr Peach had welcomed the scrutiny and encouraged the auditors to undertake exercises that they normally did not do. In particular, these exercises confirmed the need for greater resources.

The Commission's own reports brought attention to their concerns about the limitations and their ability to conduct investigations and check accounts (Charity Commission, 1984 p6; 1985 p6; 1986 p2).

The critical comments of the P.A.C., who were concerned mainly with the matter of charity accounts, and seemed to ignore the Commission's lack of power and resources, is in sharp contrast

to the more complimentary and appreciative comments in the House of Lords debate on 27th January 1988, which certainly recognised not only the Commission's limited resources but the changed style and approach.

e.g. Allen (Col. 666) ... "grey civil servants. Anyone who knows...less appropriate."

Houghton (Col 671) "The Charity Commission has long been neglected..."

Faithful (Col 677) "All the work...inspiration given to the work by the retiring Chief Commissioner..."

Mishcon (Col 686) "Tribute...a great Chief Commissioner whose work will always be appreciated".

Ferrers (Col 691) ... "congratulate the Chief Commissioner (on progress on Woodfield).

Ferrers (Col 695) "Under his distinguished leadership...a new flexibility and a human face..."

My interview with Peter Mimirriss, Chairman of the Charity Law Association, gave examples of meetings at the Commission and elsewhere in the early 1980s where there was an 'opening of the doors' by the Commission. There had been very limited contact up to this point, Commission staff being very helpful once you knew whom to talk to. The Commission to those 'not in the know' however, seemed distant. Mr Peach is credited, unlike his immediate predecessor, as instituting the Commission's increased public profile and dialogue with the sector.

In particular, Peach sought to open up the Commission and change what was regarded as a legalistic approach and "closeness". His aims were to encourage legal and administrative staff to deal

informally wherever possible; to go for the spirit rather than the letter of the law; to encourage charities or would-be charities to seek informal advice and to use the fourth head to extend and develop charity law in a changing society.

Lord Houghton's comments in the 1992 House of Lords Charities Act debate were condemned by Lord Allen, the former Permanent Secretary at the Home Office in relation to Mr Peach:

"The noble Lord, Lord Houghton, spoke in rather deprecatory terms, about the chairman of the Charity Commission before the present incumbent. I submit that that is rather unfair. The previous occupant was appointed to the post following an open competition and anyone who knew him would hardly subscribe to the view that he was a rather dull and undistinguished civil servant." (Allen, 1992 p849)

It is, however, the assessment of the P.A.C. on Mr Peach that has taken the centre stage as Lord Houghton's comments made at the start of this section illustrated. From my own interview with Mr Peach, I would endorse Lord Allen's opinion. During our discussion we focused on a wide range of social issues including 'gay' charities. His promotion of the wider charity clause, the sensitive handling of Oxfam and his encouragement to the lawyers in the Commission to use the fourth head of charity to widen its use were all discussed. Mr Peach is certainly no dull civil servant. As an internal Oxfam paper commented:

"As you will appreciate, this statement by the Chief Commissioner[over Oxfam's 1985 book: Nicaragua: a Threat of a Good Example]was a considerable departure from the Commission's public statements - it might even be said to be in direct conflict with what they had said in their Reports. These statements by the Charity Commissioners are very encouraging and we are fortunate in having a liberal-minded Chief Charity Commissioner." (Gordon, 1991 p12)

The subsequent increases in the Charity Commission budget as we identified would also support the contention that the Financial Management Initiative would have derived greater resources to the

Commission. Mr Peach had introduced the concept of viewing budgets as business plans into the Commission. Finally, in a discussion with the next Commissioner Robin Guthrie, (Guthrie 1993) he confirmed that much of the reform in the Commission for which he was receiving credit was due to Mr Peach 'who had been much maligned'. Mr Guthrie's period as Chief Commissioner saw in the new Charities Act and further encouraged a dynamism in the Commission. A published interview with Robin Guthrie by David Billis (1991) gives an example of a more pro-active role for the Commission, in particular the challenge of Europe.

The open competition appointment of Mr Guthrie and subsequently of Mr Fries, is a welcomed reform as ensuring that the Chief Commissioner's post does not again become seen as a final resting place nor that the Chief Commissioner has to necessarily come from the civil service. Another influence to keep the Commission outward-looking is the expected expansion of role it now has as a regulator under the 1992 Charities Act (see section 3.6). A final spur to maintaining initiative is the recent development of a policy unit which as part of its brief is to monitor events in Europe.

We consider in the next section another mitigating factor for the Charity Commission; failure to be more pro-active until the late 1980s: the respective developments in regulation and the growing sophistication of accounting emerging only in the early 1980s. To date our review has been micro centred on the Commission itself. We now move to a macro analysis of the development of regulation.

### **3.4 FROM THE 1960 TO THE 1992 CHARITIES ACTS**

The respective parliamentary debates of the two Acts provides a useful insight into the attitude of government to the charity sector. The 1960 Act was set against:

"Sections 10-12 of the Act were the outcome of a lengthy period of discussion of the part which charities should play after post-war social legislation had resulted in the traditional benefits provided by charity being largely provided by the statutory services." (Charity Commission, 1970 p11)

The register was conceived not as a regulatory device but as a resource particularly for social workers to use the assets of charity for the benefit of society. The filing of accounts was for this purpose. In addition, the Home Secretary stated the active use of the register:

"...would also serve as a permanent record to ensure that charities in the future do not like so many in the past become forgotten and disappear." (Butler, 1960 p413)

The 1960 Act was described by the Lord Chancellor:

"It has four main aims: first to modernise the machinery of administration of charity law; secondly to establish a statutory foundation for voluntary co-operation between Charity and the statutory welfare services on a basis of equality and partnership; thirdly, to establish a central register of charities, and fourthly to extend and specify the conditions which must be satisfied before the purpose of a charitable trust can be altered, by what is known as a Cy-pres scheme." (Hansard 1960 col 563)

The 1960 Act was never intended to be an overtly regulatory Act, though it did increase the powers of the Commission. Rather, it was seen as facilitating charity and the Commission was prohibited from getting involved in directly administering charity:

"The Commissioners shall ... have the general function of promoting the effective use of charitable resources by encouraging the development of better methods of administration, by giving charity trustees information or advice on any matter affecting the charity and by investigating and checking abuses.(3);but the commissioners shall not themselves have power to act in the administration of a charity. (4)" (Charities

Act, 1960 S.1)

Reviewing the concerns of members of the Lords in the 1960 debate it is doubtful if the 1960 Bill would have ever become law if it had been overtly regulatory. The power of the charity lobby should not be underestimated as Dr Vaughan, a junior Minister in the early 1980s, discovered after his attack on the Citizens Advice Bureau. The outrage following his decision to withhold their grant perhaps contributing to his subsequent loss of office (Brenton 1985). Historically a more substantive political figure - Gladstone - was to write in his diary after the defeat of his attempt to limit income tax exemptions:

"deadly encounter with the so-called charities ... I was endeavouring to uphold the reality of truth and justice against their superficial and flimsy appearances." (Randall and Williams, 1995)

Lord Amulree's 1960 col 581) comments that no-one could object to charities managing their affairs efficiently, were in direct contrast to the comments by Viscount Simonds:

"I do not believe in the least in a central register." (Simonds, 1960 col 600)

The debate in the Lords could have taken place a hundred and fifty years before and reflected on one side the reformers such as Lord Brougham, while the other side viewed charity as a personal act which the state should have the least involvement with. Lord Saltoun (1960) personified this view with his description of the Royal National Lifeboat Institution:

"The lowest point that the Royal National Lifeboat Institution ever touched in its history was in the third quarter of the 19th Century when it was receiving a government grant. When that institution repudiated the grant, refused it and put it aside, the public took the Institution to its heart and it has never failed since then." (Saltoun, 1960 p613)

Against this background it is not surprising that Randall, upon his appointment as a Charity Finance Director, noted:

"When I first read the 1960 Charities Act, I thought there was a printing error, it should have read 1860." (Randall 1992)

The style of regulation in the 1960 Act contrasts vividly with that of the 1961 Trustee Investments Act, where very clear controls were laid down on the respective holdings by charities of various classes of investment (Harrison 1994). In part the regulatory style of this Act must be understood as a significant progressive step from the 1925 Trustee Act which had an even narrower band of investment. It should be noted that both Acts do not apply exclusively to charity but to any trust in law, whether it is a charitable trust or otherwise. However, in regard to active supervision the 1961 Trustee Investment Act was more like the 1960 Charity Act, which followed a form of regulation which was largely self regulatory (Gillingham 1994; Wilson and Butler 1985).

Vinten (1989) provides a rationale for the regulation of charities by a historical overview of charity regulation in comparison to the financial services sector. Vinten provides an explanation for the method of regulation in the 1960 Act, the overt regulation in the 1961 Act on investment and the rationale for the regulatory role and style of the Charity Commission in 1992.

Vinten (1989) uses insurance as his benchmark :

"The case of insurance is instructive, since it shares at least two characteristics with the charity, and legislation was introduced around the same period, in 1870. First of all it is essentially based on trust, and secondly it provides vast sums of money" (Vinten, 1989 p18).

Vinten (1989) then describes the regulation of the banking industry and that it was not until 1979, following the secondary banking crisis, when the overt regulatory role of the Bank of England became formalised. He compares the limited role of the Bank of England to this date as being equal to the role of the Charity Commissioners. Vinten also considers two other historical factors: the developments of company law and the accountancy profession. The late development in company law for professionally-audited accounts; not to view fraud and error detection as primary purpose; the relative limited sophistication of accounting theory; the reliance on stewardship principles in the public sector all contributed to acting as a constraining force on the Commission. How justified is this view?

The developments of company law and the orientation and growth of the accounting profession conform to Vinten's description (Hopwood 1985, 1985; Lehman 1992; Millichamp 1986; Pallot 1992; Ryan, Scapens and Theobald 1992; Woolf 1990). Company law and the accounting profession co-terminally develop as business activity increases. The role of the auditor is to report to the shareholders on the accuracy of the financial statements. Accountancy was primarily seen as a practical activity shaped by professionals:

"Financial accounting gained its importance as a practical activity long before accounting researchers came on to the scene. Consequently accounting practices were shaped by accounting practitioners and the government agencies which took an interest in the protection of share-owners and creditors." (Ryan et al 1982)

We look at the development of accountancy theory in section 3.8 but as a historical description; the shift and emphasis towards regulation in the financial services environment does not take off until the 1980s in the United Kingdom. The legislative exemptions to this rule being the handling of clients' money (The Prevention of Fraud Investment Act, 1958) and the investment policies of certain fiduciary institutions which was the Trustee

Investments Act 1961.

City regulation was based on self regulation developed from Adam Smith whose market model assumed that self-interested behaviour combined with market competition would adequately protect the public interest. This 'laissez-faire' system was through self regulated organisations, with a licensing system for those not in such organisations from the Board of Trade. Following successive scandals and the Gower report the Financial Services Act of 1986 was passed (Weston and Copeland 1988; Peasnell and Ward 1985; Thomas 1989; Reid 1988) which, while supporting the principle of self regulation, also introduced a statutory body to oversee the self regulatory organisations.

Until the 1980s, business world and academic debates on regulation are limited (Ryan, Scapens and Theobald 1992) in the UK, though an impressive literature was developing in the United States following the publication of George Stigler's 'Theory of Economic Regulation' (Stigler 1971; Posner 1974; Peltzman 1976) and from a 'critical theory' perspective, the work of Okcabol and Tinker (1990) and Merino and Neimark (1982) who argued that the securities acts which developed statutory regulation bodies:

"...were part of a continuing nineteenth- and twentieth-century effort to reconcile corporate dominance with individualistic eighteenth-century democratic and economic theories without disturbing the existing set of social and economic relations."  
(Merino and Neimark, 1982 p34)

If the Charity Commission to the late 1970s was actively seeking guidance they would have found little coming from academia or the private sector. They also had no counterpart body to compare themselves against as we discuss in Section 3.9. The Charity Commission would have also found little guidance from public sector accountancy until the 1980s:

"Despite the ancient origins of governmental accounting (Normanton, 1966; Chatfield, 1974) and the

size and significance of governmental activity in modern times, the subject was, until recently, ignored by academics and practitioners alike. After a period of unwarranted neglect (see Perrin 1981), the 1980s witnessed an upsurge of interest in public sector accounting." (Pallot, 1992 p38)

The UK interest in charity accounting also begins in the early 1980s. In 1981, a report was commissioned by the Institute of Chartered Accountants in England and Wales to be conducted by the late Peter Bird, Professor of Accounting at Kent University. Although there had been previous published articles on charity accounting in the professional journals (Sams 1978; Fenton 1980; Manley 1977, 1979), Bird's (1981) work:

"was the first systematic study of the charitable sector by accountants, certainly in recent years." (Gambling, Jones, Kunz and Pendlebury, 1990 p8)

Also in 1981, the then Auditing Practices Committee issued a guideline on charities. The guideline highlighted key areas peculiar to charities:

- Donations and fund raising;
- Legacies;
- Central and local government grants and loans;
- Branches;
- Overseas activities;
- Specific funds;
- Grants to beneficiaries.

The statement left it to the individual auditor to decide how appropriate SSAPs (Statement of Standard Accounting Practice) were to be applied, although it did prescribe SSAP2:

"It is essential that the financial statements of all charities should include a statement of the main accounting policies in accordance with SSAP2. However, the explanatory foreword recognises that 'there may be situations in which for justifiable reasons accounting

standards are not strictly applicable because they are impractical or exceptional, having regard to the circumstances would be inappropriate or give a misleading view'. In considering the appropriateness of particular SSAPs to charities, it must be remembered that SSAPs have been prepared primarily with business enterprises in mind, whereas charities are not-for-profit organisations. As a result it is important for the auditor to use his judgement as to the appropriateness or otherwise of an SSAP to the individual circumstances of the charity concerned." (Auditing Practices Committee, p9-10 1981)

The Bird (1981) research highlighted the complete inconsistency of accounting treatments in the charitable sector. It also commented:

"The expertise of the Charity Commissioners is also entirely that of the lawyer...As a result there is no effective monitoring of the public accountability of charities by ensuring prompt filing of accounts and by expert review of a significant proportion of these." (Bird and Morgan-Jones, 1981 p225)

The Bird (1981) research led directly to the issuing in February 1984, by the Accounting Standards Committee, of a discussion paper - 'Accounting by Charities' (Accounting Standards Committee 1984). This was followed in 1985 by Exposure Draft 38 (Accounting Standards Committee 1985) and subsequently SORP 2 being issued in May 1988 (Accounting Standards Committee 1988).

The movement for changes in charity regulation has therefore to be set against activity in the business world in the 1980s with challenges to the market model; the Financial Management Initiative in the public sector; the increasing interest in the charity sector as alternative deliverer of services to statutory services and the development of professional and academic study of regulation and accountancy in general with an overflow into charities.

The Charity Commission had traditionally seen its regulatory role

in charities as the protection of charity from abuse by trustees or anyone else and from inappropriate interference from government or any other outside party. The legal culture of the Commission had seen such protection in maintaining the integrity of the original purpose of the charity and making 'cy-pres' schemes when such intentions were no longer appropriate. The 1984 Commission Report illustrated this approach:

"We are statutorily precluded from acting in the administration and our powers are therefore limited when complaints relate to questions of policy, or to differences among trustees or members." (Charity Commission, 1984 p18)

This deemed passive attitude of the Commission to its supervision role (Public Accounts Committee 1987) was condemned by the Public Accounts Committee who demanded increased action. The Woodfield Report (1987) debated what that role should be. Woodfield was assertive in believing that the Charity Commission should be retained as opposed to any other government body. Woodfield (1987 p10) provided the following rationale for the retention of the Commission:

(a) as a statutory body with the powers of the High Court it saved time and legal costs;

(b) tax benefits placed an obligation on the state to see that they are not abused;

(c) public should be able to find out what charities exist, what their objects are and particularly what grants might be available;

(d) government encourages charitable giving; to support that activity an organisation is required whose advice can be relied upon and which in crucial matters is authoritative in law.

Woodfield (1987) also discussed self regulation and the charity

sector:

"The expression 'self-regulation' does not quite express what the charitable sector has created to fill a widely acknowledged need. It is more the establishment of organisations to maintain and enhance standards, to encourage good practice and introduce professional ethics where these are appropriate. It is also valuable and in the public interest to provide a centre of information of what is available so that charitable funds can be dispersed to maximum effect... Our conclusion is that all these activities within the charitable sector itself are much to be encouraged and are evidence of a lively response to current needs. But these activities cannot be expected to be a substitute for a statutory framework and a body with statutory powers. Both the size and variety of charitable activity, and its voluntary character, make it impracticable to devise any internal regulatory body which would be accepted by charities as representative and to which even reserve powers of monitoring could be given." (Woodfield, 1987 p11)

The form of regulation relating to charity has a different tradition to both the public and private sectors, yet at the same time the charity sector has been affected by changes and attitude in the development of regulatory environments of the other two sectors. On a continuum line, at one extreme there has been from the late 19th Century to the present day increasing control over local authorities to the extent that many question if local government is not but an agent of central government (Byrne 1981; Hepworth 1992; Marsland 1985). The establishment of the district audit originating under the Poor Law Amendment Act 1834 could have been a model for charity regulation. It was not because of the philosophy that charity activity should be independent of the state. The two most important influences for this tradition and its continuation are the freedoms of religious worship and to determine one's use of personal wealth.

The level of regulation imposed by Government can be expressed diagrammatically as a continuum:

Overt Regulation

Little Regulation

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With, at the other extreme on the continuum, the Adam Smith 'laissez-faire' attitude to regulation in the private sector with its reliance on self interest and market forces. The charity sector is depicted as being mid-way between these two extremes. An implied feature of this model is the assumption that the private sector, when it concerns itself, is opposed to regulation.

This assumption has been challenged by Stigler's 'Theory of Economic Regulation' (Stigler 1971) which has challenged conventional understanding of why in a market economy the private sector actively supports regulation as opposed to resisting it, by his contention that:

"...as a rule regulation is acquired by an industry and is designed and operated primarily for its benefit." (Stigler, 1971 p3)

While regulation can be thrust upon an industry, Stigler challenges the view that regulation of industry is instituted primarily for the protection and benefit of the public at large as a result of market failure. Instead, he argues that using the state's basic resource - the power to coerce - industries may actively seek from the state four main policies to increase its profitability.

The first is the direct subsidy of money, secondly control over entry by rivals, a third is control over substitutes and complements, while the fourth is directed to price fixing. There are costs to bear for these advantages, notably procedural costs and the admission of outsiders due to the political process. Stigler therefore concludes that regulation, far from serving the consumers' interests, can actually work against them if an industry has manipulated the political process by resource

misallocation. Because of costs of 'buying' regulation it will tend to be large mature industries that will seek regulation.

A major problem with Stigler's theory, which he acknowledged, was the role of the regulator. If the political process was so manipulated then why would an industry allow the creation of a regulation machinery that can challenge its activities? For Peltzman (1976,) defending Stigler, the answer:

"...rests on the heed the political process must pay to the marginal position. It suggests that what the 'capture' literature treats as an ad hoc detail - that "the political process automatically admits powerful outsiders to the industry's councils" - is in fact integral to regulatory processes." (Peltzman, 1976 p217)

For Peltzman, a rational regulator will be seeking to balance a number of interests as opposed to a single economic interest no matter how powerful.

An alternative explanation for regulation has come from critical theorist's Merino and Neimark (1982), who argue that a crisis in capitalism provokes regulation. Using Hirschman's contention that 'classical' economic theory was motivated by political, not economic, considerations:

"Overthrow of the feudal order demanded justification, and the 'divine rights' of the feudal order that justified hereditary power were superseded by the 'natural rights' of individuals to promote their own self-interest." (Merino and Neimark, 1982 p35)

Their historical appraisal of regulation in the United States from the late nineteenth century begins with concerns over economic concentration stifling market competition. Most importantly, the American nation's philosophy that hard work, particularly for the self employed, would bring economic success was being seriously challenged by:

"the spectre of enormous economic power in the hands of a small group of men (who did not own the resources that they controlled) raised questions about the effectiveness of property and contractual rights based on the assumption of competition among individuals in free markets to protect the public interest." (Merino and Neimark, 1982 p35)

The subsequent anti-trust legislation being passed to curb the power of industry cartels. Another policy was, however, encouraged to maintain the 'democratic' nature of the country: that of promoting stock ownership among the masses of the population with the concept that the stock holder was the 'owner' of the corporation. The subsequent stock market crash of 1929 was popularly blamed on manipulative behaviour by some prominent Wall Street firms and the Democratic Party adopted regulation reform as part of its 1932 election programme. To restore faith in the system and to solve the problem of investors' capabilities, the philosophy of disclosure regulation was adopted. Disclosure legislation's fundamental aim is to provide information to investors not to shield them from ventures of dubious merit. Subsequently, attempts to curb 'insider trading' in the 1980s have indicated the limitations of this approach. Correlated to these developments have been the development of the accounting profession and accounting standards which we discuss later in this chapter.

How does the application of these theories aid our understanding of the context of charity regulation?

The former Chief Charity Commissioner, Robin Guthrie, provided a description of the role of the Charity Commission in the supervision and management of charities:

"The Charity Commission has essentially three functions to perform: registration, regulation and investigation. Registration involves the establishment of charitable status and the keeping of records on all the organizations that have charitable status. The problem has always been to maintain this kind of

information."

"The Commission was originally set up in 1853, and in 1960 there was a new Act, and the Registrar of Charities was established, but only now - for the first time in four hundred years - are we going to have a means of keeping any kind of register up to date. This is very significant and it will transform the relationship between charities and the organ through which they are accountable to the public. Regulation includes the prejudicial Acts -making schemes and orders giving consent for the redeployment of charitable assets and so on. Investigation, which has hitherto been a minor part of our operation, has already increased. It involves looking into possible abuse or interference." (Billis, 1991 p284)

The following characteristics can be identified:

1. Focusing on the publicly available register to give up-to-date information about individual charities.
2. A charity will have to seek the approval of the Commission if it wishes to change the focus of its activities.
3. An active monitoring role that will keep a watching brief on charities and intervene if maladministration occurs.

The Government White Paper on Charities that led to the 1992 Charities Act (Home Office 1989) discussed the rationale and focus for the regulation of charities. Interestingly, the paper discussed at length the increase in government grants to the charitable sector and correlated their use to the need for the government to ensure that these funds were properly and efficiently used. In drafting the paper there was no reference to the many charities which receive no government aid and therefore why should they be subject to regulation? One sentence relating to tax benefits could be implied to include those charities not receiving public grants, but an alternative proposition rarely discussed is that charities enjoy such reliefs because they reduce public expenditure that might otherwise have to be incurred.

The White Paper was extremely precise on how it envisaged the regulation of the charitable sector operating.

The White Paper reaffirmed the independence of the sector and the intention of the legislation which was for charities to 'flourish' in a framework where the integrity of charity could be assured:

"The Government's overall objective in approaching legislation for charities is to achieve a balance between on the one hand proper control by the Charity Commission and proper accountability by charities, and on the other the freedom and corresponding responsibility of individual organisations to develop and do business. Their proposals are designed to produce a stronger and a more modern framework of supervision which will equip the Charity Commission for a more active role, narrow the scope for abuse, encourage trustees to shoulder their responsibilities, and ensure continuing public confidence in the sector." (Home Office, 1989 p4)

A mixture of regulatory patterns has developed. One aspect was to focus on self regulation by encouraging industry organisations such as the Institute of Charity Fund Raising Managers to produce codes of best practice supported by emphasising the role and responsibility of charity trustees and a greater vigilance by the public. The most significant example of the emphasis towards the self regulation and a boundary line of the Commission's intervention was the rejection of the proposed 'Charity Ombudsman'. This proposal (Houghton, 1992 p3) would have allowed the Commission to investigate a complaint from a member of a membership charity about serious mismanagement or misconduct. Instead it was rejected and recommended that such grievances should be resolved within the charity by an appropriate internal procedure. It would be wrong for the Commission to have such an interventionist role.

The other side was a more pro-active Commission which would require charities to send it information annually on their activities and if necessary intervene directly in the management

of charities by, for example, sending in a receiver/manager, a new power under the 1992 Act. Earl Ferrers, for the Government, outlined the role for the Commission and its relation with charity:

"I think the Charity Commission has to be a policeman but in the same way that police in normal life are friends of the community, though periodically they have to take action against them...They will be friends of the charity world but periodically they will have to take action against some people."  
(Ferrers, 1991a p12)

The debates of the 1992 Charities Bill lack the passion and depth of the 1960 debate. In part this is due to its intention:

"It is a regulatory Bill. It does not invite consideration of the moral, social or philosophical aspects of the voluntary sector."  
(Ferrers, 1991b 844)

and secondly, the speed in which it was conveyed to become law on the last day of the dissolution of Parliament for the 1992 General Election.

Adopting a critical perspective on charity regulation Ferrers' comments on the nature of the 1992 Bill must be challenged. Historically, the establishment of the permanent Charity Commission is at the same time as charity is reconfirmed (see chapter 2) as the principal organ of state social policy. Fuelled by the Charity Organisation Society, there is a climate of action to ensure that charities' resources are efficiently deployed for the state's purpose. Public confidence needs to be maintained in the system of donation that funds donated either by the living, and most importantly by the dead, are spent on the purposes for which they were intended. The 1960 Charities Act is passed primarily to ensure that charities' resources are again being efficiently deployed, in this case a register that will enable social workers to access charity funds for the benefit of the welfare state. The 1992 Charities Act is what Ferrers declares a regulatory Act, designed to ensure public confidence in charity

as the state again sees charity as a principal instrument of social policy rather than statutory local authorities. Public confidence not in charity to deliver services but regulation that focuses on the ways charities raise and account for funds. Facilitating individual giving to charity to enable charity resources to be used for welfare spending rather than increased direct taxation. The 'disclosure' method is therefore adopted with emphasis on the public's access to charity reports and accounts combined with some interventionist power for the Charity Commission. The 1992 Charities Act contained therefore a

considerable amount of social policy from the critical perspective. The Act can be viewed as being a part of the shift which we reviewed in chapter 2, since the late 1970s on economic and social policy. The lack of debate on the Act and its packaging by government in the way Ferrers described avoided such crucial issues as should this be the future for the charity sector?

From a 'positivist perspective', one can understand the style of the Charity Commission as the 'regulator' and the support for the Act from the charity industry itself (Randall 1992b; Framjee 1992; Phelps 1992;); a sentiment summarised by Robert Hazell, the Director of the Nuffield Foundation and Vice Chairman of the Association of Charitable Foundations,:

"The Association of Charitable Foundations welcomes the Charities Bill, and the new powers given to the Charity Commission."  
(Hazell, 1992 p26)

While Harry Kidd, formerly the legal adviser of the NCVO, could comment:

"The publication of the Bill should be an occasion of particular pride and pleasure to NCVO. Six years ago they appointed a working party on malpractice in fundraising, which reported in the following year. It is as chairman of that working party that I write this

note. We can fairly claim that very much of the content of the Bill derives ultimately from our report, which gained the backing of Sir Phillip Woodfield and was reflected in the White Paper, so that the new regime that the legislation introduces is not something imposed on charities but something for which they (or at any rate, we) asked." (Kidd, 1992 p27)

Against Stigler's (1971) four main policies, the charity industry meets the most obvious criteria of direct subsidy of money through relief from income tax. The second policy of control over entry is partly met by a voluntary organisation having to go through the expense of registering with the Charity Commission but is more enforced by the increased costs of compliance with

the Act for larger charities, with the requirement in particular for professional audit. Most importantly for policy two is the control over fund raising which as Stephen Lee, Director of the Institute of Charity Fundraising Managers, points out:

"Virtually every form of public collection activity will now become regulated." (Lee, 1992 p12)

and therefore means that the preserve of major appeals will be for only the largest of charities. The concept of restricting direct entry into the market was a question directly put to the current Chief Charity Commissioner, who answered that while in the Charity Commission there was no intention to introduce such a policy, a debate in the charity sector as a whole should be undertaken on, 'what sort of range of activities can sensibly be brought together'.

Against a third criteria of substitutes and compliments some parts of the charity sector have been active, as we noted in chapter two in promoting their particular charities in the winning of contracts and their advantage over the private sector. The fourth class of price fixing is not applicable to the charity sector, though in relation to point 3 and the concerns over

contracts there exists a potential application.

The Charity Commission supported in 1992 a study into self regulation (Charlton, 1992) which found no support for self regulation by the sector itself. Instead there was support for regulation that would strengthen, not undermine, public confidence in the sector. However, that must not be at the cost of restricting independence of action. Charlton's study also found that the 'industry' saw legislation as providing base rules to minimise and control malpractice but that the promotion of best practice was the responsibility of the sector. The report recommended the establishment of a Charity Standards Council:

"this would promote best practice, draw attention to existing guidelines, identify gaps and address unmet needs for learning and for continuing improvement." (Charlton, 1992)

Stigler's theory provides a rationalist perspective for understanding the current Charities Acts, style of regulation and the relationship between the charity industry and the Charity Commission. Its principal problem in application to the charity sector is it is far too deterministic. There is no evidence historically or currently of a 'charity cartel'. The mid 19th Century Charity Organisation Society attempted such a leadership role, but as Owen (1965) chronicles it failed in this endeavour causing more antagonism from the sector against it than support for it. Charlton's (1992) study on charity self regulation found no evidence for the organisation of such opinion, indeed a conclusion of his study was: "...no single body is recognised widely as having responsibility for promoting standards" (Charlton, 1992).

The criteria of Stigler's four policies that an industry would advocate for, on closer review of the charity sector, equally looks less convincing. Tax relief for charity as Randall and Williams (1995) declare in their chapter on the History of Income Tax and Charity:

"One would assume then that any decision to exclude charities from the tax base would not have been made accidentally, given this obvious though undetermined wealth, it would have been a deliberate act of social policy. However, the striking thing is, when one peruses the record of debates on the introduction and re-introduction of income tax, that the exemption granted to charities in the legislation was not an issue - it was hardly discussed. The implication is that it was common ground, taken for granted. Indeed, the income tax provisions were merely restating in slightly different form exemptions which had been present in earlier taxes. An example is the tax, introduced in the 1690s, which became known as the land tax, but which when introduced bore more resemblance to a wealth and income tax. This tax was to provide the administrative machinery upon which income tax was erected. It contains a section exempting universities, hospitals, almshouses and certain named charities from the charge to tax. Another tax, inhabited house duty, introduced in 1778 by Lord North, contains exemptions for "any hospital, charity school or house provided for the relief of poor persons". There was, therefore nothing new about income tax's treatment of charities, it reflected a consensus." (Randall and Williams, 1995)

Contemporary tax debates equally give no evidence of a coordinated or concerted attempt by a 'charity cartel'. There is the 'Charity Tax Reform Group' who have achieved some VAT exemptions in specialist areas but have been relatively unsuccessful to date in wholesale relief of VAT for the charity sector. The specialist areas being primarily in the field of the disabled and medical research, which has been complementary to government policy. The other major tax advantage, the 'Gift Aid' scheme, has been attributed to Michael Brophy, Director of the Charities Aid Foundation, and his relationship with the then Chancellor Nigel Lawson. The scheme, however, has been criticised by a number of charities (Harrow, Hind and Palmer 1993) as being badly thought out and potentially damaging for the sector. These criticisms focusing on Brophy winning concessions that the government, as part of their policy, would have granted and thereby diluting the force of the campaign for more substantive reliefs on VAT. From a critical theory perspective, the 'gift aid' scheme would be an example of supporting substitution policy from statutory welfare services. A parallel example would be the

promotion of personal pension schemes with tax incentives over the statutory SERPs scheme. A second financial management criticism, which has still to be proven, is that 'covenants' which give charities a medium term income supply stream are being replaced by short-term one year amounts under 'gift aid'.

Stigler's (1971) second policy of restricting entry has even less evidence to support it. The Charity Commission does not have the power to refuse to register an organisation that meets the purposes of charity. Indeed, as we cited earlier from our interview with Denis Peach, against the Government's wishes the Charity Commission registered part of the 'Moonies.' The interview with the Chief Charity Commissioner made clear that the Commission had no intention of introducing such a policy. Economically, there is little evidence to date that new 'fund raising' charities cannot compete in the charity market for funds and grow quite quickly. As, for example, the 'AIDS' charities like the London Lighthouse and the Terence Higgins Trust who have received substantial finance from both statutory and private sources.

The third and fourth policies of Stigler's (1971) theorem currently have little application to the charity sector beyond speculation of what might happen in the contracting environment. It is conceivably possible, however, that if the projected pessimism of the contract state was to see a 'premier' league of charities then Stigler's theorem would begin to have more relevance to the sector. Stigler's (1971) theory does, however, provide a focus for why the charity industry supports regulation rather than opposes it, based upon a self interest concept. As the Charlton (1992) research observed on the widespread concern by the charities themselves over scandals that undermine public confidence in charity.

The wider application by Peltzman (1976) on the role of the regulator is useful in recognition of the different interest groups that the regulators must be aware of. The Charity

Commission is unique in both being a department of government yet also a branch of the Court, independent of the executive. The relationship of the Charity Commission to the charity sector is complex as the following extract from my interview with the current Chief Charity Commissioner illustrates:

"Denis [Peach the former Chief Charity Commissioner] used to be fond of talking about the initiative and idiosyncrasy of the voluntary sector. The whole tradition is on a framework that individuals can use and benefit from according to their own commitments. It encourages a person's initiative, certainly any concept of rationalisation or directive powers and the notion of interfering with charities of anything other of a legal integrity, I suspect its always been foreign in the Charity Commission. Charities, those responsible for charities, may do whatever they choose within their powers and the Charity Commission's own responsibility is to make sure the legal requirements are complied with." (Fries 1994)

The application of critical theory encompassing both a wider perspective on the relationship of charity with the state; and secondly identifying the use of 'disclosure' methods - particularly as we explore in section 3.7 on the style of charity accounting - offers a challenging understanding of the development and nature of charity regulation. The major weakness of this perspective is that at its extreme it is too conspiratorial. Critical theory excludes by its rejection of 'individual' roles to 'class' roles:

"...the dialectical interaction of social roles under capitalism." (Okcabol and Tinker, 1990 p80)

a contingent analysis of the independence and nature of charity which has also impacted on the style of regulation which has developed in the charity sector to date; and the nature of the relationship with the Charity Commission.

#### **4.5 THE 1992/3 CHARITIES ACTS AND THE DEREGULATION TASK FORCE.**

The principal measures of the Act can be grouped as follows (Turner Kenneth Brown, 1992) and a brief summary is provided. The numbering in brackets relates to the respective section of the 1992 Act:

i) Increase in the powers given to the Charity Commissioners:

The commissioners (or any person appointed by them) can now request copies of any documents from any individual relating to an issue involved in an inquiry (6).

If the commissioners are satisfied that there is or has been any misconduct or mismanagement in the administration of a charity they have the following new powers-

The power to suspend any trustee, officer or employee (8), The power to appoint such additional trustees (8), the power to order any debtor of the charity not to pay any liability without the approval of the commissioners (8) and the power to appoint a receiver and manager (8).

ii) Measures to make charity trustees more accountable:

Certain persons are now disqualified from becoming trustees, notably those convicted of offence involving dishonesty and bankrupts. The anomaly of someone who has been removed as a trustee by the commissioner for one charity and is able to become the trustee of another is resolved. A director disqualified under the 1986 Insolvency Act and the Directors Disqualification Act.(45) Trustees to ensure that none of their number are so disqualified.

Trustees are now responsible for ensuring that charities with a gross income of more than £5,000 must display on documentation that they are a charity (3) and that they send in the filing requirements relating to accounts (19-26).

iii) Increased disclosure and accounting requirements for charities:

All stationery etc for charities with an income over £5,000 to display charitable status (3). Charities to keep 'accounting records' and to retain them for six years. Depending on size of income annual statements of accounts in a form determined by regulation (19-26). Depending on size of income either a full professional audit or an independent examination (19-26) (see later comment on deregulation proposals). Annual Report to be prepared and filed with Commission in form prescribed by regulation (22-26).

iv) Trustee Investments Act 1961 and investment powers:

Power given to the Secretary of State to relax restrictions on wider range of investments (38) and make regulations extending investments which are authorised for charities (39).

v) Charity Property:

Divestment of charity property held by the Official Custodian (28-29); Disposal of charity land without the approval of the commissioners (32); Restrictions on mortgaging charity land (34).

vi) Ex-gratia payments:

Charities, subject to the Commission's approval will be able to make payments or waive entitlements (17).

vii) Miscellaneous changes in charity law machinery:

Charity registration raised from £15 to £1,000 (2) Dormant bank accounts can be transferred to another charity (18) and small charities (subject to certain exemptions) defined as a charity with a gross income of less than £5,000 in the last financial year able to transfer its assets to a similar charity (43).

Subject to regulation the Charity Commission able to charge fees (51).

viii) Fund-raising:

New definitions provided in relation to fund raisers (58); Formal agreements to be prescribed by regulation to be introduced (59); a clear public statement on how much a charity and all other parties will receive when a professional fund-raiser solicits or a commercial participator makes representations (60); a charity able to apply to the court to prevent unauthorised fund-raising (62); Secretary of State able to make regulations on form and contents of agreements between charities and professional fund-raisers, make records publicly available and any other provision relating to raising of funds (64).

ix) Public collections:

New definition provided of what is a public charitable collection, so no longer includes coffee mornings and permits for collections (65).

The 1992 Act can be seen to have considerably extended both the interventionist powers of the commissioners and the requirement

on charities to send information to the commissioners.

Fund-raising control had been subject to considerable attention. The Act also removed many previous restrictions on charities particularly with regard to commercial transactions on investment and land subject to obtaining professional advice.

To enable the commissioners to discharge their regulatory duties, the Act in addition to prescribing various controls, such as on fund-raising, placed the emphasis on the role of trustees. The Act did not go, however, as far as some proposed at the committee

stage on trustees responsibility and liability. The failure to display charitable status was proposed as a criminal sanction on every trustee. Subsequently, this was revised to the person actually authorising or issuing the document. The emphasis was also changed to the onus of proof being placed on the prosecution (Turner Kenneth Brown, 1992 p8).

Parts of the 1992 Charities Act did not last for long, becoming the 1993 Charities Act, a consolidation Act as the Lord Chancellor explained:

"The Bill consolidates the Charitable Trustees Incorporation Act 1872, the Charities Act 1960 and Part 1 of the Charities Act 1992. The need for this consolidating measure arises from the substantial amendments made to earlier legislation by Part 1 of the Charities Act 1992." (Mackay, 1993 816)

Other aspects of the Act, particularly relating to smaller charities were, however, to be removed. For, in September 1993, an 8th De-regulation Task Force was established to examine regulation of charities and voluntary organisations. This was an additional task force to the seven the government had already created to review 'red-tape' business practices. The Charity De-regulation Task Force (Baring 1994a) reported in July 1994 with 189 proposals for reducing the burden of legislation of which 72 had been accepted, 60 were under review and 57 had been rejected.

In volume 1 of the report the concerns of over-regulation specifically for smaller charities were summarised by the Chair:

"...it is estimated that 91% of charities have an income of less than £100,000 per year and 90% of charities have no paid staff, relying entirely on voluntary effort. The effect of numerous regulations coming from different sources, and often not designed with the voluntary sector in mind at all, is particularly damaging, acting as a marked disincentive to thousands of small groups, such as village halls

and community centres, which are often the mainspring of community life. The danger is that volunteers are beginning to say: "Its not worth the hassle", a phrase that could be the death knell of voluntary activity in this country." (Baring 1994a)

While not implicitly criticising the 1992 Charities Act, the Task Force made a number of recommendations, subsequently accepted that will change the proposed regulations which are determined by the Secretary of State. The principal contribution of the Task Force is to clarify what was implied in the 1992 Act - that is the difference in treatment between large and small charities.

Recommendations of the Task Force (1994b page number in report shown in brackets) relating to the 1992/3 Acts which were accepted were designed to reduce the burden on small charities. These accepted recommendations were to be reviewed after two years and the financial thresholds to be reviewed every two years, included:

1. Charitable status disclosure on documents raised from £5,000 to £10,000. (8)

2. Charities below £10,000 to have a simplified annual report and need to only produce a receipts and payments account. The accounts and report do not have to be sent to the Commission. They are, however, to be made available to the public and the Commission on request. An annual filing return to maintain the accuracy of the register and for basic monitoring information will be sent to the Commission. (8-9)

3. Charities below £10,000 will not require the proposed independent examination of accounts. (9)

4. Annual Income threshold for preparation of full accrual accounts raised from £25,000 to £100,000. (9)

## 5. Threshold for professional audit from £100,000 to £250,000.

The De-regulation Task Force also made recommendations for clarity and longer transition periods for parts 2 and 3 of the 1992 Act relating to fund-raising and public collections.

In general, the De-regulation Task Force saw its principal aim as reducing the administrative burden on smaller charities which were administered by volunteers as opposed to paid staff. It therefore made a series of wide ranging recommendations relating to not just charity law but also covering water disposal charges for village halls to registration fees for play schemes. A general acceptance was that the Small Business Litmus Test would be enlarged to also include voluntary organisations and charities where appropriate.

The developments in reducing the burden on small charities replicates the wider debate in the 1980s and 1990s to the burden and applicability of audit and accounting standards on business. A DTI Consultative Document on the audit and requirements for very small companies (DTI, 1993) had proposed the abolition of a compulsory audit for very small companies: a proposal subsequently enacted in the 1993 Budget. Introduced by secondary legislation in 1994, the changes involved the removal of audit from companies with a turnover of less than £90,000 and the replacement of the professional audit with a report by an independent accountant for companies with turnovers between £90,000 and £350,000. There is a clear correlation between companies and charities regarding exemption and the independent examiner, except the amounts for charities are much less. No audit or independent examiner is required for charities not exceeding £10,000 gross income. An independent examination is

required for charities between £10,000 and £250,000 gross income. A professional audit being mandatory on charities at £250,000 which is £100,000 less than the company requirement. The reasons

for these differences relate to the public interest perspective and the fiscal relief given to charities. The inconsistency between the two for those charities which are incorporated reflects the need to have a single registration, a reform in charity law that we discussed in chapter one.

The traditional argument for small company audit abolition featured on for whom the accounts and audit were intended. It is argued that in most small companies the shareholders and directors are the same and are therefore responsible for their own actions (Barker 1985). Audited accounts are historical in nature and the benefits of such a review are of little value. Small companies with limited resources would receive greater benefit from a more limited examination which would focus on their needs and incorporate forward planning (Woolf 1990). Small companies' accounts are in many cases drawn up by outside accountants who also act as the auditor, therefore the accountants are auditing themselves. With the exception of the tax authorities, there is no evidence for 'third parties interests', such as banks and trade creditors, which have traditionally been cited as requiring the audit. Banks usually require a director's guarantee charged upon personal assets, while trade creditors place little faith in historic audited accounts, relying instead on a trading record (Berry, Citron and Jarvis 1987).

The argument for retention is based on the premise that it is the price for limited liability and confidence in the corporate sector (Bishop 1992). Historically, the audit was developed to protect shareholders with the distinction, from the late nineteenth century, between shareholders and paid management. Jensen and Meckling's (1976) seminal paper on agency costs identified the cost of the audit as one payment or sacrifice to value maximisation shareholders must pay to control the self interests of 'disinterested management'. Some small companies

have minority shareholders; independent accounts provide reassurance to them and to the corporate sector as a whole. Secondly, although an historic document, the audit does provide management with an independent check on the accuracy of the accounting systems, and the auditor is often able to recommend improvements in those systems via the management letter sent at audit completion. Thirdly, the tax authorities rely on accounts for computational purposes. Accounts would still be required by the tax authorities, and they would not accept computations that have not been independently verified (ICAEW 1985).

The debate for abolition in the UK began in the early 1980s with the adoption of the EEC Fourth Directive in the 1981 Companies Act. The accounting regulations permitted small companies to publish modified accounts comprising a balance sheet but failed to amend the first schedule to the Act which required small companies to have audited accounts. In 1983, the then Auditing Practices Committee (APC 1983) issued guidance which stated that auditing standards applied equally to small companies but that exemptions might arise as the result of applying a cost benefit test. No such exemptions were forthcoming, and its successor, the Auditing Practices Board, in 1991 confirmed this position of auditing standards applying to all companies (APB 1991).

In the mid 1980s the DTI issued a number of documents (DTI 1985; DTI 1985a) which identified the problem and recommended abolition. However, led in particular by the Certified Accountants (ACCA), their proposal to abolish the small company audit was defeated. This was not the end of the debate as the case for abolition would be strengthened by the increased costs associated with the EC Eighth Directive. The EC Eight Company Law Directive is concerned with auditors' qualifications and the supervisory regime (DTI 1986; DTI 1993). The British system is self regulatory through the appropriate professional bodies who developed their own regulatory requirements including registration and inspection. The costs of meeting these

requirements were placed on the auditing firms who in turn placed the costs on clients. Research at Manchester University indicated that the audit was costing as much as 4.5% of turnover for companies in the range of £20,000 - £50,000 (DTI 1993).

The early 1990s saw the campaign to abolish the small company audit gathering pace with the need to reconcile standards of auditing and costs (Burton 1993); the lack of support for a distinctive small company audit (Hatherly and O'Reilly 1993); support for independent review (Searjeant 1993); the revenue withdrawing their opposition (Bruce 1993) and disagreement between the auditing professional bodies (Accountancy Age 1992). The ACCA (1993) with these pressures qualified their objections and the effective opposition to abolition was over.

While the traditional 'agency' argument does not apply to charities, where it is not the trustees' money (unlike proprietary companies), the audit costs perspective was extremely serious. In a sector that has considerable concerns over administrative costs (Fenton, Golding and Radley 1993), for the auditors to be taking 5p in every pound yearly from donations, would not have been tenable for smaller charities financed by public donations. The cost of professional audit has also prompted the question of the universal applicability of accounting standards to all companies. A recent consultative document by a Working Party of the Consultative Committee of Accountancy Bodies (CCAB, 1995) has raised this question. From the 'user of accounts perspective' the development of accounting standards was intended for shareholders to understand company accounts, but as for smaller companies the shareholders and the directors are one and the same.

Evidence that cost rather than any other criteria has prompted a review, articulated by the Working Party, can be evidenced by Professor Harold Edey's paper on 'Accounting Records and the Smaller Company', published by the Institute of Chartered Accountants in 1992. Professor Edey makes no reference to

reducing the applicability of accounting standards (Edey 1992).

The consultative document, however, details accounting standards which have become much more complex. Compliance by the auditor for ensuring such standards have been complied with has meant that costs have risen, argues the consultative document, which concludes:

"The Working Party considers that the needs of less complex entities and those who deal with them would be best served by straightforward, uncomplicated accounts and that some of the requirements of accounting standards tend to conflict with these needs." (CCAB, 1995 p107)

For the charity sector, the public interest argument overrides the traditional user of accounts argument, but the cost burden perspective is applicable. The adoption of the SORP only for larger charities is evidence that the compliance cost overrode initial expectations of the original charity SORP's of universal application. Unlike the corporate sector the charity sector, for reasons of public confidence, is subject to a monitoring body, the Charity Commission. It is clearly intended that the costs of monitoring the charity sector, unlike the corporate sector, are falling on that body rather than smaller charities paying higher audit fees in some other form of self regulation. It is to the current system of monitoring by the Charity Commission that we now turn.

#### **4.6 THE CURRENT SYSTEM OF MONITORING.**

The inquiry section until the late 1980s was based in the two offices - Liverpool and London - each with its own head and overseen by the Secretary of the Commission. The general approach of the section was to react to complaints which it would then investigate. The register was not viewed as a monitoring tool, being paper-based and of limited value (Woodfield 1987; Mitchell

1994). Following the Woodfield Report (1987), an expanded Monitoring and Investigation Division was established under a new civil servant who was recruited from outside the Charity Commission. Victor Mitchell was appointed following a career in investigation management and management services with Customs and Excise. His particular expertise was Investigation Management, Operational Management, Information Systems and Performance Indicators.

The then Chief Commissioner Robin Guthrie viewed the development of a Monitoring and Investigation Division as a top priority (Mitchell 1994). The Annual Reports began to state how much charity property the Commission had protected and its more proactive approach:

"We have in the past drawn attention to our lack both of sufficient resources and adequate powers to act quickly to deal with abuse. The implementation of the Scrutiny Report's recommendations would increase those powers and improve the resource situation by shifting the focus of our work from some existing statutory responsibilities to a greater emphasis on Monitoring charities and the investigation of abuse." (Charity Commission, 1987 p1);

"The main aim of the fundamental programme of change on which we have embarked is to transform the Commission into an essentially proactive organisation." (Charity Commission 1989, p1)

The first stage was to change the emphasis of the new division's approach from being a complaints department whose focus was addressing the concerns of the complainant to a focus on the charities themselves. To assist the charity sector and promote public confidence in charity. An initial internal workshop for Commission staff asked the question - 'what the business of the Commission was in investigation and monitoring' (Mitchell, 1994).

Value for money was seen as a key component in this philosophy and a focus on what effect on charity and particularly the

trustees and beneficiaries would this increased interest have. A degree of sensitivity had to be balanced, particularly with trustees, between a public criteria seeking action and support for the charity. Different strategies for different concerns, particularly if they arose from genuine mistakes. The focus was to improve awareness and accountability.

"The confidence of the public and government in charities is dependent not only upon the open accountability of trustees and our own capacity to identify and root out abuse, but also upon the effectiveness with which trustees themselves use their resources to fulfil the purpose of their charities... Trustees must become fully involved in the control and management of their charity from the start and be clearly aware of their responsibilities in this regard." (Charity Commission, 1990 p1-2)

To meet this strategy the Commission embarked upon an educational initiative for trustees by the production of booklets, notably:

CC2 - The Charity Commissioners - How they can help charity trustees;

CC3 - Responsibility of Charity Trustees;

CC41 - Payment of Charity Trustees.

The monitoring aspect was to be undertaken by the development of an annual return in addition to an annual report and accounts. With the assistance of representatives from the sector, the development of an appropriate return was begun with a first prototype sent out to charities for return in 1990-91. The NAO supported the development of Performance Indicators. This was in addition to a National Audit Office review on progress in the Commission which reported to Parliament in November 1990:

"We had responded positively to all the conclusions of the Committee." (Charity Commission, 1990 p1)

In parallel to the development of an annual return, emphasis was placed on looking at the accounts and updating the register. The accounts review was further developed to see them as a support to monitoring. A training programme for non-qualified accounting staff using the qualified accountants by this time employed in the Commission and professional firms was started. The checking of all the top charities' accounts was seen as being part of the core business for the qualified accountants. The review is also

intended to include a programme of visits, to offer advice and support and to enable Commission staff to improve their knowledge and appreciation of the work and problems of charities:

"We recognise that if we are to fulfil successfully our general function of promoting the effective use of charitable resources, we must work even more closely with charities. We need to understand the problems which charities face." (Charity Commission, 1993 p4)

The register was seen as integral both to the support and supervision role. To be designed to identify charities in need of assistance or corrective action, thus meeting the dual concerns of confidence in the charity sector and ensuring that it was subject to an effective supervisory regime. Linking the annual return to the register a number of indicators would be included. For example, 'fund-raising costs to funds raised' and 'accumulation of income to charity type'. As the return information is input to the computer a 'credibility programme' would check the information. This programme is still being piloted but is expected to be operational at the end of April 1996 (Mitchell 1994).

An example of the way questions are being formulated to support supervision on fund-raising:

a) Initially, questions on fund raising would ask:

1. Are you a Fund-raising Charity?

2. Do you employ a Fund-raiser?

b) Instead they are changed to:

1. Methods of Fund-raising used:

2. How much Funds did you raise?

3. How much did you expend on fund-raising costs?

The annual returns will generally be income determined. For charities with an income less than £10,000 the return and the requirements will be low key, primarily to ensure the charity still exists. A key aspect will be the requirement for a nominated trustee to sign on behalf of all trustees, however, on the form it will state that the return was discussed and agreed by all the trustees.

Mr Mitchell moved to become the Director of Operations at the Commission. In October 1994, the Commission structure on monitoring and investigation was to have an Investigation Division which was based in the Charity Support Division which embraces regulation and schemes. The regulatory function's aim is to make sure that charities are able to function in a modern world. A central monitoring unit is based in the Charity Database Division. The Database will contain all information about a charity it will not be available to the public. The register will, however, be available to the public. With the expanded use of terminals by modem, it should be possible to access the public register in the future without having to travel to one of the three Commission offices.

The Commission's supervision and monitoring initiative is

therefore based on obtaining three components of information:

- i) The Annual Return;
- ii) The Annual Report;
- iii) The Accounts.

while the focus is on the trustees effectively managing their charities. We now turn to reviewing respectively the accounts. The emphasis on trustees is reviewed in chapter 4.

#### **4.7 CHARITY ACCOUNTS AND AUDITS.**

In section 3.5 we described the development of a charity accounting SORP (Accountancy 1988 p 149-159) in the 1980s. SORP's (Statement of Recommended Practice) were introduced by the Accounting Standards Committee in 1982:

"As SSAPs had been issued in increasingly controversial areas, problems of enforcement had emerged. One of the purposes of SORPs was to allow the profession to continue to develop rules in controversial areas but to reduce their status so as to pre-empt enforcement problems.

The reduced status of SORPs is as follows:

a) The Accounting Standards Committee has approved a SORP but the approval of the councils of the six chartered bodies has not been sought.

b) SORPs are not mandatory on members of the six chartered bodies. Explicitly, the Accounting Standards Committee does not require disclosure of either the fact or the nature of any departure from SORPs." (Gambling, Jones, Kunz, Pendlebury, 1990 p8)

Three very different academic studies (Ashford 1991; Gambling,

Jones, Kunz Pendlebury 1990; Hines and Jones 1992) have been undertaken of the charity SORP. The Ashford study was supported by the Charity Finance Directors Group, and consisted of reviewing the accounts of fifty six of the largest charities. Gambling and colleagues produced a research report for the Association of Certified Accountants. Their study was a review of the SORPs development and its context. A case study approach was used which looked at six charities chosen to represent a diversity of income, legal status and activity. The Hines and Jones study was to look at the annual reports and accounts of the top fifty-four charities chosen from Charities Aid Foundation's list of top voluntary income over a three year period to include before and after the SORP. The Hines and Jones survey eventually resulted in a final sample of forty charities who sent them their reports and accounts. It should be noted that a 100% response should now be achieved following the 1992/3 Charities Acts which requires charities to send their published accounts on request (This part of the Act coming into force by December 1995). Though, at present, as the editor of the Henderson Top 2,000 Charity Guide (1994) has noted, there has still been a reluctance by some charities to supply them or to request a fee of £25 for a copy (Rattigan 1994).

All three studies came to the same conclusion; that the SORP was generally being ignored or had not even been heard of. One reason for non-compliance was suggested by Gambling and his colleagues to be down to the lack of ownership of the SORP by charities themselves:

"It can be seen that charities were by no means the majority of those who commented on this discussion paper. Since one of the "representative bodies" collated the comments of 19 District Technical Advisory Committees( which are committees of the accounting profession), the most numerous comments were those of the professional accountants. This gives some support to the view expressed by one of our respondents[E], to the effect that the SORP reflected the opinions of the accounting profession about charity accounting, rather than those of the charities themselves." (Gambling 1990 p9) See also Hyndman

(1990, 1991) and the accounting theory interpretative school debate at the end of section 3.8.

Hines and Jones(1992) suggested the non-compliance was not a surprising finding. Referring to other studies of compliance with non-mandatory accounting standards they concluded that "...This persuasive approach does not appear to have much success" (Hines and Jones, 1992 p54).

The problem with non-compliance with the first SORP was to be temporarily shelved following the wholesale change in the setting of accounting standards. There had been a growing lack of confidence in the Accounting Standards Committee, and following a report by Sir Ron Dearing a new Accounting Standards Board was created and came into force in August 1990 (Ebling 1990).

The Accounting Standards Board (ASB) adopted all twenty-two of the extant 'Statement of Standard Accounting Practice' (SSAPs).

The adoption by the ASB gives the status of accounting standards within the parameters of Part VII of the Companies Act 1985. Under the ASB, a SSAP is now called a Financial Reporting Standard (FRS).

In order to produce financial statements which give a true and fair view, it may be necessary not to comply with a particular SSAP or FRS. If this is the case, it is further necessary to disclose and explain in the accounts the fact of non-compliance and the reasons why. Directors of companies, other than most small or medium-sized companies, will be under a statutory duty to disclose the fact of any material departure from such standards in all accounts. Under Section 245(b) of the Act, where accounts of a company do not comply with requirements of the Act, the court may order the preparation of revised accounts and that all or part of the costs be borne by such directors as were party to the approval of the defective accounts.

In addition to the monitoring of company's accounts by the DTI (which would include monitoring of charities incorporated as companies), an independent body, the Financial Reporting Review Panel, was set up under the Companies Act 1989 to monitor and, if necessary, enforce compliance. This panel is empowered to apply to the court for a declaration that the annual accounts of a company do not comply with the requirements of the Companies Act 1985. The Panel can then obtain a Court Order requiring the directors of the company to prepare revised accounts. The Panel, however, will not actively search for defective accounts but will only examine matters drawn to its attention. The Panel will report an auditor to their professional body in any case where the company has voluntarily accepted, or the court has declared, that its accounts were defective and where the auditor had not qualified his report in that respect.

The new regime does have considerable teeth to enforce the application of accounting standards. The ASB, however, announced in the October of the year it had been created that the SORPS would not be adopted by the Board. The ASB did say that SORPs could be:

"...developed by bodies recognised by the Board to provide guidance on the application of accounting standards to specific industries." (Accounting Standards Board 1990)

Subsequently, a Review Committee sponsored by the Charity Commission and chaired by Michael Webber, one of the new part-time charity commissioners, was set up at the invitation of the Accounting Standards Board (Hobson 1993).

The Committee comprised members of the accounting profession, including the previous SORP chairman Fergus Falk, an accounting academic Professor Trevor Gambling who had written on the SORP, and leading Charity Finance Directors, notably Adrian Randall of the Cancer Research Campaign and Ian Theodorsen of Save The Children Fund.

The Committee issued an exposure draft of the revised SORP in March 1993 (Charity Commission ,1993b) requesting comments by the 17th May 1993. The previous SORP, the preface noted, had been to provide general guidelines of best practice. As the original SORP2 Chairman had written:

"In framing the recommended practice the ASC has sought to make, in a readable document, detailed recommendations which take all of these circumstances into account. We have attempted to make recommendations sufficiently clear to help charity accounts achieve greater consistency which will aid comparability. It would have been easier to have produced a brief statement of bland principles. The Woodfield Report, scrutiny of the supervision of charities, expects charities to conform to SORP2, so we have done our best to make our recommendations appropriate to the vast majority of charities." (Falk, 1987 p77)

The draft SORP attempts to build constructively on the lessons learnt from the original SORP by addressing major issues and problems in the layout of charity accounts. It has adopted a radical approach to solve these problems which recognises that charity accounting issues are fundamentally different from those in the commercial sector. A major omission is that such a fundamental topic as the applicability of SSAPs to charities is not addressed or even referred to in SORP2. It was included in the ASC discussion paper - Accounting by Charities (Accounting Standards Committee 1988) but did not find its way into the final document. It is ironic because SSAPs were designed to increase the comparability of accounts by narrowing the areas of difference and variety in the accounting treatment of the matters with which they deal. In its defence, SORP 2 does address some of the issues which are contained in the SSAPs, such as capitalization and the depreciation of fixed assets, and does examine areas of accounting in which there are no SSAPs for guidance, such as fund accounting and the recognition of the voluntary income.

The draft SORP repeats many of the concepts and requirements of the original SORP but has also introduced significant changes.

These are:

#### **4.7.1 Prescriptive Approach:-**

The Charity Commission's objective is that the SORP recommendations will reduce the current diversity in accounting practice and presentation which was identified by Gambling (1990), Ashford (1991) and Hines and Jones (1992). Michael Webber (1993), the Chairman of the Charity Accounting Review Committee, explained this statement by referring to the alternative accounting treatments allowed under the original SORP " - " experience in working with the original guidelines has shown that many of these alternatives need to be eliminated for the sake of simplicity and consistency" (Webber, 1993 p1).

The prescriptive approach will be greatly enhanced if, as expected, the SORP is used as the basis of the accounting regulations under the Charities Act 1992/3 (Home Office, 1995).

#### **4.7.2 Detailed trustees' report:-**

Like the original SORP (Accountancy 1988 p150), the draft SORP

requires charities to include a comprehensive review and explanation of the accounts in the trustees' report. The disclosure requirements have been increased to cover important issues such as the availability of assets to fulfil obligations of the charity on a fund-by-fund basis and post balance sheet events. Paragraphs 22 and 23 of the SORP give comprehensive guidance and can be used as a checklist. The main constituents of the trustees' report follow those of the original SORP and those recommended in the 1989 Government White Paper, namely:

- \* explanation of organisation, objectives and policies;
- \* review of developments, activities and achievements;
- \* review of the transactions and financial position;

- \* explanation of the salient features of the accounts;
- \* other information which could be usefully included;

Additional disclosure requirements include:

- \* review of results of trading or other non-charitable companies included in the results;
- \* availability of assets to fulfil obligations on a fund-by-fund basis;
- \* note of post balance sheet events;
- \* statistical information;
- \* material grants made other than to individuals;
- \* funds held as custodian trustees.

#### **4.7.3 New Format for Accounts:-**

One of the underlying themes of the SORP is the need to move away from judging charities by a single performance indicator, that is, by the difference between income and expenditure - the so called bottom line. Unfortunately, this measure was a natural product of the Income and Expenditure Account allowing ready analysis, like the net profit figure does in commercial entities.

The danger of this analysis can best be illustrated by a simple example:

A child care charity receives annual income of £10m, which it uses to pay the running costs of its existing homes, say £4m, and buys a new home costing £6m. The income and expenditure account would show a surplus of £6m and taken in isolation the charity might be criticised for not spending enough money on charitable purposes. In reality, this money had been spent on the purchase of a new home which is just as important as the money spent on running costs. The charity may have built up very large reserves but if these are all tied up in residential homes, then these reserves have been utilised for charitable purposes and are not available for revenue expenditure, even though the Income and

Expenditure Account is likely to have shown substantial revenue surpluses over a number of years.

To overcome this problem, the draft SORP suggests a 'Statement of Financial Activities' to replace the Income and Expenditure Account. The new statement still has to show the resources made available to the charity and the expenditure incurred by the charity during the period. However, expenditure in this case includes both revenue and capital expenditure, in order Webber (1993) argues, to present a complete picture which gives a true and fair view of the charity's activities. The key issue for the reader of charity accounts is to understand how incoming resources have been applied and what changes have taken place in the various funds of the charity during the year.

This radical approach will find favour with those charities who consider capital expenditure is as important as revenue expenditure in achieving their charitable purposes. But there is opposition from some accountants on technical grounds because capital and revenue are conventionally kept separate. Indeed, the Accounting Standards Board (ASB) have insisted that the Statement of Financial Activities is presented for comment with a choice of two formats. The second format was introduced because they thought that the format favoured by the Committee could mislead in that it seemed to imply that capital expenditure was a reduction in total resources, when in reality it is expenditure for the future benefit of the charity's beneficiaries.

Fund accounting is still given prominence in the proposed SORP because the requirements to separate out funds subject to different restrictions, and the separate identification of assets and liabilities making up those funds, stem from trust law. Fund Accounting and its use for financial reports was developed in the US by Vatter (1947). Fund Accounting has been criticised as being used by charities to obscure and not enlighten users of

accounts by:

- \* failure to present an overall picture of an entity's activities, presenting a number of reports instead;
- \* failing to report on aspects of an entity's activities by not reporting on transactions directed through some funds;
- \* obscuring the effects of an entity's activities by interfund transfers not clearly differentiating between those interfund transfers and transactions;
- \* failing to differentiate between funds subject to external restrictions and funds subject to reversible designations by the trustees of the charity itself" (Newberry, 1992 p21) .

To overcome these problems unlike the original SORP2, the draft SORP insists on separate disclosure. Indeed, paragraph 29 (Charity Commission, 1993b) states that the statement of Financial Activities: "...be presented in columnar form if the charity operates more than one fund." (Charity Commission, 1993b p15) This means that the minimum analysis will be a split between:

- \* Unrestricted funds, including designated funds;
- \* restricted funds;
- \* permanent endowments.

with further analysis of each category in the notes to the accounts, if appropriate.

Furthermore, paragraph 39 (Charity Commission, 1993b) requires the accounts to include a reconciliation of the opening and closing balances analysed between the major funds of the charity. The appendices to the draft SORP include numerical illustrations

of how this can be achieved. The nature and purpose of each major fund should also be disclosed.

#### **4.7.4 Investments at market value:-**

The draft SORP states that long-term investments, including investment properties, should be included under fixed assets at market value with the cost disclosed separately. This change in treatment stems from the strong conceptual argument that charity accounts should show the total resources available to the charity, which means carrying investments in the balance sheet at their current market value rather than at historic cost.

This treatment is in line with the ASB views on valuation. However, it is likely to be a particularly contentious area, causing some charities to disclose very large reserves which will need to be explained elsewhere in the accounts. Ian McGregor, the Finance Director of the Wellcome Trust, Britain's largest charity by assets and income, has indicated that his charity may well ignore this recommendation. Any changes in value and realised gains and losses should be disclosed in the Statement of Financial Activities.

#### **4.7.5 Overheads:-**

The categories of overhead cost identified in the original SORP2, namely administration, publicity and fund-raising, are redefined and a new category of 'support costs' is added. The SORP tries to get away from the idea that all overheads represent wasteful expense and should be minimised. If too little money is spent on key overheads, such as financial control, then the charity is unlikely to achieve effective performance of its charitable purpose, or even survive in the present recession.

The SORP attempts to change the conventional view by explicitly recognising the nature of each overhead cost. The new category 'support costs' comprises:

"all services supplied centrally...in support of the charity's project work or other direct charitable expenditure." (Charity Commission, 1993b p44)

This definition should encourage charities to recognise that a proportion of Head Office administration costs are legitimately support costs and so can be disclosed as such under charitable expenditure. Similarly, publicity costs have been redefined as:

"all costs incurred in educating and informing governments, institutions and members of the public." (Charity Commission, 1993b p44)

and as such should also be disclosed separately under charitable expenditure. This definition of publicity may cause problems because it is not the normal understanding of the term, which is nearer to advertising and promotion rather than education. Indeed, whilst many charities would agree that education was one of their main charitable objectives, they would probably already include it under direct charitable expenditure anyway and certainly not under publicity as an overhead.

#### The Draft SORP Issued

The draft SORP received considerable publicity and exposure. A special edition of the respected journal NGO Finance (April 1993) was published wholly devoted to the SORP. The Journal not only published in full the draft SORP but also articles from leading figures in the charity field on specific subjects including members of the Review Committee. Meetings were held of various interest groups including the Charity Finance Directors' Group. This resulted in over 350 written submissions commenting on the Exposure draft (Webber, 1994).

In February 1994, the Chairman of the Review Committee wrote an open letter: "To all bodies or persons who submitted written comments on the SORP Exposure Draft" (Webber, 1994).

The letter explained progress to date and the expected plan to the issuing of the SORP. The delay in part was due to 'protracted' discussions with the ASB. Such discussions featured on reconciling the differences between charities and commercial entities. The revised SORP was granted its 'negative assurance' by the ASB in January 1994 as Webber explained:

"The ASB's principal task in relation to SORP has been to ensure that no conflict exists between the recommendations of the SORP and the current accounting standards. The ASB's "negative assurance" is a statement that it is satisfied in that respect, and is essential confirmation for those preparing charity accounts." (Webber 1994)

In addition to explaining the delay, the letter went on to describe the impact of the Charity De-regulation Task Force that we discussed in section 3.5 which proposed the threshold for the application of the SORP to be raised. The letter then explained that the SORP would not be published until the draft regulations by the Home Office were published:

"We intend to publish the revised SORP at the same time as the draft regulations so that the recommendations for best practice can be viewed alongside the proposed legal requirement. It is essential that the SORP and the regulations which are eventually established should be entirely compatible with each other, and it may be that changes made to the draft regulations following this consultation period will require some consequential changes to be made to the SORP. That is why the SORP cannot be finalised until the regulations have reached their final form and have been approved by Parliament." (Webber 1994)

Webber, as a charity commissioner, then explained the Charity Commission's views on the SORP. In particular, he wished to make it clear that the SORP was not mandatory. He then went on, however, to make it clear that if charities did not follow the

SORP and this led to a distorted or misleading view of a charity's affairs, the Commission may criticise. The importance of trustees in ensuring as accurate a picture as possible was emphasised. Departure from the SORP should be seen as being a last resort and only if it could be justified in a positive way.

Finally, the letter referred to simplified versions of the SORP for smaller charities preparing receipts and payments accounts and that the final documents will be published by the Charity Commission and be free to charities. The draft Home Office Regulations were issued in January 1995 (Home Office 1995) and the Statement of Recommended Practice on the 1st February (Accounting by Charities 1995).

The success of the new SORP and the new regulations wait to be assessed. Given the intention to closely bind the enforceable regulations and the decision to raise the threshold of the full SORP's application, there is every indication of the SORP being successful in ensuring compliance with its format and treatment. The accounting SORP and regulation will therefore be a powerful tool in both the formal regulatory structure of the Commission's role and the adjuvant of empowering the public and other bodies to assess the performance of charities. A standard followed by charities allowing for comparisons and the development of performance indicators.

There is, however, from confidential discussions and internal correspondence between members of the Committee, considerable concern over certain aspects of the revised SORP. These papers and conversations were disclosed to assist my understanding of the SORP and the accounts setting standard. It was on the strict understanding that they would not be publicly disclosed until the Review Committee authorised such disclosures or other members 'broke rank'. I would therefore urge the following for future charity accounting research.

Once the regulations and the SORP are in force a variety of research projects will undoubtedly begin. As a signpost for such

research we would urge that the 350 submissions sent to the Review Working Group feature as part of that research project. We would also urge that the current confidentiality rule over the Committee be lifted to allow access to not only the minutes (which are relatively non-committal) of the Committee but in particular the working documents. They provide an insight into the complexity of charity finance and the problems with the SORP which undoubtedly will emerge. In addition, they would bring an invaluable contribution to an understanding of accounting standard setting.

#### **4.8 ACCOUNTANCY THEORY AND THE SORP.**

Whittington(1986) commences his review of accounting theory:

"Financial accounting theory has accumulated a vast literature. A cynic might be inclined to say that the vastness of the literature is in sharp contrast to its impact on practice."  
(Whittington, 1986 p4)

He concludes his review of accounting theory by asserting that most qualified accountants are unaware of theoretical developments and moreover are proud of that ignorance. It is a sad indictment of the accounting profession that such a statement can be made. For the use of theory is paramount if we are to understand developments such as the emergence of the SORP and its likely future.

There is an academic accounting literature on the setting of accounting standards which we consider. We then evaluate this literature to enhance understanding of the application of the SORP. The seminal paper for this debate was written by Watts and

Zimmerman (1978):

"This article provides the beginning of a positive theory of accounting by exploring those factors influencing management's attitudes on accounting standards." (Watts and Zimmerman, 1978 p112)

Through the illustration of a number of empirical studies, they determine from a rationalistic perspective of self interest that management will lobby on accounting standards for its own interest:

"The histories of the Committee on Accounting Procedures, the Accounting Principles Board and the FASB are replete with examples of managements and industries exerting political pressure on the standard setting bodies." (Watts and Zimmerman, 1978 p131)

Why firms lobby, they argue, is due to government intervention which has an effect on their cash flows. Large firms in particular, as they have most contact with government, are the most likely to lobby. They conclude that as long as accounting standards will have an impact on cash flow then political lobbying will continue.

A subsequent paper (Watts and Zimmerman, 1979) declared that because accounting theory has had little substantive, direct impact on accounting practice it had also little influence on accounting standards bodies. Their intention:

"Our objective in this paper is to begin building a theory of the determinants of accounting theory. This theory is intended to be a positive theory, that is, a theory capable of explaining the factors determining the extant accounting literature, predicting how research will change as the underlying factors change, and explaining the role of theories in the determination of accounting standards. It is not normative or prescriptive." (Watts and Zimmerman, 1979)

They begin by examining the demand for accounting theories in an unregulated economy and then the additional demands generated by government intervention.

Audited financial statements are voluntarily produced in an unregulated economy due to articles of incorporation and contracts between corporations and creditors. These contracts are encouraged as they increase the welfare of the promoter or manager because they reduce agency costs. Agency costs (Jensen and Meckling 1976; Fama 1980) arise because managers' (the agents) interests do not necessarily coincide with the interests of bondholders or shareholders. As an illustration, the managers may decide to award themselves additional compensation payments (perquisites), for example a more luxurious car, first class travel, instead of retaining the funds in the firm for growth or increasing dividends. An equilibrium occurs when the net costs of an agency relationship, the agency costs, are minimized by trading off the costs of the perquisites against the monitoring costs.

Watts and Zimmerman (1979) therefore suggest that the function of audited financial statements in an unregulated economy is to reduce agency costs. As examples, they illustrate studies of management compensation schemes in the 19th Century which tied management to the firm's profits. A problem, however, was that profits were effectively cash flows as accrual accounting was not used. Thus short-term manipulation by management was possible but this in turn led to several contractual devices such as restricting dividends to a fixed proportion of profits to control such abuse. From their analysis, Watts and Zimmerman suggest that accounting theories will serve three overlapping functions in an unregulated economy:

i) Pedagogic demand:-

A diversity of accounting procedures will develop to meet the

miscellany of agency costs across firms. Such diversity of accounting procedures leads to difficulty in the teaching of accounting, consequently accounting teachers will develop pedagogic devices to assist learning and to structure the variation found in practice, thus:

"Nineteenth century accounting texts and articles indicate that accounting theorists recognised the diversity of practice and attempted to distil general tendencies from the diversity." (Watts and Zimmerman, 1979 p279)

ii) Information Demand:-

In the unregulated economy there is a requirement for writers to do more than just describe variations in practice. An additional demand is for the prediction of the effects of accounting procedures for both the managers' and auditors' welfare in court cases. The emergence of professional audit in the late half of the 19th Century was due to the contract of the auditor with the shareholders to monitor management. If the auditor fails then he is legally liable. In addition, the welfare of the auditor depends on their efficiency in monitoring management:

"Auditors would value information in the form of theories predicting how agency costs vary with accounting procedures. In particular, auditors would like to know how managers' actions and hence agency costs would be affected by alternative accounting procedures." (Watts and Zimmerman, 1979 p279)

iii) Justification Demand:-

A review of early accounting texts illustrates that a prevailing theme was the fear that managers would use accounting to serve their own interests at the expense of shareholders. Auditors were able to use such works in their discussions with management as they sought to establish their authority:

"Accounting texts (and theories) which detail how managers seek to manipulate profits and the consequent effects of those manipulations on shareholders and bondholders not only improve the auditor's ability to monitor such behaviour, but also provide the auditor with ready made arguments to use against such practices in discussion with management." (Watts and Zimmerman, 1979 p280)

The demand for accounting theories in a regulated economy were then developed:

i) Accounting and the Political Process:-

The value of a firm is affected by the government through either transfer of wealth to government, ie taxes, or recipient of wealth from government ie subsidies. Financial statements perform a central role in these wealth transfers. Therefore the content of such statements as they noted in their previous paper, (Watts and Zimmerman, 1978) are affected by this political process.

ii) The Effect of Government Intervention on the Demand for Accounting Theories:-

There is a correlated increase in demand for accounting theories as rules and regulations which result from government regulation of business increase. As the advocacy battle intensifies between proponents and opponents of special interest legislation, so the justification demand for theories will expand. For the proponents of regulation the arguments will centre on public interest and market failure:

"Government regulation creates a demand for normative accounting theories employing public interest arguments, that is, for theories purporting to demonstrate that certain accounting procedures *should* be used because they lead to better decisions by investors, more efficient capital markets, etc. Further, the demand is not for one theory, but rather for diverse prescriptions... With increased government intervention in business, the demand for theories

which justify particular accounting procedures (proposed in the self-interest of various parties) has come to eclipse the demand for theories which fulfil the pedagogic and information roles." (Watts and Zimmerman, 1979 p283)

### iii) Rationality or 'Theory Illusion':-

The assumption that public officials act in the 'public interest' is challenged by Watts and Zimmerman (1979) who instead support the proposition that individuals involved in the political process act in their own interests. To adopt this perspective implies that the assumption that eventually the best accounting theory will prevail will not necessarily occur. If the welfare interests (costs) of public officials are neutral (zero) then the

best theory will prevail, if not then government officials will not use the best theory available:

"We assume that political transactions costs are large enough to cause the acceptance of "invalid" theories, that the competition among excuses does not always lead to acceptance of the "best" theory. The usefulness of that assumption depends on the empirical consistency of its implications. It is an empirical question...in our model of the political process everyone is rational. No one is being "fooled" by "theory illusion". If people do not investigate the validity of theories, it is because they do not expect such investigation to be worthwhile. If the expected benefits of investigation to an individual are small, he will make only a limited investigation." (Watts and Zimmerman, 1979 p284-5)

### iv) The Supply of Accounting Theories:-

Watts and Zimmerman (1979) challenge the proposition that accounting theory is used to determine accounting practice and standards and that the supply of such theories will ultimately improve accounting practice. Instead they suggest that a supply and demand condition exists. If there exists a large number of individuals who are able to supply a wide diversity of theories at relatively low cost then supply will be responsive to demand. Therefore consumers will determine the production of accounting

research through incentives to accounting researchers. The more prestigious the academic researcher, the greater will be the resources deriving to them and their university and their own prestige, salary and research budget will grow. The tendency for some academic researchers to write papers on current controversies derives from such self interested motivating factors.

An output of academic research is policy recommendations. Whether intentional or not by the researcher, Watts and Zimmerman (1979) argue these recommendations will be favourably quoted by those with vested interests. Those purporting a particular view will seek out accounting researchers who have advocated a particular practice which happens to be in the practitioner's, bureaucrat's

or manager's self interest. They may even then, through commissioning further research, predict more accurate justifications. The ultimate end product is to produce a survival bias for theory. The bias introduced by the vested interests:

"Rationales differ (and are inconsistent) across accounting standards because a standard is the result of political action. The outcome depends on the relative costs which the various involved parties are willing to incur to achieve their goals. And these costs will vary with the expected benefits." (Watts and Zimmerman, 1979 p287)

From an empirical examination of legislation and industries as diverse as railway development to capital markets, Watts and Zimmerman claim support for "the hypothesis that accounting theory has changed after the introduction of government regulation." (1979, p289). Political action they claim, generates accounting theory, not vice-versa. They conclude:

"We are not offering any judgement on the desirability of accounting theories fulfilling an excuse role. What we are arguing, however, is that given the existing economic and political institutions and the incentives of voters, politicians, managers, investors, etc. to

become involved in the process by which accounting standards are determined, the only accounting theory that will provide a set of predictions that are consistent with observed phenomena is one based on self interest. No other theory, *no normative theory currently in the accounting literature*, (eg current value theories) can explain or will be used to justify all accounting standards, because:

1. accounting standards are justified using the theory(excuse) of the vested interest group which is benefited by the standard;
2. vested interest groups use different theories(excuses) for different issues; and
3. different vested interest groups prevail on different issues.

While a self-interest theory can explain accounting standards, such a theory will not be used to justify accounting standards because self-interest theories are politically unpalatable. As a consequence, *not only is there no generally accepted theory to justify accounting standards, there will never be one*" (Watts and Zimmerman, 1979 p300-301).

Can this proposition of Watts and Zimmerman enhance our understanding of charity regulation and the SORP? A number of developments can be clarified and explained by applying their theory to the development of charity accounting standards and regulation:

The support of the charity industry for a specific charity accounting standard can be explained by a self interest perspective. Despite individual reservations representing specific interests, there was wholesale support for the new SORP from the respective charity self help pressure groups: The Charity Finance Directors' Group (Hind 1993); The National Council for Voluntary Organisations (Silley 1993); The Association of Chief Executives of Voluntary Organisations (Dalton 1993); The Institute of Charity Fundraising Managers (Lee 1993); The Association of Charitable Foundations (Siederer 1993) and from the accounting profession with leaders of major accountancy firms involved in charity audit supporting the SORP (Framjee 1993; Finlayson; 1993; Pianca 1993; Vincent 1993). The provision of a separate standard that specifically recognises the

specialist nature of charity both enhances the 'industry' and 'status' to the professionals who work within or provide services to it.

The support of the Charity Commission can equally be explained as the active support of the SORP provides a justification for its own role, particularly following criticism of its past inertia in this field. The emergence of a charity accounting standard can be correlated to the interest of government in the charity sector.

The initial emergence of the SORP from the accounting profession initially corresponds to Watts and Zimmerman's explanation of diversity of accounting practices and the attempt to explain them. The initial SORP accepts this diversity; the revised SORP moves to a more prescriptive approach as regulation requirements shape it.

The findings of this thesis's empirical research on charity auditing discovered:

"...100% of those who answered the survey had external auditors (98.6% being chartered firms) even though only 57% of the sample required this because they were incorporated charities." (Palmer, 1992 p7)

The rationale for external audit can be explained by the two propositions offered by Watts and Zimmerman (1979) for unregulated firms; that it was either in their articles or the pressure of corporations and creditors. For charities, an additional pressure would have been those in receipt of government grants or from foundations who would have demanded audited accounts as part of the grant condition. The specialist nature of charity operations and the perceived threat of litigation leads to a charity auditing standard.

The rationale for regulation, Watts and Zimmerman (1978, 1979) argued, was the implied nature of public interest and market failure. The public interest argument was propounded for charity regulation and the SORP. Market failure was perceived as the Charity Commission failure to supervise charities identified by Woodfield (1987) and the Public Accounts Committee (1987). There seemed to be a transference of the Commission's failure to monitor charities as there also being a failure generally in charities. Yet the Commission throughout their Annual Reports from 1960 continually asserted that they could find little evidence of abuse in the charity sector. To date, there has been

no study of the charitable sector that has found widespread abuse. Indeed, even the Brougham Commissioners' reports last century as we noted found little widespread evidence of abuse.

Finally, while there has been considerable debate on the SORP it has occurred primarily in the forum of the confidential meetings of the Review Committee. The disputes in the Committee discussions represent a diversity of accounting approaches for example between those who have supported the adoption of the Statement of Financial Activities and those who see 'Fund accounting as a (rather primitive) form of management accounting'. The absence of concerted opposition to the revised SORP to date can be explained by its 'non-appearance' (until February 1995) as a formal document in relation to the regulations and therefore the 'costs' of opposing it are not justified until the final product and its impact is fully understood.

The above explanation of charity accounting standards is perhaps rather too deterministic and conspiratorial. It is given as an example to illustrate how the Watts and Zimmerman theoretical hypothesis of the determination of accounting standards can be applied to the emergence of charity accounting standards and regulation. One issue we have not debated is how tangible is the Watts and Zimmerman (1978, 1979) hypothesis.

Whittington (1986) describes three main approaches to accounting theory in the English speaking world of the 20th Century. The first he calls the 'empirical inductive approach' and is evident in the earliest writing on accounting theory. Its approach is to rationalise accounting practice. The second is the 'deductive approach' which is pure theory and can be completely 'ivory tower' if the assumptions are unrealistic. The final approach is:

"The new empiricism based on positivism, derived from the Chicago school of economics. This regards theories as worthwhile only if they are testable against empirical evidence, eg the impact of a particular accounting practice on investor behaviour as reflected in share prices." (Whittington, 1986 p7)

It is to this last school that Watts and Zimmerman belong, as Whittington notes:

"The growth of empirical studies has contributed a great deal to our knowledge and has more to offer in the future. However, some of the more extreme adherents of the positivist school, notably Watts and Zimmerman(1979), have carried their enthusiasm for the positivist approach to such an extent that they seem to denigrate all theories which are not simply descriptions of what happens in the real world" (Whittington, 1986 p25).

The principal attacks on Watts and Zimmerman have not come from a disagreement of their conclusion that the standard setting process is a political process. Despite the controversy of their views on accounting standards, there is widespread agreement that the standard-setting process involves issues of social choice (Whittington, 1986 p23). The principal attacks have come instead from the philosophical assumptions that their theory holds (Chua 1986; Okcabol and Tinker 1990; Ryan, Scapens and Theobald 1992). Thus, criticism of Watts and Zimmerman are the criticisms of positivism and their belief in the assumption of economic rationality:

"Positive accounting theory has been subjected to a number of critiques in recent years; Christenson

(1983); Lowe et al(1983); Tinker et al(1982); and Whittington (1987). All these critiques have pointed to the impossibility of divorcing empirical testing from theoretical analysis. For example, the design of any empirical test requires theoretical constructs and the development of positive theory will inevitably contain theoretical assumptions. As mentioned above, much positive accounting research is based on the assumptions of neoclassical economics and agency theory. Such research, and especially the work emanating from Chicago and Rochester, relies on an implicit belief in the effectiveness of the free market system. Watts and Zimmerman have been widely challenged by other writers. As their work is heavily dependent upon the logical positivist tradition, much of the criticism levied against them is fairly levelled against that tradition. It is a different argument whether their work is sound within the methodological framework in which they quite explicitly operate." (Ryan, Scapens and Theobald, 1982 p79)

A critique of Watts and Zimmerman and the application of their hypothesis to charity accounting standards would therefore embrace questioning the very core assumptions implicit in their work. Okcabol and Tinker (1990) adopt a critique that goes to the core of their theory:

"This paper deconstructs the sovereign viewpoint implicit in this literature by delimiting some of its founding assumptions; its non-self-referentiality; the autonomy of the political and economic realms; the subsumption of social value into relative (utility) value; the hyperrationality of economic actors; the prevalence of market competition and the absence of market domination; the dynamic equilibrating propensity of markets with regard to prices; the existence of specific kinds of continuous functions relating technological and economic variables necessary even for static equilibrium analysis; and the concurrence of private and social costs and benefits. Each of these assumptions is delimited to examine what it represents - the reality that is denied. The deconstruction of the orthodox accounting perspective reveals that systematically social inequality, irrationality [sic], unequal exchange, and partisanship on the part of accountants, typifies the alternative scenario that is repressed by the theoretical status quo." (Okcabol and Tinker, 1990 p71)

Two distinct groups of accounting researchers offer an

alternative to the positivism of Watts and Zimmerman - the interpretive, and the critical (Chua, 1986 p626).

The proponents of critical theory offer an alternative view of society and the acceptance of the established world order. The critical theorists (Lehman, 1992) view accounting information as social control measures (Chua, 1986 p625) based upon the unequal distribution of power in society. Taking their lead from the critical theory of the Frankfurt school (Arato and Gebhardt, 1978; Habermas 1976). A critical theoretical perspective to the setting of accounting standards in the charity sector would also set such a review in an historical and policy context and would take the following perspective:

The role of charity in Britain in the 1990s is part of the government's policy towards maintaining a provision of welfare services despite cutbacks in welfare expenditure. Charity as a welfare philosophy is opposite to universal services proposed by socialists. It supports and maintains inequality of wealth in society. As much wealth, according to Marx (1974), has been acquired not through hard work but through the appropriation of surplus value after the initial endowment, facilitated by 'redistribution' after the dissolution of the monasteries; charity provides a legitimisation for 'consciousness' salvaging and further supports the capitalist state by retention of wealth even after death through the charitable trust. The delivery of welfare services by charity as a gift replacing welfare services as a right.

The charity sector must be efficiently organised to ensure that the wealth in the sector is supporting the state thereby enabling other welfare expenditure to be cut. The adoption of accounting standards based on 'fund accounting' is to ensure that wealth intended for specific charity causes, which have been limited by the state, can be identified. Additionally inefficiency can be identified and ideally, through soft measures of public

accountability, can improve efficiency. A harder form of coercion would be available if the softer form fails, for example, greater intervention by the Home Secretary on the Charity Commission to get tougher. Adopting the viewpoint that the state can be both a potential resource or a threat in society the historical perspective would give examples such as the Tudor constraint on the creation of trusts for religious purposes (Jordan, 1958 p115). The content of the accounting standard would be assessed within a position of: is it designed for the state to be able to assess the activities of charities for the states purpose? The use of fund accounting, for example, could be viewed in this analysis to ensure that charities are spending their resources on stated conservative purposes within the constraints of charity law. Therefore, use of funds for political purposes can be prevented by the legitimation of what is seen as an independent accounting standard.

An 'interpretative' approach adopts a quite different set of objectives about society:

"In this case, subjectivism and relativism together with the view that social order is negotiated through social interaction lead to the use of qualitative, naturalistic research methods. The role of accounting research is seen to be a passive one, and theory is seen to be a vehicle for enhancing mutual understanding and communication between the various groups in society." (Ryan, Scapens and Theobald, 1992 p81)

The application of this interpretive approach to charity accounting standards would be to see the recommended practice as a facilitating tool to enhance communication with various stakeholders. Accounting has a role as a symbolic mediator. A leading proponent of this approach is Gambling (Chua, 1986 p615) who is the academic member of the SORP Review Committee. The application of this approach has featured in one academic accounting journal that devotes some exposure to charities - Financial Accountability and Management. Hyndman(1990, 1991)

illustrates the concern of the interpretative approach to understand user needs:

"The case with charity reporting is similar. Bird et al (1981) were aware of the lack of empirical work on user needs and argued that studies of needs must be undertaken before anything else was done. Their research formed the basis of the three ASC publications on accounting by charities, which culminated in a Statement of Recommended Practice (ASC, 1988). Each of the ASC publications stated its objective in terms of improving the quality/usefulness of reporting by charities, and the argument was promulgated that this should be viewed in terms of the extent to which users' information needs are met. However, the recommendations made by the ASC were not based on empirical evidence regarding user's information needs. As a result of this, the potential value of the recommendations may be limited. It would seem appropriate that empirical research regarding the needs of users of charity reports be carried out to underpin future developments in this area." (Hyndman, 1990 p296)

The subsequent failure of the first SORP can be explained by this omission to understand user needs. Hyndman subsequently

undertook empirical research on the perception of information needs. His findings noted that while the providers of such reports, charity officials and their auditors, believed reports addressing contributors were important, the actual information they provided did not do so. A 'relevance gap' existed Hyndman (1991) concluded because there was a general complacency by the providers of information. This was due, he believed, to the lack of incentive on charity managers to improve charity reports. Hyndman therefore believed that more user driven reports would encourage managers to more directly pursue the goals of the charity.

Gambling (Gambling, Jones and Karim, 1993) reinforces Hyndman's concerns of the failure to meet donors' information needs by existing charity reports, but notes:

"...although the review of SORP 2 (following the Charities Act 1992) should go some way toward providing a remedy for this."  
(Gambling, Jones and Karim, 1993 p203)

There have been similar research findings in the United States (Steinberg 1986; Anthony 1991; Blades and Milofsky 1992) with one paper interestingly enough mirroring the debates in the Review Committee over fund accounting and rejecting the need for specialist treatment:

"With one exception, the accounting principles governing the information reported on the financial statements of nonprofit organisations should be the same as those for business organisations, and trustees should use this information to decide on budgets and analyse actual performance in essentially the same way as do business boards of directors. The exception is that nonprofit organisations receive capital contributions, which are rare in business corporations. In some nonprofit organisations, especially colleges, the information that trustees actually receive is confusing because of the unnecessary use of fund accounting and other peculiarities." (Anthony, 1991 p371)

Gambling and his colleagues view the increase in the regulatory

powers of the Charity Commission as a move in the direction to what they term a:

"formal system of external regulation of the *administration of an organisation*, as opposed to external standard-setting for the content of its accounting reports." (Gambling, Jones and Karim, 1993 p205)

A subsequent development, they suggest, could be independent bodies with powers to accredit appropriately-qualified organisations, after a suitable inspection and testing of their internal systems of administrative control. This would be required as charities need to convince benefactors of their *bona fides*.

All three theoretical perspectives offer an explanation of the charity accounting SORP which enhance our knowledge. The 'interpretative' approach has dominated charity accounting direction in the last few years. It offers empowerment to both the trustee and to those who wish to contribute to charities.

#### **4.9 THE EUROPEAN PERSPECTIVE.**

In a relatively short period of time, the United Kingdom has introduced a comprehensive supervision system with a specialist accounting regulation for its charitable sector. The recognition of a specialist accounting practice adds further support to those who argue against 'sector blurring' (Billis, 1993) that we discussed in chapter 1. But how does this specialist 'British Model' compare with its European counterparts? Do other European Union states recognise a separate charitable sector? How do they monitor such a sector? Have they developed specialist standards or do they apply commercial practices? How do they compare? The answer to these questions is particularly important with the possibility of joint ventures between UK charities and equivalent European bodies, for both aid and service delivery as well as potential Euro-wide fundraising (NCVO, 1992). In addition, in

1992 the draft regulation of the statute for a European Association (the European equivalent to an English charity) was published (HM Treasury). If there is a common statute throughout the European Union, which member state's supervision system would be applicable?

To answer the above questions requires a comparative evaluation of the current respective practices within the European Union. However, obtaining information on the auditing, accounting and supervision practices of other European Union countries in respect of their voluntary sectors has proved problematic. After interviews with the English Charity Commission (Corden, 1992),

the European Officer at the National Council for Voluntary Organisations (NCVO) (Morrison, 1992), it was discovered that very little information was available. The Charity Commission through the Foreign Office had used the Embassies to discover if they had European counterparts and discovered they were unique as a body. The European Accounting Association was contacted but they advised that they had no knowledge of the differing accounting and audit requirements. Would an International Charity operating throughout the European Union have such information? An interview with the International Finance Secretary and the Head of Audit (Flett and Woods 1993) of the Salvation Army, however, discovered that while the Salvation Army is treated as a charity in the UK, there are separate treatments owing to it being a church in other European countries. Finally, a trip to Brussels to see the Directorate General Office, DG23 of the European Commission (Crook 1993) responsible for voluntary organisations established that they did not have any comparative information on what were the individual practices of each country.

While the information wanted was not available, I was able to attain some information from all these bodies that helped shape the next stage forward; it became obvious that I would have to obtain the primary information myself.

The NCVO had undertaken a major survey on political activities (6,1992) of voluntary organisations which assisted in explaining the respective legal processes. We obtained a copy of the proposed European Statute (HM Treasury 1992). Finally, the European Commission (1993) publishes a guide to the Accounting Standards of the Member States (see appendix 3). Attempting to obtain the primary information on the respective practices led to the conclusion that a survey, using an International Firm of Chartered Accountants, which had offices in each European Union country would be a method.

Moore Rowland International ranks ninth in size in the world accountancy practices with offices in every European Union state.

Moore's Rowland agreed to support a survey using the resources of their respective international offices. To ensure completion, the Partner for European Affairs in the Brussels office (DeBlessner, 1993) personally addressed the survey to each national member and coordinated the response.

A questionnaire was designed with Neil Finlayson of Moore's Rowland, with comments on the final draft from the Charity Commission's Richard Corden and the NCVO's Janet Morrison. The questionnaire included two appendices (see appendix 3). Given the problems that the European Community had in agreeing the types of organisations which would be included within the definition of a European Association, that is, the European equivalent of an English charity, one appendix defined charities both in terms of European Community legal definitions and by characteristics following the definitions debate summarised in chapter 1. These characteristics were summarised as:

Public benefit;  
Disinterested Management;  
No profit distribution;  
Freedom of establishment.

The second appendix to the questionnaire was an illustrative answer in respect of the English situation. This was compiled by Neil Finlayson, Senior Manager of the Moore's Rowland Charities Unit. It acted as both a pilot test of the questionnaire and provided a further focus and contact point for the Moore's Rowland offices to contact if they needed clarification.

With the exception of Greece, information on all the European Union member states was obtained. The results of the survey are illustrated in three separate tables to ease explanation (see appendix 3). They demonstrate that practices range from no specific controls and no recognition of the charity sector differences to sophisticated controls that perhaps the SORP

Review Committee and the Charity Commission should consider, particularly the French requirements.

France requires a compulsory audit for their large charities as is now the case in England. However, they go one stage further by also requiring large associations that have more than three hundred employees and an income greater than FF20 million to publish a half-yearly status of the liquid assets and current liabilities, statement of source and application of funds, a financing plan as well as an estimated income statement. Given the Charity Commission's concerns on 'Good Management':

"comparatively few of the charities we looked at in 1993 had prepared spending plans and budgets at the beginning of each year." (Charity Commission, 1994 p22)

For the English, SORP only encourages charities to disclose in their trustee report whether they can meet their obligations as they fall. The English option is clearly inferior to the French Statutory Statement.

The view that England has the most developed criteria of accounting, audit and supervisory practices appears to be supported by the survey's findings. This can best be illustrated by extracting the answers to the following key issues:

Mandatory Audit Requirement.

England  
France  
Denmark

Specific Audit Guidance.

England  
France  
Ireland

Portugal

Specific Control Body (independent of Government).

England

Ireland

The designation of a specific control body is particularly noteworthy as studies in the US (Blades and Milofsky, 1992); Australia (Sievers and McGregor-Lowndes, 1994); New Zealand (Newberry, 1992) have all concluded that regulation exercised through the tax authorities have failed to provide adequate supervision. In the US, the tax authority is usually complemented at state level by the Attorney General's Office, who are interested primarily in authorising collections. The failure of the revenue authorities being attributable to their primary interest in collecting tax revenues (Blades and Milofsky), the majority of charities being small and the cost of checking outweighs benefits. The British system of having a separate 'regulatory' body for the charity sector being complemented by these studies as a model for their own countries to follow. Though in the US, specific comment was made on the role of independent watchdog bodies and the media (Blades and Milofsky 1992).

A negative observation is the absence of auditing requirements in some European Countries, which means that English and French charities are incurring higher administrative costs, audit fees.

It should not, however, be assumed that the English system is therefore the most superior or indeed should become the basis of any European-wide supervision system. The diversity of cultures

throughout Europe may suggest that alternatives would be more appropriate than the British system. For example, as we discussed in Chapter 1, there are constraints on political

activities by charities. In France it is written into the Constitution that organisations have a right to politically campaign and the state may not remove their tax privileges (6,1992). The English system of having a specific control body, however, has much to commend it.

There is clearly the need for detailed research to explore the traditions of the respective voluntary sectors and for European-wide debates. The Johns Hopkins University study, described in chapter 1, will hopefully provide such a stimulus and be a facilitating tool. However, a lead needs to come from the European Commission's DGXXIII itself, as the NCVO has called for (NCVO 1992):

"There is concern about how fundraising, which will increasingly cross member state boundaries, will be regulated and what standards voluntary organisations should be meeting... Advances in some techniques of fundraising may need further pan-European regulation eg mail marketing, broadcasting appeals, lotteries and the organisation of transnational events.

There may be potential for the creation of pan-European accreditation for fundraising professionals, which ensures that members are bound by certain codes of conduct and good practice. Should such a system be left to the voluntary efforts of voluntary organisations themselves? DGXXIII should gather together information on different standards in member states and look at drawing together some proposals for EC wide regulation." (NCVO, 1992 p12-13)

This small study has met one of the demands of the NCVO on establishing current accounting standards in the European Union. We have also identified that further research is required, particularly of the French requirements:

"DGXXIII should use its questionnaire of governments to establish what accounting standards are applied to associations across the EC and whether there is a need for further research into accounting and auditing standards and requirements for registration and supervision of organisations. This research should help to establish what need there is for minimum accounting standards across the EC and how the

submission of accounts could be regulated." (NCVO, 1992 p13)

#### 4.10 CONCLUSION.

In this chapter we have reviewed the regulation of the charity sector since Tudor times. We have demonstrated that the interest in regulating the charity sector is correlated with the importance of charity to the state. We believe, however, that a statist perspective is too deterministic in describing the regulation of charity. The charity sector has demonstrated a degree of independence to date that has led to a unique form of regulation and a regulatory body. The Charity Commission's problems of the 1980s were comprehensively reviewed. While the Charity Commission was in some part to blame for its negative image there were considerable mitigating factors. The treatment of the then Chief Charity Commissioner, Denis Peach, was not a glorious chapter in the Public Accounts Committee history.

The Commission is now well-resourced and equipped with considerable powers. The Commission, however, faces considerable problems as it attempts to balance being both a 'regulator' and a promoter of charity. Owing to its distance from other government departments, the influence of the Chief Commissioner is more powerful than a normal Grade 3 public servant. The image of the Chief Commissioner can be said to also be the Commission's. We make specific recommendations on this role in our conclusion. We also endorsed earlier recommendations that an advisory Board of notable individuals would provide a public focus for the Commission to ensure that it never returned to its 'sleepy' image.

The new SORP was comprehensively explained. Its distinct features from commercial accounting strengthen the concept of a separate sector. Different accounting standards theory was evaluated against the SORP. While all theoretical perspectives could be applied the 'interpretative' school offers the most accurate framework. In the absence of information, a survey of

the respective accounting, audit and supervision practices in other European Union states was undertaken. The French standard featuring on interim statements of liquidity was recommended as requiring further investigation. The uniqueness of the Charity Commission as a specialist regulatory body for the sector could be the model for other countries to follow.

The current regulation structure, particularly after the Charity De-regulation Task Force has focused the supervision structure primarily on the larger charities. The Trustees of those estimated 8,000 charities are in the forefront of ensuring that their charities are meeting those requirements. It is the problems of these individuals which we now review in Chapter 4.

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