

RELIGIOUS, REFORMATION, REMEDIAL AND RENAISSANCE PHILANTHROPY

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Introduction

In Canada my private law practice is restricted to issues relating to charities, trusts and taxation and is completely immersed in the common law world. In recent years, however, I have spent considerable time in civil code countries such as the Peoples' Republic of China, Russia and other countries in Eastern Europe consulting with those responsible for drafting laws to enable and regulate the charities, non-profit organisations and citizens' groups this paper refers to as the Third Sector. Those challenging and exhilarating interchanges taught me that when dealing with the law of charity on an international basis it is irrelevant to simply know legal and tax rules unless one also understands the social, political and ideological environment which fostered the policy objectives which the legal and tax principles seek to accomplish. I also learned the difficulties of transporting to civil code jurisdictions without a trust law tradition such a unique branch of the law rooted in the obscure doctrines of equity. The problems are compounded by the fact that legislators and even charities today are much more interested in tax and fiscal legislation and policies than in theoretical legal and equitable doctrines. Working in Eastern Europe also taught me how intertwined developing a legal framework for charities is with the movement towards creating a "civil society" with a heavy emphasis on pluralism, democracy and a free market economy.

Building pluralism and democratic institutions are worthy and important goals of the "Third Sector" but may follow from, rather than lead, responsible social and economic action. If we go back to the historical origins of the charitable sector in England we will find that it developed in a political atmosphere which did not tolerate pluralism and was not democratic. Also, it developed in a dysfunctional economy which was almost as desperate and chaotic as many economies in Eastern Europe today. This paper will examine and analyse the evolution of

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philanthropy in its historical context with the suggestion that helping emerging civil societies to understand the early stages of philanthropy may be more useful than attempting to export a mature, fully democratic and pluralistic model which has sophisticated tax incentives. Further, it is increasingly my belief that international experts in philanthropy promoting civil society would do better to concentrate their time on analysing and communicating the history, ideology and evolution of the charitable sector in their own country rather than in the recipient country. The interpretation and selection of the aspects of the Third Sector most appropriate to the successful evolution of an indigenous Third Sector should be left to those in the recipient country.

Philanthropy Defined

Utilising the term philanthropy to mean the societal context in which the legal concept of charity evolves, this paper will analyse philanthropy rather than the law of charity. The definition I will give philanthropy is the social objectives which the State and the law seek to fund and address through the voluntary contributions and activities of citizens, and which the State will encourage and protect by extending legal and fiscal privileges to individuals and institutions funding and carrying out those objectives. The courts look to the framework of philanthropy to assist them in determining the specific substantive purposes the law will regard as being charitable. Because philanthropy is only an effective force in society if citizens voluntarily participate and contribute, it is an exercise in futility if the social objectives promoted by the State and the law are not substantially embraced by the citizens.

While philanthropy must be voluntary and not compelled by the State, the State moulds and influences philanthropy much more than citizens generally realise. The State frequently does produce public policy legislation which in due course does influence the courts' definition of the legal concept of charity. The interests of the State in philanthropy go beyond theoretical policy matters and can extend to social order. Philanthropy is an exercise in converting the citizens' desire to voluntarily better their society and the poor, to concrete social action.

The historical evolution of philanthropy can be divided into phases which substantially correlate with watershed points in the legal development of the law of charity. Every society has a tradition of philanthropy which existed prior to significant legal recognition and development. In the common law world, that phase was during the Middle Ages and I classify it as the "Medieval Phase". The starting point of the legal concept of charity in the common law world is generally acknowledged to be the purposes enumerated in the preamble ("Preamble") to the Statute of Charitable Uses 1601² commonly (and hereafter) referred to as the Statute of Elizabeth 1. I will refer to the philanthropy which emanated from the Preamble after 1601 as the "Preamble Phase". The classic statement of the current legal concept of charity is found in Lord Macnaghten's four categories of charitable purposes in *Income Tax Commissioners v Pemsel*³ ("Pemsel") in 1891.

² 43 Elizabeth I, c.4

³ [1891] AC 531 (hereafter cited as "Pemsel") at p.583

The resulting philanthropy subsequent to 1891 will be called the "Pensel Phase". Pensel represents a significant break from the Preamble and reflects the philanthropy of late nineteenth-century England rather than Elizabethan England. Pensel marks a turn away from concern for the poor being the pervasive and dominating consideration of the law of charity to other purposes beneficial to the community which could incidentally benefit the rich.

These historical phases will be discussed in conjunction with my analysis that there are four broad classifications of philanthropy which I designate Religious Philanthropy, Reformation Philanthropy, Remedial Philanthropy and Renaissance Philanthropy. These four classifications are not mutually exclusive but have had a different level of emphasis in different historical periods. I suggest that we may be embarking on a new historical phase with a new trend in philanthropy, which I classify as Retrenchment Philanthropy.

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. I believe that the single most important factor in determining what the popular use of "charity" means in any era is understanding the man in the street's attitude to the poor. The changing attitudes to the poor are a relevant issue when one traces the evolution of the legal concept of charity from the middle ages to Tudor England, which shaped the Preamble, and to the late nineteenth century, when Pensel was decided. The relationship between the church and the State as well as the general religious climate of the era historically have been important forces in shaping the attitude to the poor. The emergence of charity as a legal concept rather than a religious concept in England coincides with the emergence from feudalism and the Protestant Reformation. The religious power struggles between Henry VIII and Rome directly affected the law of charity as did the Protestant Reformation. As society became more secular, the public policy legislation of the era became a better indicator of society's attitude to the poor than the church. I believe that the legal concept of charity is substantially shaped by public policy legislation. The most explicit example of legislation in a common law jurisdiction defining what the law regards as charitable is the Preamble itself. In communist societies, ideology takes the place of religion in shaping the legislative environment which governs and restricts the legal concept of charity.

Religious Philanthropy

The first historical period, the Medieval Phase, was almost exclusively Religious Philanthropy with its primary expression in society being almsgiving. Religious Philanthropy as a classification is focused on the spiritual, moral or ethical benefit which society receives from promoting conduct which is ordered by a belief or values system which recognises and is guided by some god or supreme being outside of the temporal world. Every society has a tradition of Religious Philanthropy rooted in its indigenous religious and moral teachings. While religious teachings provide an important societal framework for charity, this type of philanthropy has historically provided real difficulty to the courts in trying to interpret and reconcile "God's law" with "man's law" and the relationship between church and State. From a legal perspective, Religious Philanthropy is better rationalised as a matter of public policy rather than as something which has an

objectively ascertainable public benefit. In Religious Philanthropy the agenda is set by God, and the devotee voluntarily determines the level of participation.

Every society in every age has some form of Religious Philanthropy. There is much to be learned by studying the charitable traditions taught by Judaism, Islam and other religions. In England, however, during the Medieval Period and throughout much of the Preamble Period, Religious Philanthropy as recognised by the law was exclusively Christian. There was no pluralism or tolerance for other religions. Even Christian groups with dissenting doctrinal views who did not enjoy the favour of the monarch were denied the legal protection and privileges extended to charity as they were not included in the religions recognised by the law. With modern philanthropy being a bulwark of pluralism, it is easy to forget the narrow recognition extended to Religious Philanthropy at the outset.

Charitable trusts were developed originally to enable religious bodies to benefit from charitable endowments. In the Middle Ages charity was primarily religious in motivation. Donors gave out of Christian piety. In his masterful historical study entitled *Philanthropy in England 1480-1660*, Professor W.K. Jordan wrote:

"...poverty itself was idealised, possibly because its amelioration lay wholly beyond the resources of the society, and the obligation of alms was taught as an intrinsic and significant part of the Christian social duty."⁴

Most of the giving was alms for the poor or for the church itself. Monasteries and hospitals operated by the church were the primary vehicles for delivering social services. At this point in history English society was not only disintegrating, as the end of the Middle Ages saw an increase in unemployment and debilitating poverty, but also was being ravished by famine and the plague. Whatever alleviation of poverty resulted from alms was not sufficient to address the social needs. The medieval church was no longer adequate to deliver social services efficiently and became a complete failure as a mechanism for providing relief to the poor. This inadequacy was compounded by its corruption. The prominence and extent of the church's wealth meant that both the State and citizens looking for solutions to social problems coveted the immense endowments held in charitable trusts. Henry VIII appropriated the monasteries and removed the economic base for the Pope's temporal power in England.

The Protestant Reformation was changing the beliefs, values and culture of the citizens of Tudor England. Alms in the medieval period were administered casually and ineffectively by the monastic foundations with the intent of alleviating only the most conspicuous and abject poverty. The Puritans of Tudor England (led by wealthy merchants) wanted to do far more than relieve suffering and poverty. They were content to do nothing less than eradicate the conditions which gave rise to poverty and sickness and accomplish a social reformation. Although this zeal for social change was religiously motivated, these merchants could see that the church was neither able nor ideally suited to solve the problems

⁴ George Allen & Unwin, London 1959 (hereafter cited as "Jordan") p.54.

of their society and needed a legal mechanism to implement their secular solutions, the charitable trust. Jordan wrote:

"It is likewise clear that it was the mercantile aristocracy of London which came in the course of our period to exercise a dominant influence on the moulding of national aspirations and on shaping and endowing the institutions required to translate aspirations into enduring reality. These Londoners, who were very rich and almost incredibly generous, spread the pervasive pattern of their giving across the whole face of England. The focus of their attack was on the ancient evil of poverty. But they were prescient enough to sense that poverty could never be destroyed unless the ignorance in which it spawns was relieved. Such men scorned and discarded alms, the mechanism of medieval charity, since they were profoundly persuaded that casual, undisciplined charity was as ineffective as it was wasteful. The great and effective instrument which the mercantile aristocracy, whether of London, Bristol or Norwich, developed to secure the translation of their aspirations into historical reality was the charitable trust, which was to be classically defined and most powerfully encouraged by the great Elizabethan statute of charitable uses."⁵

Giving alms requires no legal mechanism. Endowing charitable institutions does. Having witnessed Henry VIII's expropriation of the monasteries, donors now wanted the Crown to protect charitable trusts. Faced with the economic dislocation resulting from a decline in labour intensive farming practices and also from severe urban unemployment, Elizabeth I was ready to accommodate these concerns. The last decade of the sixteenth century brought a severe economic depression and bread riots in London. In both rural and urban areas willing and able responsible men desperate to work were totally unable to find employment. The genuinely unemployed poor added a third class to the impotent⁶ poor and the vagrant or criminal poor which government and social observers had refused to recognise to that time. Elizabeth I enacted the "Poor Law"⁷ in 1597 which for the first time recognised the fact of unemployment among those who were neither vagrants nor impotent.

Reformation Philanthropy

⁵ Jordan, pp. 18-9.

⁶ Impotent is a term used in the Preamble and the literature of the time to refer to those who were physically unable to work by virtue of age, disability or other cause which removed any "moral" taint from their being unemployed and unemployable.

⁷ *An act for the relief of the poor* 39 Elizabeth I, c.2 (continued by 43 Elizabeth I, c.9; 1 Jac. 1, c.25).

The Statute of Elizabeth I in 1601 must be understood as being shaped by all the legislative initiatives, religious reformation, social upheaval and economic dislocation of the previous century. It led to a historical period I have called the Preamble Phase which was dominated by what I classify as Reformation Philanthropy. The Medieval Phase reflected the church's practice of charity, whereas the Preamble reflected a watershed change to predominantly the State's agenda for charity, not only as it was, but as it should become.

Reformation Philanthropy is the philanthropy promoted by the Preamble, which is fundamentally a positive partnership between the voluntary donor and the State. The agenda is set in conjunction with or by the State, and the citizen determines his or her level of participation. The objective is to create, initiate, fund and maintain programs and institutions which will reform, shape and even revolutionise society with private funds according to the donor's aspirations in ways which are consistent with but not directed by the State. This is the proactive philanthropy of the endowment giver and those who are giving out of their capital and not just their income. It is also the cognitive philanthropy of a donor who has the foresight to realise that if the institutions and programs the donor is creating with private funds are to survive in perpetuity, it is almost a necessity to select projects which accord with the State's agenda so that the financial responsibility for maintaining and enhancing the project will ultimately be passed to the State as there is not enough private funds to sustain them indefinitely. The objective is to reform society through social institutions and not to worry about whether this is initially or ultimately accomplished by private or State funds. These newly rich Protestant merchants in the beginning of the seventeenth century wanted to attack poverty at its roots through employment and education and only needed the legal mechanism which would facilitate this, the charitable trust, and assurance that it would be protected by law, the Statute of Elizabeth I. Jordan wrote:

"An historical decision of very great moment was perhaps unwittingly taken by private donors of all classes, but most importantly by those of the merchant elite, which initiated not only the fashioning of adequate social institutions for the nation but also the fashioning of an ethic of social responsibility which was to be the hallmark of the liberal society. Very generally, one may say that the bulwarks raised by private generosity against poverty, disease, ignorance, and impotence remained sufficient until they were overwhelmed by the forces loosed by the Industrial Revolution, which in England and the western world made necessary the direct and ultimately the massive intervention of the state in order to ensure the welfare, perhaps the survival, of large masses of men chronically in danger from, when they had not been rendered permanent casualties by, the complex society which is the modern industrial economy."⁸

The Statute of Elizabeth I should be celebrated not as the classic starting point and quintessential statement of the law of charity but as the beginning of philanthropy as a voluntary partnership between the citizen and the State to fund and achieve

⁸ Jordan, p. 143.

social objectives. The citizen provided the motivation, methods and means and the State provided enabling legal (and later fiscal) privileges and protection from and remedies for abuses and maladministration. The secular social objectives of the State were given definition in the Preamble and protection in the body of the statute, and the law enabled and simplified the legal mechanisms necessary for the citizens to voluntarily initiate, fund and operate social institutions which would better society and its poor. The results as documented by Jordan were spectacular.

"... in the span of two generations Protestantism had in fact created in England a new social order and that in terms of effective charitable giving had outstripped by far the whole of the charitable accumulation of the medieval past."⁹

Charity in the Preamble

The purposes listed in the Preamble as charitable are:

"The relief of aged, impotent, and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars of universities; the repair of bridges, havens, causeways, churches, sea banks and highways; the education and preferment of orphans; the relief, stock or maintenance of houses of correction; marriages of poor maids; supportation, aid and help of young tradesmen, handicraftsmen and persons decayed; the relief or redemption of prisoners or captives and the aid or ease of any poor inhabitants concerning payments of fifteens,¹⁰ setting out of soldiers and other taxes."

This list is astounding for its single-minded dedication to social objectives which promote the Tudor view of social order and the diversion of private money to public expenses. The Preamble does not promote religion or the arts, culture, environment or other worthy causes included in Renaissance Philanthropy. The Preamble promotes secular purposes which advance the public good according to the agenda and priorities recognised by the State. These purposes allow the money to go directly to the recipient of charity, such as persons who are aged, sick, disabled, impotent or orphans, if the object is relief of poverty. The emphasis is not on this classic statement of relief of poverty but on anything which goes to eradicate the causes of poverty and the environment in which it breeds.

Eradicating poverty not only was accomplished by providing education but also by supplying loans and grants to generate and sustain employment opportunities. In practice, these loan funds were sometimes to provide small interest-free funds to respectable and responsible householders temporarily facing distress. Other larger funds provided working capital to young persons just completing their

⁹ Jordan, p.230.

¹⁰ A tax of one-fifteenth formerly imposed upon personal property.

apprenticeship and about to begin their careers as artisans, tradesmen or merchants. Still other loan funds provided help to these same classes of people who fell on hard times or suffered financial reverses after having been established in their careers for some time.¹¹ Modern philanthropy needs to rediscover and re-emphasise the priority given to generating employment in Preamble and Reformation Philanthropy.

Reading the history of the Tudor era it seems quite clear that the economic dislocation resulting from the fundamental changes which were taking place in the agrarian economy and the influx of people to the cities was of great concern and importance to the legislators. It is my opinion that the Preamble read in conjunction with the poor laws would say that the 'spirit and intendment' of the Preamble extended to activities and purposes which created employment for poor persons. I think that the inclusion of "the repair of bridges, havens, causeways, churches, sea banks and highways" means that make-work projects involving public facilities is charitable rather than that repairing bridges in and of itself is charitable.

It is clear that the Preamble classified as charitable things which relieve the State of expenses which it would otherwise incur. It is interesting when one considers the current problems in Eastern Europe with funding, housing and employing discharged military personnel that maintaining maimed soldiers and mariners was explicitly listed as a charitable purpose in the Preamble. The relationship between philanthropy and social order in the Preamble is implicit rather than explicit. The society was just beginning to move beyond the assumption that "poor people" not being aged or impotent were necessarily criminals or vagabonds. One of the problems of the era was disabled veterans and mariners who were reduced to begging but, having served their country and not been subsequently supported, could not be whipped like common beggars.

Remedial Philanthropy

Every society in every age has my third classification called Remedial Philanthropy. Every religion has a tradition of giving charity to the needy. Much of Remedial Philanthropy is what Lord Goodman in his dichotomised definition of charity¹² called "those whose objects are the relief of poverty and illness and other

¹¹ Jordan, p.43.

¹² In his Chairman's Preface to the *Goodman Report*, Lord Goodman said of the problem in defining charity:

"The principal problem in the way of definition is the dichotomy in relation to charities between those whose objects are the relief of poverty and illness and other forms of misery and deprivation and those whose objects are of a more hedonistic nature which contribute to the quality of life."

forms of misery and deprivation".¹³ The poor are always with us and there will always be human disasters and environmental catastrophes requiring emergency remedies. Remedial philanthropy is the emotive and reactive philanthropy of those giving out of income not capital with the agenda being set by the vicissitudes of life and 'acts of God'. Remedial Philanthropy has changed with the decline of the role of the church and the growth of a government-funded social safety net and now substantially opposes utilising private money to accomplish the obligations of the State in providing social services. There was a significant change in society's (philanthropy's) attitude not only to the poor but to partnership in sharing the financial burdens of the State in the late nineteenth century when Pemsel was decided. The impact of the Protestant work ethic and other factors resulted in a radical shift of attitudes from those at the time of the Preamble. As the *Nathan Report* said:

"It seems clear that at the date of the Statute of 1601 and for long afterwards there was no conception that a charitable endowment was necessarily ill-spent because its effect might be to relieve the burden of public obligations."¹⁴

In the most recent leaflet¹⁵ produced in England by the Charity Commissioners to give guidance to trustees of charities on assisting people who receive benefits from the State, trustees are instructed to take care not to use the charity's funds simply to replace the State assistance received by a person because the charity would in effect be relieving the State, not the beneficiary. They are told:

"In order to make the most effective use of their charity's funds, trustees should take the trouble to learn about:

- * the system of State benefits;
- * how a person's State benefits can be affected by receiving a grant from a charity;
- * the gaps in the State benefit system which can be filled by payments from charities."

My reading of history leads me to doubt that Elizabeth I would have required a charity trustee to inquire whether a maimed soldier was entitled to State benefits prior to assisting him, especially since the Preamble talked about the

¹³ "National Council of Social Services Committee of Inquiry into the Effect of Charity Law and Practice on Voluntary Organisations", Bedford Square Press, London, 1976, (hereafter cited as "Goodman"), p.i.

¹⁴ Cmd.8710 (1952) para 624.

¹⁵ *Charities for the Relief of the Poor*, leaflet published by the Charity Commissioners for England and Wales, June 1992.

"maintenance" of maimed soldiers and only the "relief" of the poor. This is clearly a post-Pemsel attitude and not the 'spirit and intendment' of the Preamble. While it might be a modern and even a progressive attitude it troubles me because it leads a trustee into the path of temptation to become directly involved in political activities. What compassionate progressive trustee having identified the gaps in the State's benefits system will not want to have the State redress the flaw which produced the gap rather than simply fill it by a payment from the charity?

Earlier I have made the point that philanthropy must be *voluntary* in that neither the State nor the beneficiary can compel it. The critical difference with State benefits is that the beneficiary is *entitled* to them and the State is obligated to pay. There has always been tension between "entitlement" and "charity". This tension is escalated to conflict and any partnership becomes divisive rather than collaborative when the Commission asserts:

"It is a cardinal principle of charity law that charitable funds should not be used in place of benefits to which an individual has a statutory right."¹⁶

Renaissance Philanthropy

In 1891, in what has become the *locus classicus* at common law, Lord Macnaghten in Pemsel¹⁷ restated the fourth head of charity as "other purposes beneficial to the community not falling under any of the preceding heads". Pemsel put an end to the argument that a purpose must be related to the relief of poverty to be charitable in law.¹⁸ Macnaghten does not deal with the poverty issue extensively but states in the sentence following his four heads of charity:

"The trusts last referred to are not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor, as indeed, every charity that deserves the name must do either directly or indirectly."¹⁹

Again, Pemsel's significance is not continuity with the Preamble but a break with the medieval idealisation of the poor and the Preamble's determination to eradicate poverty's causes. Therefore I refer to the third historical period as the Pemsel Phase. The poor are not forgotten in the Pemsel Phase; but philanthropy in the

¹⁶ *Charities for the Relief of the Poor*, leaflet published by the Charity Commissioners for England and Wales, June 1991.

¹⁷ Pemsel, at p.583.

¹⁸ This proposition was formally confirmed in Lord Wrenbury's judgment in the Privy Council decision in *Verge v Somerville* [1924] AC 496 at p.503.

¹⁹ Pemsel, p.593.

social field is henceforth limited to remedial actions which 'fill the gaps' left by the State. The Pemsel Phase therefore maintains a component of Remedial Philanthropy but shifts the focus to what I call Renaissance Philanthropy.

Renaissance Philanthropy is the expansion of the legal concept of charity in Macnaghten's fourth head to 'other purposes beneficial to the community' which Lord Goodman called "those whose objects are of a more hedonistic nature which contribute to the quality of life".²⁰ The agenda in Renaissance Philanthropy is set by the citizen and the State determines the level of support it gives through legal and fiscal incentives. After Pemsel any willing partnership between the voluntary donor and the State seeking to create and fund new programs and institutions with private funds is limited to purposes which fall within the pursuits of the Renaissance man. Education is no longer primarily training which leads to employment and breaking the cycle of poverty but is predominately emancipation of the mind and excellence.

Renaissance Philanthropy focuses on the fourth head - other purposes beneficial to the community. No longer were these to be determined by reference to Parliament or the State. Charity had been democratised. If the man in the street thought it was beneficial and the courts thought it benefited the public, it was charitable. Ideological orthodoxy on the right dictates that partnership with the State is heresy, and ideological orthodoxy on the left forbids accepting social solutions from sources other than the State. This ideological dyslexia continues until today.

Retrenchment Philanthropy

I have outlined only three historical phases because most observers would say that we are still in the Pemsel Phase. I believe that Macnaghten's statement of the legal concept of charity in Pemsel will soon be superseded by some as yet undecided legal case which will lead us into a new historical phase which can not be ascertained or described at this point in time. I am also afraid that we are on the threshold of creating a new classification of "philanthropy" which I designate Retrenchment Philanthropy.

I have defined philanthropy to be the social objectives which the State and the law seek to fund and address through the voluntary contributions and activities of citizens and which the State will encourage and protect by extending legal and fiscal privileges to individuals and institutions carrying out these objectives. This is fundamentally a voluntary partnership in which citizens with money, time or skills contribute and work towards achieving the betterment of society through initiating, funding and enhancing institutions and programs which the State protects, fosters and, ultimately, may maintain. Although Parliament can list any objects for any reason as being charitable in law, in the real world it is the donor who decides what is charitable by selecting the objects to which he or she will voluntarily contribute. The State's ability to dictate the social agenda by legislating charitable purposes is not terribly productive unless the legislation is enabling and responds to the citizens' desire to expand the purposes which the law will then recognise as charitable.

²⁰ Goodman, p.1.

The Preamble promotes a partnership between the donor and the State which I have classified as Reformation Philanthropy. The State in recent years is increasingly promoting a "partnership" between organised charity and the State which if it takes root I will classify Retrenchment Philanthropy. While the word "partnership" is used in both Reformation and Retrenchment Philanthropy it has radically different meaning. Reformation Philanthropy does not use the word partnership as it is used in the opening chapter of the White Paper "Charities: A Framework for the Future"²¹ presented to the Parliament of England in 1989, where it means the State contracting out social services which may be more responsibly, flexibly and innovatively carried out by the voluntary sector under contract rather than directly by State agencies. Nor does Reformation Philanthropy use the term partnership as has been done by the ideologically conservative governments of Ronald Reagan and Margaret Thatcher which simply want to off-load the cost of social services onto the private sector. "Partnership" in those contexts is fundamentally a retrogressive realignment of the roles and funding sources between the State and the donor which increasingly removes the voluntary nature of the donor's financial responsibility. Social services and renaissance activities are unilaterally shifted to the charitable sector and the spin-doctors attempt to make it appear more acceptable by calling it "partnership". In my opinion this movement is Retrenchment Philanthropy.

The partnership of Reformation Philanthropy embraces programs and social policy directions which are predominantly progressive rather than retrogressive. The partnership of Retrenchment Philanthropy is a deficit driven retreat from the social safety net and cultural programs provided by the welfare state. "Partnership" is a misnomer because the withdrawal of funds is unilateral on the part of the State. The "partnership" is also temporary as the State is in a staged withdrawal with the ultimate goal of retreating from all responsibility for and commitment to the programs it previously funded.

The reason I have not designated Retrenchment Philanthropy as a fifth classification is that at this point it does not meet my definition of philanthropy. Retrenchment Philanthropy is a product of a partnership between charitable institutions and the State. True philanthropy is a voluntary partnership between the citizen and the State. Charitable institutions desperately seeking to maintain the status quo and the State pleading poverty are both promoting Retrenchment Philanthropy to the ordinary citizen. When this trend succeeds to the point that many citizens voluntarily direct their charitable giving to these purposes and programs it will qualify as philanthropy.

Conclusion

The positive sense of partnership between the State and the citizen promoted in the Preamble and Reformation Philanthropy needs to be rediscovered. It is doubtful whether Pempel and Renaissance Philanthropy reflect an attitude to the poor and the State which is in tune with social priorities dictated by increasingly dysfunctional economies with structural unemployment. Renaissance

²¹ (1989): London, Her Majesty's Stationery Office paras 1.7 and 1.8.

Philanthropy flourishes in an age of well funded State benefits for the poor and therefore limits Remedial Philanthropy to filling in the gaps left by the State. Reformation Philanthropy succeeded beyond anyone's dream in the Preamble Phase but was overwhelmed by, and inadequate to address, the problems put forward by the industrial revolution. It was necessary and preferable to move to a State funded system of benefits to which the beneficiary had a legal entitlement.

Now that the State pleads poverty and claims that it can no longer afford to pay those benefits, the danger is that the charitable sector will unwittingly be drawn into and trapped by the retrenchment trend. Charitable funds are not adequate to replace State funds in simply maintaining existing programs. The charitable sector will be drained of all its resources and lose its potential to provide creative new solutions which attack the root causes of social problems if it tries to maintain the status quo by promoting Retrenchment Philanthropy.

There needs to be a re-orientation to Reformation Philanthropy where wealthy individuals rather than establishment charitable institutions forge a renewed partnership with the State in both setting social priorities and funding them if philanthropy is to be adequate or survive a society that experiences social dislocation and unemployment to an extent which is comparable by contemporary standards with the economic environment when the law of charity began in Tudor England. A revitalised Reformation Philanthropy will be increasingly required as our economies go through the dislocation and structural unemployment which follow from the radical changes demanded by a global economy with multi-national corporations moving production to distant countries with lower costs. Renaissance and Remedial Philanthropy are fine for an expanding flourishing economy but assume that fundamental social and employment problems are being addressed and solved by the State. Retrenchment Philanthropy seeks to ameliorate the pain resulting from the off-loading of State provision in an era of Maggie Thatcher but, again, does not attempt to solve the root problems.

Reformation Philanthropy can rekindle the partnership required to attract funds from wealthy donors for new and innovative institutions in a profoundly depressed and dysfunctional economy. If through Reformation Philanthropy institutions of excellence are created that demonstrate innovative and enterprising new solutions to the problems of society, the State will ultimately have no alternative but to fund, maintain and protect those institutions conceived and administered by charities. Neither the State nor charity benefits by denying the possibility of such a creative and progressive partnership. Neither the State nor charitable institutions independently have the financial resources and flexibility to be creative and ingenious in finding new solutions and the capability to both implement and maintain the resulting novel institutions and programs. These institutions and programs will in turn foster and protect values of democracy, pluralism and tolerance which are so important to the development and protection of a Civil Society.