THE POLITICAL MUDDLE—A CHARITABLE VIEW?

I

CONCLUSION

1. A trust for the promotion of a political purpose is charitable, provided that the purpose is not contrary to public policy and is to be achieved by lawful means.

2. A trust for the attainment of political objects has always been held invalid and never charitable.

Proposition number 1 purports to be a statement of the law of California, and is to be found in *Re Murphey's Estate*.[1] The Supreme Court of that state there held the American Jewish Congress charitable. Among the objects of the Congress were:

> "(a) To safeguard the civil, political, economic, and religious rights of the Jews in all countries, (b) To further development of the Jewish National Home in Palestine, (c) To develop an articulate, intelligent, widespread and compelling public opinion touching Jewish interests and problems, (d) To gather and disseminate information concerning such interests and problems, and to foster the free and open discussion of them, (e) To secure and maintain equality of opportunity for Jews everywhere, and, in every lawful manner, to secure effective remedies, assistance, and redress in all cases of injustice, hardship, or suffering arising out of discriminatory measures against Jews, or from the violation or denial of their lawful rights."

Thompson J., giving the judgment of the court, said:[2]

> "... the purposes of the respondent are political.... In fact, as we understand it, 'the development of the Jewish National Home in Palestine' contemplates the re-settlement of Palestine under British mandate by the Jewish people and is already the cause of friction with the Arabs. However, we think the question is answered by... *Collier* v. *Lindley*,[3] ... in which this Court held that a trust for the promotion of political purposes was eleemosynary and charitable... we cannot distinguish between political purposes, saying one is charitable and another is not, assuming, of course, that the changes sought are not *contra bonos mores* and are to be brought about by peaceable means, and not by war, riot, or revolution.... Since it cannot be said that the purposes of the legatee bring it within the exceptions, we must hold that it is a charitable organization...."

While that *dictum* goes slightly too far even for the law of California, as a political party is not a charity,[4] both the *dictum* and the decision go a long way beyond what a court in a Commonwealth country

[1] 62 P. 2d 374 (1936).
[2] 62 P. 2d 375.
[3] 266 P. 526 (1928) (nn. 21, 31, *post,* pp. 64, 66).
[4] The Socialist Labor Party of America, California branch, was held not charitable by a majority of the Court of Appeals in *Estate of Carlson,* 41 A.L.R. 3d 825 (1970).

would accept. Such a court would have difficulty today in holding charitable objects (a), (c) and (e); would not have held object (b) charitable in 1936; and would deny firmly the generally charitable nature of the promotion of political purposes.

Proposition number 2 purports to be a statement of English law of general validity in the common-law world, having been made, for example, in the House of Lords,[5] the New York Surrogate's Court,[6] the Court of Session[7] and the Saskatchewan Court of Appeal.[8] In *Bowman* v. *Secular Society Ltd.*[9] Lord Parker of Waddington said *obiter:*

> "The abolition of religious tests, the disestablishment of the Church, the secularization of education, the alteration of the law touching religion or marriage, or the observation of the Sabbath, are purely political objects. Equity has always refused to recognize such objects as charitable. … a trust for the attainment of political objects has always been held invalid, not because it is illegal, for every one is at liberty to advocate or promote by any lawful means a change in the law, but because the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift."

The *dictum* is over-emphatic, for in cases which, while not all good law today, were respected in 1917, English courts had held charitable the incidental furtherance of Conservative principles[10] and the anti-vivisectionist movement.[11] The New York Supreme Court had held the cause of prohibition charitable prior to 1925.[12] In Canada, prohibition was held charitable in 1892[13] and the promotion of civil rights in 1898.[14] Political activities ancillary to the achievement of a main charitable purpose are also charitable.

Lord Parker of Waddington assumed that political energy was devoted to bringing about change, but some of it is expended to try to keep things as they are. Conservatism and conservation are no less and no more political or charitable than promotion of change and development. Even supporting the government has come to grief, though it was mixed with helping the public — and both in controversial circumstances. Controversy is central in the Commonwealth denial of charitable status to politics, and a different attitude to controversy is what marks off the attitude of the courts in many of the United States. In *Trustees for the Roll of Voluntary Workers* v. *Commissioners of Inland Revenue*[15] English law fell to be applied in the Court of Session. The object of the trust was: "… the taking

5 *Bowman* v. *Secular Society Ltd.* [1917] A.C. 406, 442 (n. 9, *post).*
6 *Re Killen's Will,* 209 N.Y.S. 206, 208 (1925) (n. 84, *post).*
7 *Trustees for the Roll of Voluntary Workers* v. *Commissioners of Inland Revenue,* 1942 S.C. 47, 55 (n. 17, *post).*
8 *Re Patriotic Acre Fund* [1951] 2 D.L.R. 624, 634 (n. 23, *post).*
9 [1917] A.C. 406, 442, treated as approved by the Privy Council in *Tribune Press, Lahore (Trustees)* v. *Income Tax Commissioner, Punjab, Lahore* [1939] 3 All E R. 469, 476, by Kennedy J. in *Knowles* v. *Commissioner of Stamp Duties* [1945] N.Z.L.R. 522, 529.
10 *Re Scowcroft* [1898] 2 Ch. 638 (n. 94, *post).*
11 *Re Foveaux* [1895] 2 Ch. 501.
12 *Buell* v. *Gardner,* 144 N.Y.S. 945 (1914) (n. 16, *post,* p. 63).
13 *Farewell* v. *Farewell,* 22 O.R. 573 (n. 10. *post,* p. 62).
14 *Lewis* v. *Doerle,* 25 O.A.R. 206 (n. 14, *post,* p. 77).
15 1942 S.C. 47.

of all or any measures which might be calculated to assist the Government or the public in resisting or helping to resist any strike, lock-out, or civil commotion of whatever description which interferes with the essential public services, the ordinary supply of food, fuel, light, water, and other necessaries of life…" Their lordships unanimously held that not charitable. Lord Normand, the Lord President, said:[16]

> "Its objects are political, and not the less so because it disclaims partisanship in political or industrial controversy. A trust which exists for the purpose of supporting the Government, or the community, or the authority of the State in resisting any strike or lock-out which interferes with public services or the supply of food, fuel, light, water, and other necessaries of life, enters the political arena and has not even a remote resemblance to charity. It was said that, as a kind of by-product of the association's activities, members of the community would receive food, and drink, and service essential to their health, of which they might otherwise be deprived. I assume that that may be so, and I pass over some less advantageous results which many people might believe would accrue from the activities of the association. But all that is irrelevant. The political purpose is predominant, and it swallows up all the others."

Lord Fleming added:[17]

> "… the expression 'charitable purpose'... has certainly not been applied to any purpose which has a predominantly political flavour. To hold otherwise would impose upon the Courts of law the impossible duty of being required to decide whether or not a certain line of political action was beneficial to the community."

And in the opinion of Lord Moncrieff:[18] charitable purposes do not include "a purpose which proposes to benefit certain of the lieges by thwarting the activities of others. It is not for Courts of law to confer a charitable immunity upon a usurpation by private persons of the functions of government...."

The idea that it is not charitable to benefit some members of the community by thwarting others, while clearly not accepted in many of the United States, may have a broad appeal as a Commonwealth rationalisation. It would, however, be easy to press it too far. It does not fit with the charitable nature, if the Chancellor of Ontario was right, of the promotion of prohibition legislation;[19] nor with the charitable nature of many other thwarting activities such as the stock or maintenance of houses of correction, the prevention of cruelty to animals and the advancement of religion.

There is firmer support for a distinction between a body which has political action as its main or predominant object (or one of its main objects) and a body whose objects include political action only as ancillary or incidental to a charitable object. The trust in

[16] 1942 S.C. 53.
[17] 1942 S.C. 55.
[18] 1942 S.C. 56. If the trust had been to alleviate suffering resulting from the absence of essential services and the necessities of life due to an industrial dispute it would presumably have been charitable according to English law. Even as it stood, it might have been charitable according to the law of Scotland. In *Carlke* v. *Ross* 1976 S.L.T. (Notes) 62 a strike fund averred to have been collected "to alleviate… the hardship caused to miners and their families, *and to promote the interest of the striking miners* [my italics], during and immediately following the strike" which occurred in January and February 1972 was held charitable and the surplus in the fund was applied cy-pres.
[19] *Farewell* v. *Farewell* (1892) 22 O.R. 573 (n. 10, *post,* p. 62).

Trustees for the Roll of Voluntary Workers v. *Commissioners of Inland Revenue*[20] was not charitable because the political purpose was predominant. The appellants in *National Anti-Vivisection Society* v. *Inland Revenue Commissioners*[21] were not charitable because the enactment of a statute prohibiting vivisection was one of their main objects. Similarly with *Re Patriotic Acre Fund*,[22] which turned on the objects of the United Farmers of Canada, expressed by statute as follows.

> "The objects of the association shall be to forward the interests of the farmers in any honourable and legitimate way and without limiting the generality thereof: *(a)* to promote the interests of its members by suggesting suitable legislation and to make appropriate representations to the Legislature or to Parliament in order that such suggestions may be reflected in legislation; *(b)* to promote co-operative buying and selling among its members and to carry on and exercise any power of trade or business as the association may deem advisable within the limits of the authority conferred on it by this Act or any amendments thereto; *(c)* to affiliate with any organisation in Canada having similar objects; *(d)* to do all or any of the above acts as principals, agents, or otherwise, and either alone or in conjunction with others; *(e)* to do all such other acts as are incidental or conducive to the attainment of the above objects."

Martin C.J.S., giving the judgment of the Saskatchewan Court of Appeal, said:[23]

> "Trusts for the attainment of political objects have always been held not to be valid charitable trusts … The word 'political' includes activities for the purpose of influencing Legislature or Parliament to change existing laws or to enact new laws in accordance with the view or the views of the interested parties. Such objects or activities are not charitable. The United Farmers of Canada… is an organization whose main purpose is to promote legislation and effect changes in the law which in its opinion will be of benefit to the farmers of the Province; such an organization is not charitable even if among its objects one could find a charitable object."

(In Canada, *Farewell* v. *Farewell*[24] stands as an obstacle here, too, for the promotion of legislation was the main object of the trust held charitable there.)

In the federal law of the United States of America, *Marshall* v. *Commissioner of Internal Revenue*[25] exhibits a similar approach. That case arose out of a will which provided for the creation of three trusts. The first, labelled "Economic Trust," was for: "The education of the People of the United States of America to the necessity and desirability of the development and organization of unions of persons engaged in work or of unemployed persons and the promotion and advancement of an economic system in the United States based upon the theory of production for use and not for profit." The objects of the second, the "Civil Liberties Trust," were: "The safeguarding and advancement of the cause of civil liberties in the United States of America and the various States and subdivisions thereof…" Finally, there was a "Wilderness Trust" for: "The preservation of

20 1942 S.C. 47 (n. 15, *ante).*
21 [1948] A.C. 31.
22 [1951] 2 D.L.R. 624.
23 [1951] 2 D.L.R. 634.
24 (1892) 22 O.R. 573 (n. 10, p. 62).
25 147 F. 2d 75 (1945).

the wilderness conditions in outdoor America, including, but not limited to, the preservation of areas embracing primitive conditions and transportation, vegetation and fauna...." All three trusts included provision that the trustees could use all lawful means to achieve the objects, including the promotion or (in the case of the Wilderness Trust) opposing of legislation. The Second Circuit Court of Appeals held all the trusts not charitable. Hand J., giving the judgment of the court, said:[26]

> "It is argued that because the trustees were not directed but only authorized to draft bills and to use all lawful means to have legislation enacted in aid of the objects of the three trusts that their power to indulge in political activities was merely incidental and ancillary to charitable or educational[27] objects that were primarily to be promoted. ... But, a dominant object of the first trust was to eliminate the capitalistic system and a designated method, and perhaps the only practicable one for achieving this result, was by securing legislation. However lawful such a means is it necessarily will involve political agitation which... 'must be conducted without public subvention.' Such political activity was plainly designed to effect the objects for which the trust was created. The same thing is true of the political activities involved in carrying out the second trust to advance civil liberties, many of which can only be attained or effectively maintained through specific legislation. The third trust to acquire and preserve wild tracts also involves legislation if there is to be any practical advance toward the objects sought to be obtained."

Cases like that usually reach the federal courts of the United States of America on a claim for exemption from tax under section 501 (a) and (c)(3) of the Internal Revenue Code, which provides:[28]

> "501 (a) An organization described in subsection (c) ... shall be exempt from taxation under this subtitle unless ... [part of subsection (a) and the whole of subsection (b) omitted.] (c) The following organizations are referred to in subsection (a): ... (3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, *no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation* [my italics], and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

If the words in italics were not there, a society for the relief of poverty which occasionally advised on legislation designed to diminish such poverty might be exempt on the ground that objects and activities ancillary and incidental to a charitable object do not prevent the society being exclusively charitable; while such a society whose main objects included the enactment by statute of minimum social welfare payments might be taxable on the ground that it was not organised exclusively for charitable purposes. With the words in italics there, ancillary and incidental work in connection with legislation will probably be classified as "no substantial part" (the precise meaning of which is the subject of much dispute, which is not surprising since its meaning is not precise); but a main political object which is not charitable in itself will disqualify a body from being organized exclusively for

[26] 147 F. 2d 77-78.
[27] Both terms used in the relevant taxing statute (n. 28, *post).*
[28] The words "testing for public safety" were added in 1954; the words in italics were added in 1934; and the subsequent words were added in 1954.

charitable purposes; and a main political object which is charitable under state law[29] will probably fall to be considered under both parts of the subsection, i.e., as to whether the main political object is charitable under federal law and as to whether a substantial part of the activities of the body concerned is attempting to influence legislation.

An example of a society interested in legislation being held charitable because the interest in legislation was ancillary or incidental to a main purpose which was charitable is provided by *Commissioners of Inland Revenue* v. *Yorkshire Agricultural Society*[30] a decision of the Court of Appeal in England. The society's objects, which were for the general promotion and improvement of agriculture, included: "the watching and advising on legislation affecting the agriculture industry..." Atkin L.J. said:[31]

> "It is said that if that stood by itself it plainly would not be a charitable purpose; and I can imagine that a society which was formed solely for the purpose of watching and advising on legislation affecting agriculture would not be a society formed for a charitable purpose. But that does not seem to me at all to affect the matter. It is perfectly consistent with the main object of the Society being one for the promotion of agriculture generally, that in order to carry out its object it should watch and advise on legislation affecting agriculture. Supposing a society formed for the admittedly charitable purpose of promoting education, or of promoting the relief of the sick and poor, it appears to me impossible to suggest that it might not be well within the charitable objects of such a society to watch and advise on legislation, in the one case affecting education and in the other case affecting the relief of the sick and poor. Therefore, in my opinion there is no reason for picking out that particular object so defined as being something so inconsistent with the main charitable purpose as to amount to something different, so that there are two purposes and not one."

Lord Normand was of that opinion too, in *National Anti-Vivisection Society* v. *Inland Revenue Commissioners*[32] where he was one of the majority deciding that the appellants were not charitable because one of their main objects was political. He said:

> "Societies for the amelioration of the condition of animals like other societies for the improvement of human morals do not as a rule limit their activities to one particular method of advancing their cause. Commonly they hope to make voluntary converts, and they also hope to educate public opinion and so to bring its influence to bear on those who offend against a humane code of conduct towards animals. But they seldom disclaim and frequently avow an intention of inducing Parliament to pass new legislation if a favourable opportunity should arise of furthering their purpose by that means. A society for the prevention of cruelty to animals, for example, may include among its professed purposes amendments of the law dealing with field sports or with the taking of eggs or the like. Yet it would not, in my view, necessarily lose its right to be considered a charity, and if that right were questioned, it would become the duty of the court to decide whether the general purpose of the society was the improvement of morals by various lawful means including new legislation, all such means being subsidiary to the general charitable purpose. If the court answered this question in favour of the society, it would retain its privileges as a charity. But if the decision was that the leading purpose

[29] See e.g., *Re Murphey's Estate,* 62 P. 2d 374, 375 (1936) (nn. 1, 2, *ante).*
[30] [1928] 1 K.B. 611.
[31] [1928] 1 K.B. 632.
[32] [1948] A.C. 31, 76-77. See also *Re Bushnell* [1975] 1 W.L.R. 1596, 1603-1604, *per* Goulding J.

> of the society was to promote legislation in order to bring about a change of policy towards field sports or the protection of wild birds it would follow that the society should be classified as an association with political objects and that it would lose its privileges as a charity. The problem is therefore to discover the general purposes of the society and whether they are in the main political or in the main charitable. It is a question of degree of a sort well known to the courts."

That their activities in connection with legislation were a small portion of their activities was one of the grounds upon which a federal court in the United States of America decided that bequests to Bar Associations were charitable in *Dulles* v. *Johnson*,[33] and the distinction between main and ancillary objects was the basis of the judgment in *Re Inman*.[34] In that case there was a gift in Victoria to the Royal Society for the Prevention of Cruelty to Animals, whose objects were:

> "… to prevent cruelty to animals, by enforcing where practicable the existing laws, by procuring such further legislation as may be thought expedient, by inciting and sustaining an intelligent public opinion regarding man's duty to the lower animals, by rendering relief to animals requiring the same and by doing all things incidental and conducive to the attainment of the foregoing objects."

Holding the R.S.P.C.A. to be a charity, Gowan J. said:[35]

> "The general object is, therefore, to prevent cruelty to animals. This dominates the statement of objects… None of the methods set out for the achievement of this object detracts from its character. It is true that one of those methods, viz. procuring such further legislation as may be thought expedient, if taken alone, would be a political object and nothing more. But it is only a method of achieving the main or fundamental object, the prevention of cruelty to animals."

On the other hand, the learned judge held an anti-vivisection society not charitable because securing legislation was a leading object.[36]

While some activity in connection with legislation is allowed to charities in Commonwealth jurisdictions and under federal taxation laws in the United States of America, that activity is circumscribed within fairly narrow limits. On the other hand, in California and other states in America much political activity is held charitable. The narrower attitude has been mildly criticised in England[37] and been the subject of detailed attack in the United States.[38] Various reasons have been put forward for that narrower attitude. One is that, as political movements generally do not receive tax exemptions, a society with some charitable and some political objects should not do so either. Another is that, while a purpose is charitable only if it is for the public benefit, a court has no means of determining whether a political change will be for the public benefit or not.[39] Yet another proposition is that a purpose for the public benefit is not charitable (except in Ontario) unless it is within the letter or spirit of the preamble to the Statute of Charitable Uses, and there

[33] 273 F. 2d 362 (1959) (n. 37, *post,* p. 67).
[34] [1965] V.R. 238.
[35] [1965] V.R. 242.
[36] [1965] V.R. 243-244.
[37] Tenth Report from the Expenditure Committee to the House of Commons, Session 1974-5, "Charity Commissioners and their Accountability," para. 40.
[38] See Caplin and Timbie, "Legislative Activities of Public Charities" (1975) 39 *Law and Contemporary Problems* (pt. 4) 183.
[39] See p. 49, *post.*

is nothing in that preamble about political activity or to which political activity could be regarded as analogous. In favour of allowing more political activity to charities, it is said that people engaged in charity work become involved with the basic social problem giving rise to the need for charity, so that they wish to do something really useful by promoting measures for the eradication of the problem instead of merely relieving those who suffer in consequence of it. It is also said that if the court cannot tell what is for the public benefit and what not, it ought to allow any object as charitable, provided the object is unselfish and moral, not wholly useless and sought to be achieved by lawful means, which is the test applied to the charitable nature of gifts for the circulation of religious tracts.

The advocacy of a more welcoming attitude to politics within the homestead of charity can represent a variety of points of view. First, that trusts for the achievement of political ends should be valid (which trusts for purposes generally are not, unless the purposes are charitable). Secondly, that trusts for the achievement of political ends should not be limited in their duration by the rule against perpetuities (which valid purpose trusts are, unless the purposes are charitable). Thirdly, that trusts for the achievement of political ends should be treated favourably by the tax laws (as charitable trusts are), at least if the political ends are associated in some way with manifestly charitable ends. (In its extreme form, that doctrine is that all political movements should be charitable unless their objects are irrational, immoral, selfish, illegal or intended to be brought about by means other than due processes of legislation or constitutional amendment; in its moderate form, it calls for a charity to be allowed, without fiscal consequences, to finance public campaigns and lobbying of members of legislatures with a view to influencing legislation on some topic germane to the charity's field of activity, e.g., a medical charity campaigning for the introduction of a state health service and the prohibition of private practice). The third point of view comprehends two separate ones: (a) that a corporation, society or trust with the achievement of such ends set out as the main object, or one of the main objects, should be charitable; (b) that a corporation, society or trust which has nothing in its objects about political activity, all the main objects being charitable, should be acting *intra vires* and retain tax exemptions if it in fact uses its funds for political activity not ancillary to but in some way connected with its charitable objects. In its extreme form, this last point of view amounts to saying that political campaigns should be capable of being advanced, comformably to principles of equity, out of funds donated possibly by people to whom such campaigns would be anathema, out of funds enjoying the tax status of funds provided for good works.

II

SEEKING LEGISLATION IS NEVER CHARITABLE BUT OFTEN IS

In England, a corporation, society or trust is not charitable if its main object, or one of its main objects, is to secure the enactment of legislation.[40] That is assumed to be the law throughout the Com-

[40] *National Anti-Vivisection Society* v. *Inland Revenue Commissioners* [1948] A.C. 31; *Animal Defence and Anti-Vivisection Society* v. *Inland Revenue Commissioners* (1950) 66 T.L.R. (pt. 2) 1091.

monwealth, except, possibly, in Ontario. It was so stated, for example, in New Zealand in *Re Wilkinson*,[41] in Saskatchewan in *Re Patriotic Acre Fund*[42] and *Re Co-operative College of Canada and Saskatchewan Human Rights Commission*[43] and in Victoria in *Re Inman*.[44]

In *Re Co-operative College of Canada and Saskatchewan Human Rights Commission*[45] the Court of Appeal of Saskatchewan held not charitable the Co-operative College, whose general objects and some of whose particular objects were stated to be:

> "... to provide... education, training, advisement and guidance to improve and *[sic]* organizations to which such training, advisement and guidance is given and without limiting the generality of the foregoing[46] shall include: (a) To encourage the application of co-operative and credit union principles and methods to the economic and social needs of such persons as may wish to organize and operate co-operatives and credit unions.... (g) To protect the interests of co-operatives and credit unions by appropriate action in making representations to legislative, administrative, judicial and other bodies...."

Of object (a), Bayda J.A., in the course of giving the judgment of the court, said:[47] "That may be a laudable goal for the College but the Court has no way of judging whether that economic goal if reached, will or will not be for the public benefit. The reasons for disallowing economic objects as charitable ones, are the same as those which apply to political objects." Of object (g), Bayda J.A. observed:[48] "The aim of this object is plainly to influence the Legislature or Parliament, as well as administrative and judicial bodies, to change existing laws, enact new laws, or to resist any such change or enactment of new laws — so that the interests of co-operatives and credit unions may be protected." Then he quoted the passage reproduced earlier from *Re Patriotic Acre Fund*[49] and continued: "The political object contained in para. 4(g), therefore, makes it impossible to say that the College is an 'exclusively' charitable organization, even if the remaining objects are capable of being construed as charitable."

Massachusetts also has a few cases along those lines. In *Jackson* v. *Phillips*[50] there were three gifts by will on trust: (i) to "create a public sentiment that will put an end to negro slavery in this country"; (ii) "for the benefit of fugitive slaves who may escape from the slaveholding states of this infamous Union from time to time"; (iii) "to secure the passage of laws granting women, whether married or unmarried, the right to vote; to hold office; to hold, manage, and devise property; and all other civil rights enjoyed by men..." Gray J., giving the judgment of the court, said:[51]

41 [1941] N.Z.L.R. 1065, 1077, *per* Kennedy J. (n. 90, *post).*
42 [1951] 2 D.L.R. 624 (n. 22, *ante).*
43 (1975) 64 D.L.R. (3d) 531 (n.45, *post).*
44 [1965] V.R. 244 (n. 36, *ante).*
45 (1975) 64 D.L.R. (3d) 531.
46 The foregoing is not literally comprehensible, but the flavour can be discerned.
47 64 D.L.R. (3d) 537.
48 64 D.L.R. (3d) 538.
49 [1951] 2 D.L.R. 624, 634 (n. 23, *ante).*
50 96 Mass. 539 (1867).
51 96 Mass. 555.

> "In a free republic, it is the right of every citizen to strive in a peaceable manner by vote, speech or writing, to cause the laws, or even the constitution, under which he lives, to be reformed, or altered by the legislature or the people. But it is the duty of the judicial department to expound and administer the laws as they exist. And trusts whose expressed purpose is to bring about changes in the laws or the political institutions of the country are not charitable..."

The court held trust (i) charitable, being for the relief or redemption of prisoners and captives, or analogous to that, and Gray J. said:[52]

> "We fully concur with the learned counsel for the heirs at law that if this trust could not be executed according to the intention of the testator without tending to excite servile insurrections in other states of the Union, it would have been unlawful; and that a trust which looked solely to political agitation and to attempts to alter existing laws could not be recognized by this court as charitable. But such does not appear to us to be the necessary or the reasonable interpretation of this bequest. The manner stated of putting an end to slavery is not by legislation or political action, but by creating a public sentiment, which rather points to moral influence and voluntary manumission."

Trust (ii) was also held charitable, to be carried out by such means as were lawful. On the other hand, trust (iii) was held not to be charitable. Of that, Gray J. said:[53]

> "This bequest differs from the others in aiming directly and exclusively to change the laws; and its object cannot be accomplished without changing the Constitution also. Whether such an alteration of the existing laws and frame of government would be wise and desirable is a question upon which we cannot, sitting in a judicial capacity, properly express any opinion. Our duty is limited to expounding the laws as they stand. And those laws do not recognize the purpose of overthrowing or changing them, in whole or in part, as a charitable use."

The decision in *Jackson* v. *Phillips* as to trust (iii) was regarded as out of date by a California court in 1928,[54] and the distinction taken between trusts (i) and (ii) on the one hand and trust (iii) on the other hand was misunderstood by the Pennsylvania Supreme Court in *Taylor* v. *Hoag*.[55] In that case, Frazer J., giving the judgment of the majority, said[56] that trusts (i) and (ii) in *Jackson* v. *Phillips* had objects "involving questions of such serious controversy as to require, not only a constitutional amendment, but a civil war, to settle them." Now ending slavery required a constitutional amendment and a civil war, but creating a public sentiment in favour of not acquiring slaves and manumitting those already owned and giving succour to slaves who had escaped required neither. Frazer J. went on to say of *Jackson* v. *Phillips:* "We find it difficult to reconcile the opposite conclusions reached by the Massachusetts court, with respect to the different objects of the trust, since both contemplated a change in existing laws, and consequently, to that extent, were contrary to law, but neither proposed to effect a change in other than a lawful manner." I find it difficult to reconcile that comment with careful reading of the long judgment in *Jackson* v. *Phillips* by the majority of the court in *Taylor* v. *Hoag.* It is possible to discharge with the

[52] 96 Mass. 565.
[53] 96 Mass. 571.
[54] *Collier* v. *Lindley,* 266 P. 526, 529 (n. 21, *post,* p. 64).
[55] 21 A.L.R. 946 (1922).
[56] 21 A.L.R. 949.

Massachusetts court as to the question of construction, i.e., what the testator contemplated; but the Massachusett's courts law was based on trusts (i) and (ii) not contemplating a change in existing laws and trust (iii) being aimed directly and exclusively at that. Moreover, there was no suggestion in *Jackson* v. *Phillips* that trust (iii) was contrary to law: only that it was not charitable.

In *Bowditch* v. *Attorney General*[57] there was a trust to "promote the causes (1) of women's rights, (2) of temperance, and (3) the best interests of sewing girls in Boston..." Items (2) and (3) were held charitable by the Supreme Judicial Court of Massachusetts, but item (1) was not. Crosby C.J., giving the judgment of the court, said:[58] "The bequest to promote the cause of temperance is a valid charitable trust.... It is not a gift for a political purpose..." (With respect, that ought to depend on how the object of temperance was meant to be achieved, and what temperance meant). The sewing girls were charitable because they were young handicraftsmen, whose supportation, aid and help are mentioned in the preamble to the Statute of Charitable Uses. Referring to item (1), Crosby C.J. said:[59] "For many years before and after the testator's death in 1890 the phrase 'women's rights' had a definite and well-defined meaning. In common parlance it was understood as being the right of women to vote, to hold office, and be placed upon an equality with men in a political sense by appropriate legislation." The testator "undoubtedly had in mind the decision in *Jackson* v. *Phillips,...* which construed the will of his father...." The conclusion was:[60] "The gift under consideration cannot be distinguished from that which was held to be invalid in *Jackson* v. *Phillips....* The principles enunciated in that case have been for more than half a century the settled law of the commonwealth." The brighest, or best-advised, member of the family was Mrs. Eliza Eddy, daughter of the testator in *Jackson* v. *Phillips* and sister of the one in *Bowditch* v. *Attorney General,* who did more for women's rights with her property by refraining from setting up a trust.[61]

Federal courts in the United States of America have had questions of this kind before them in tax cases. In *Slee* v. *Commissioner of Internal Revenue*[62] the Second Circuit Court of Appeals considered the status of the American Birth Control League, whose objects included: "To collect, correlate, distribute and disseminate lawful

[57] 28 A.L.R. 713 (1922). See also *Parkhurst* v. *Burrill,* 117 N.E. 39, 40 (1917), where Rugg C.J., in the Supreme Judicial Court of Massachusetts, said: "A bequest aimed at effecting a change in the existing laws and constitutions cannot be sustained as a charity."

[58] 28 A.L.R. 719.

[59] 28 A.L.R. 717.

[60] 28 A.L.R. 718.

[61] *Bacon* v. *Ransom,* 29 N.E. 473 (1885).

[62] 72 A.L.R. 400 (1930). See also *Vannderbilt* v. *Commissioner of Internal Revenue,* 93 F. 2d 360 (1937); *Marshall* v. *Commissioner of Internal Revenue,* 147 F. 2d 75 (1945) (n. 25, *ante); Krohn* v. *United States,* 246 F. Supp. 341 (1965), where a bequest to the Denver Medical Society, who engaged in much activity with respect to legislation, was held not charitable, Doyle J. saying (p. 347) that it might be that an organisation is charitable even if it seeks to influence the course of governmental action, provided it does not have a special interest at stake, but that was not the case here; *Christian Echoes National Ministry Inc.* v. *United States of America,* 470 F. 2d 849 (1973); *Haswell* v. *United States,* 500 F. 2d 1133 (1974).

information regarding the political, social and economic facts of uncontrolled procreation. To enlist the support and co-operation of legal advisors, statesmen and legislators in effecting the lawful repeal and amendment of state and federal statutes which deal with the prevention of conception." They were held not exclusively charitable, for purposes of tax exemption, because the political activities were general, not confined to what was ancillary to the conduct of the charitable object.

Most corporations, societies and trusts with an interest in politics seek change, and most *dicta* and decisions of judges about legislative objects relate to change in the law. However, the political object of keeping things as they are, of promoting opposition to bills before the legislature, is no more or less charitable than seeking to change things, than promoting support for bills. Vaisey J. made that point in *Re Hopkinsonf*[63] having quoted Lord Parker of Waddington:[64] "I venture to add as a corollary to that statement that it would be equally true to apply it to the advocating or promoting of the maintenance of the present law, because the court would have no means in that case of judging whether the absence of a change in the law would or would not be for the public benefit."

There is an analogy and a contrast between politics and religion in this respect. Changing people's minds away from religion is not a charitable object, any more than is influencing their political opinions. In *Bowman* v. *Secular Society Ltd*.[65] Lord Parker of Waddington held that the society's first object, viewed alone, "to promote... the principle that human conduct should be based upon natural knowledge and not upon super-natural belief, and that human welfare in this world is the proper end of all thought and action", was not charitable. In *Old Colony Trust Co.* v. *Welch*[66] a federal District Court held not charitable the Freethinkers of America Inc., Ford J. saying:[67] "This organization confined its activities to its own members as far as any evidence introduced in the instant case showed. It cannot be contended successfully that it was engaged in educating the general public to its views, and it is of little help to say that the public would be 'educated' if it adopted its views." (So perhaps it would have been charitable if it had engaged in propaganda?) In fact: "In its purpose to separate church and state it confined its activities principally to the conduct of litigation seeking to prevent the expenditure of public monies in behalf of those engaged in the promotion of religion and in suits" of a similar nature seeking to uphold its point of view by securing judicial precedent. Those suits were, presumably, unsuccessful, because the resources of the organization were drained to defray the expense of them. A trust for the promotion of litigation is not charitable, though having the law declared may be for the public benefit (even if it is declared in the opposite sense from that desired by the organisation instituting the proceedings); or it may be to the public detriment that resources are wasted on

[63] [1949] 1 All E.R. 346, 350.
[64] *Bowman* v. *Secular Society Ltd.* [1917] A.C. 406, 442 (n. 9, *ante).*
[65] [1917] A.C. 406, 444-445.
[66] 25 F. Supp. 45 (1938). Cf. *Commissioner of Internal Revenue* v. *John Danz Charitable Trust,* 284 F. 2d 726 (1960).
[67] 25 F. Supp. 49.

futile suits. (Actually the stated objects of the corporation were: "To enlighten all people upon the philosophy of free thought and by all legal means to uphold the fundamental American principle of the complete separation of church and state.")

On the other hand, not only is propagating the Gospel charitable,[68] but so is spreading religious propaganda of any kind, however foolish the propaganda, so long as it is not immoral. In *Thornton* v. *Howe*[69] Romilly M.R. said:

> "... if a bequest of money be made for the purpose of printing and circulating works of a religious tendency, or for the purpose of extending the knowledge of the Christian religion, that ... is a charitable bequest..." "... the Court... makes no distinction between one sort of religion and another."
>
> "Neither does the Court, in this respect, make any distinction between one sect and another. It may be that the tenets of a particular sect inculcate doctrines adverse to the very foundations of all religion, and that they are subversive of all morality. In such a case, if it should arise, the Court will not assist the execution of the bequest, but will declare it to be void.... But if the tendency were not immoral, and although this Court might consider the opinions sought to be propagated foolish or even devoid of foundation, it would not, on that account, declare it void, or take it put of the class of legacies which are included in the general terms charitable bequests."

That opinion is reflected in the Ontario case of *Re Knight*,[70] where there was a gift on trust for the purposes set out in the letters patent of incorporation of the True Christian Church Publishing Society of Canada. Those objects were: "(a) To Publish, sell and distribute the New Church Writings of Emanuel Swedenborg and especially to advertise widely the book entitled 'Heaven and Hell,' and such other books that people would be lead *[sic]* to read; and (b) To employ a travelling missionary to follow-up *[sic]* and supplement the aforesaid." Rose C.J.H.C. said:[71]

> "... the trust is, I think, a charitable one .... In support of the proposition that it is a charitable trust it suffices to refer to *Thornton* v. *Howe*... and *Re Orr*[72] .... The tenets of the Church of New Jerusalem [those of Emanuel Swedenborg] certainly cannot be said to 'inculcate doctrines adverse to the very foundations of all religion;' and even if the Court should 'consider the opinions sought to be propagated foolish or even devoid of foundation' it would not on that account declare that the gift did not fall within the class of legacies which are included in the general term 'charitable bequests.'"

Nevertheless, keeping religion as it is can be a charitable object. It has been assumed[73] that a bequest "to the Protestant Alliance (1851), or some one or more kindred institutions, having for their object the maintenance and defence of the doctrines of the Reformation, and the principles of civil and religious liberty against the advance of Popery" was charitable; and it has been decided[74] that a trust for asserting the absolute supremacy of the pope in ecclesiastical matters over the sovereignty of the state was contrary to public policy as a

68 See Keeton and Sheridan, *The Modern Law of Charities,* 2nd ed., pp. 63-65.
69 (1862) 31 Beav. 14, 19, 20, followed in *Re Watson* [1973] 1 W.L.R. 1472.
70 [1937] 2 D.L.R. 285.
71 [1937] 2 D.L.R. 287-288.
72 (1917) 40 O.L.R. 567, where propagation of Christian Science views was held a charitable purpose.
73 *Re Delmar Charitable Trust* [1897] 2 Ch. 163.
74 *De Themmines* v. *De Bonneval* (1828) 5 Russ. 288 (see also n. 69, *post,* p. 72).

superstitious use. Yet conversion, not only of the heathen to religion but from one religion or sect to another, is charitable. In *West* v. *Shuttleworth*[75] Pepys M.R. held charitable a gift of the residuary estate of the testatrix "to promote the knowledge of the Catholic Christian religion among the poor and ignorant inhabitants of Swale Dale and Wenston Dale, in the county of York". In *Gillies* v. *McConochie*[76] Proudfoot J. held charitable the following two gifts by will: (1) "As the time for the fulfilment of prophecy in the conversion of the Jews is now speedily approaching, I give for a Jewish mission the sum of $1,000..." and (2) "To the pious poor converted Jews that meet together for the reading of the scriptures for their instruction and mutual edification I leave $1,000." "There will have to be an inquiry," said the learned judge,[77] "if any such pious converted Jews are to be found." Another unjustified optimist gave property to promote the glory of God by saving the souls of Roman Catholic Irishmen through the instrumentality of the Church of Ireland, and Lord O'Brien C.J. held that charitable.[78] There is clearly greater freedom within the compass of charity for religious controversy than there is for political controversy; but then the advancement of religion is itself a head of charity while the advancement of politics is not.

In the cases cited so far, promoting legislation has been held not charitable in cases where the legislation desired was to further the interests of farmers in Saskatchewan; to advance the interests of doctors in Denver, Colorado; to protect the interests of co-operatives and credit unions in Saskatchewan; to advance socialism in the United States; to preserve the wilderness in the United States; to safeguard and advance civil liberties in the United States; to secure political rights for women in the United States; to promote birth control in the United States; and to suppress vivisection in England and Victoria. Another political object regarded as not charitable in England was what was seen by the promoters as an improvement in the electoral system. In *Re The Trusts of the Arthur McDougall Fund*[79] Upjohn J. said:

> "The objects of the society are to secure the adoption of the principle of proportional representation by the method of the single transferable vote in national, local and other elections. That may be a very laudable object, but it is clear that it is not a charitable object, for the simple reason that, as the society is seeking to alter the method of voting at present in force, legislation would be required, and, therefore, their principal object is to alter the law of this country."

It seems that, at least in England, a purpose may be disqualified from being charitable if the pursuit of it is likely to lead to a demand for legislation, or if legislation is an obvious mode of achieving it, even if the promotion of legislation is not a stated object of the corporation, society or trust having that purpose. In *Animal Defence and Anti-Vivisection Society* v. *Inland Revenue Commissioners*[80] the society's objects were directed generally against cruelty to animals, but rule 4 provided:

> "The society shall oppose vivisection and all experiments on animals 'calculated to cause pain' (definition of Cruelty to Animals Act of

75 (1835) 2 My. & K. 684.
76 (1882) 3 O.R. 203.
77 3 O.R. 207.
78 *A.-G.* v. *Becher* [1910] 2 I.R. 251.
79 [1957] 1 W.L.R. 81, 85.
80 (1950) 66 T.L.R. (pt. 2) 1091.

> 1876) by exposing the suffering inflicted and the failure to bring benefit to humanity. Further, the society shall give effective publicity to the constructive aspect of the opposition to vivisection, to methods of research and healing dissociated from experiments on animals, support medical freedom and the science of health, thereby demonstrating the tact that the welfare of humanity and that of animals are inter-related."

That was a separate and important object, and Danckwerts J. held it not charitable on the ground that it was political. The learned judge said:[81]

> "It was said that that rule did not involve the suppression of vivisection, but merely opposition to it, which was a different matter, and that the purpose of the rule was educational rather than for suppressing by repealing the Cruelty to Animals Act, 1876, or promoting any other legislation.... Those arguments cannot succeed. It is not a correct reading of rule 4, and it also seems to me to be inconsistent with the conduct of the society's affairs as shown by their evidence. The matters which are to be done—observe the word 'shall' used in the rule — must necessarily in the end involve an attack on the Cruelty to Animals Act, 1876, and the promotion or the support of legislation for repealing that Act and for suppressing vivisection altogether."

The fact that the society so conducted their affairs as to seek legislation may be enough to dispose of the case. I cannot, though, read rule 4 in the way Danckwerts J. did. I can see nothing required by that rule to be done that would "necessarily in the end" require the support or promotion of legislation. It is possible to seek the end of vivisection by persuading scientists to refrain from it, just as it is possible to seek the end of slavery by persuading owners of slaves to manumit them. Nevertheless, I admit that the doctrine of Danckwerts J. only goes as far as holding a purpose not charitable if its achievement is "necessarily" to be by legislation. Harman J. went much further in *Re Shaw*[82] where, in the course of holding not charitable a trust for research into, production of and advocacy of adoption of an alphabet of more letters than the one presently used has, he said: "It seems to me that the objects of the alphabet trusts are analogous to trusts for political purposes, which advocate a change in the law. Such objects have never been considered charitable." I admit he did not say the objects *were* political. He only said the objects were *analogous to* purposes advocating a change in the law. But the germ, at least, is there of a doctrine that could spread a large shadow of non-charitable politics over the advocacy of change in the interstices of the advancement of education by the increase or spread of knowledge.

In New York, the promotion of constitutional change has been held not charitable. The testator in *Re Killen's Will*[83] made a gift to his executor "to expend the same in the manner which in his judgment will best further the development of the Irish Republic." Northern Ireland was and is part of the United Kingdom and the rest of Ireland, then the Irish Free State, was a British colony, whose head of state was King George V. Slater S. said:[84]

> "This is a gift to the executor to expend a fund apparently for political objects. A trust for the attainment of political purposes has always

[81] 66 T.L.R. (pt. 2) 1094-1095.
[82] [1957] 1 W.L.R. 729, 742.
[83] 209 N.Y.S. 206 (1925).
[84] 209 N.Y.S. 208.

> been held invalid. It is not illegal to advocate or promote by any lawful means a change in the fundamental law, but the court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure a change is a charitable gift. On the other hand, a bequest tending to encourage a change in the fundamental law of any nation of the world might very well and probably would be said to be against public policy."

Courts in Illinois[85] and Maryland[86] have not agreed with that opinion, at least with regard to advocating or promoting constitutional change at home by lawful means. On promoting revolution (even by lawful means) in a friendly country, the New York decision is supported by an English case and contradicted by one from California. In *Habershon* v. *Vardon*[87] an English trust for "the political restoration of the Jews to Jerusalem and to their own land" was held not charitable by Knight Bruce V.-C. at a time when Palestine was part of the Ottoman Empire. In *Re Murphey's Estate*[88] a similar object was held charitable in California, where (almost) anything goes, when Palestine was part of the British Empire.

Influencing government policy otherwise than in connection with legislation or constitutional change is probably in the same position. In *Re Wilkinson*[89] Kennedy J. held a gift to the League of Nations Union of New Zealand not charitable for that reason. The learned judge said:[90]

> "The first object of the Union is to secure the whole-hearted acceptance of the League of Nations by the people of New Zealand.... I cannot think... its purpose is any more the advancement of education than it can be said is the purpose of the argument whether called educative or otherwise, by which political parties justify and commend their policies.... The object of the Union is not so much to secure legislation as to secure and obtain such an opinion that the people of New Zealand shall accept the League of Nations ... that is, that the central executive authority or the Government shall be influenced to act in a particular way.... Whether [the League's] method is practicable or a good one or not is a political issue to be resolved by political action.... Advocacy of the League really is the advocacy of a particular kind of international politics. Its advocates may have high ideals, but that does not make their purposes charitable.... Any purpose with the object of influencing the Legislature is a political purpose, and similarly, in my view, a purpose that the central executive authority be induced to act in a particular way in foreign relations or that the people be induced to accept a particular view or opinion as to how the central executive shall act in the foreign relations of this country is, in the broadest sense, a political purpose ...."

Even supporting the government in a course of action it has decided upon is probably not charitable in Commonwealth countries,[91] though it may well be charitable to support a scheme embodied in

[85] *Garrison* v. *Little,* 75 III. App. 402 (1897) (n. 99, *post).*
[86] *Register of Wills for Baltimore County* v. *Cook,* 22 A.L.R. (3d) 872 (1966) (n. 3, p. 60).
[87] (1851) 4 De G. & Sm. 467, regarded by Wootton J. in the British Columbia case of *Re Schechter* (1963) 37 D.L.R. (2d) 433, 437, as a "curious decision".
[88] 62 P. 2d 374 (1936) (n. 1, *ante).*
[89] [1941] N.Z.L.R. 1065.
[90] [1941] N.Z.L.R. 1075-1077.
[91] See *Trustees for the Roll of Voluntary Workers* v. *Commissioners of Inland Revenue* 1942 S.C. 47 (n. 15, *ante).*

an Act of Parliament while not charitable to advocate the same scheme before it is so embodied.[92]

There has been much assertion that the reason why promoting or opposing legislation is not itself charitable is that it cannot be told by the court whether any given change in the law, or defeat of a proposal for such a change, would or would not be for the public benefit.[93] The same impossibility led the Supreme Court of California to the conclusion[94] that all trusts for promotion by peaceable means of political purpose not *contra bonos mores* were charitable. (There are other American cases where the advocacy of legislation has been held charitable, but not by appeal to that impossibility). In jurisdictions where influencing the legislature is not a charitable object, the impossibility of assessing public benefit is not a convincing explanation. A better analysis can be made.

(1) A trust which is useless or cannot be believed by rational people to promote the public benefit is not charitable.[95]

(2) A trust with the object of promoting or opposing legislation in the interests of members of a group is not charitable in the same way that a mutual benefit society or professional institute is not charitable.[96]

(3) A trust for the promotion or defeat of unselfish legislation which is controversial is not charitable in most jurisdictions, without inquiring whether the legislation would be for the public benefit or not,[97] because the stimulation of political controversy (unlike the stimulation of intellectual controversy, which is advancement of education) is neither within the spirit and intendment of the preamble to the Statute of Charitable Uses nor related to the idea of good works among the poor, the sick and the stricken.

[92] See *Re Bushnell* [1975] 1 W.L.R. 1596 (n. 42, *post,* p. 68).

[93] *Jackson* v. *Phillips, 96* Mass. 539, 571 (1867) (n. 53, *ante); Bowman* v. *Secular Society Ltd.* [1917] A.C. 406, 442 (n. 9, *ante); Re Killen's Will,* 209 N.Y.S. 206, 208 (1925) (n. 83, *ante); Trustees for the Roll of Voluntary Workers* v. *Commissioners of Inland Revenue* 1942 S.C. 47, 55 (n. 17, *ante); Re Hopkinson* [1949] 1 All E.R. 346, 350 (n. 63, *ante); Re Co-operative College of Canada and Saskatchewan Human Rights Commission* (1975) 64 D.L.R. (3d) 531, 537 (n.47, *ante).*

[94] *Re Murphey's Estate,* 62 P. 2d 374, 375 (n. 2, *ante).*

[95] *American Restatement,* Trusts 2d, s. 374, comment m: "A trust for a purpose which is irrational is not a charitable trust. If the court is of the opinion not merely that the purpose is one which it does not believe will promote the social welfare of the community but that rational persons do not and cannot so believe, the trust is not a charitable trust. The decision as to what is merely unwise and what is irrational is not an easy one to draw. The difference is one of degree and the line may be drawn differently at different times and in different places. "So also, a trust for a purpose which is useless will not be enforced … a trust to publish and distribute the writings of the testator is not enforceable if his writings are of no value."

[96] So, while the promotion of agriculture, medicine or commerce is a charitable purpose, a trust for the benefit of farmers, doctors or merchants is not charitable.

[97] The exception is Ontario where, by the Mortmain and Charitable Uses Act, R.S.O. 1970, c. 280, s. 1(2)(d), *any* purpose beneficial to the community is charitable. It is therefore necessary, in Ontario, for the purpose of any litigation to which that Act applies, for the court to determine whether the legislation whose enactment or defeat is the object of the trust would or would not be beneficial to the community, that being decisive and the preamble to the Act of 1601 being irrelevant.

(4) A trust for a charitable purpose is nonetheless a charitable trust by virtue of the (authorised) expenditure of trust funds on preparing proposals for or comments on legislative bills whose enactment, defeat or amendment would be ancillary to the charitable purpose.

(5) A trust to promote legislation improving the law is charitable because improving the law is for the public benefit, and is, like the publication of law reports, within the spirit and intendment of the preamble. Judges can tell what would improve the law, and frequently do so in judgments.

Many American cases, and one Ontario case, controvert proposition (3). In fact the *American Restatement*,[98] making no allowance for contrary views in Massachusetts, New York or federal revenue cases, declares generally:

> "A trust may be charitable although the accomplishment of the purpose for which the trust is created involves a change in the existing law. If the purpose of the trust is to bring about changes in the law by illegal means, such as by revolution, bribery, illegal lobbying or bringing improper pressure to bear upon members of the legislature, the purpose is illegal.... The mere fact, however, that the purpose is to bring about a change in the law, whether indirectly through the education of the electors so as to bring about a public sentiment in favor of the change, or through proper influences brought to bear upon the legislators, does not prevent the purpose from being legal and charitable."

("Education" seems to bear an unusual meaning in that sentence: proselytism rather than training the intellect or the pursuit of truth.)

In *Garrison* v. *Little*[99] the testatrix made a bequest to three legatees "to be used by them according to their best judgment for the attainment of woman suffrage in the United States of America and its Territories." That was held charitable. The court took the view that it was no objection that a change in the law or the constitution would be necessary to achieve the purpose.

In *Taylor* v. *Hoag*[1] the Pennsylvania Supreme Court held charitable a trust

> "to promote improvements in the structure and methods of government, with a special reference to the initiative, referendum, and recall, proportional representation, preferential voting, ballot reform, the simplification of municipal, state, and national government, and the revision or remaking of city charters, state constitutions, and our national Constitution, with a view to promote efficiency and popular control of government..."

Frazer J., giving the judgment of the majority, said:[2]

> "... a trust for a public charity is not invalid merely because it contemplates the procuring of such changes in existing laws as the donor deems beneficial to the people in general, or to a class for whose benefit the trust is created. To hold that an endeavour to procure, by proper means, a change in a law, is, in effect, to attempt to violate that law, would discourage improvement in legislation and tend to compel us to continue indefinitely to live under laws designed for an entirely different state of society. Such view is opposed to every principle

[98] Trusts 2d, s. 374, comment j.
[99] 75 111. App. 402 (1897).
[1] 21 A.L.R. 946 (1922).
[2] 21 A.L.R. 950.

> of our government, based on the theory that it is a government 'of the people, by the people, and for the people,' and fails to recognize the right of those who make the laws to change them at their pleasure, when circumstances may seem to require. With the wisdom of the proposed change the courts are not concerned. We perform our duty in determining whether or not the method adopted to make the change violates established law."

In *Register of Wills for Baltimore County* v. *Cook*[3] there were bequests: (a) to "the Maryland Branch of the National Woman's Party"; (b) "to help further the passage of and enactment into law of the Equal Rights Amendment to the Constitution of the United States"; (c) "for the purpose of aiding and assisting any woman who may be in distress or suffer any injury to herself or her property as a result of any inequalities in the laws of the State of Maryland or of any of the United States"; (d) "to be used to further the cause of equality for women in civil and economic rights and to carry on the work for women in accordance with the objectives as outlined in" (a), (b) and (c). The fundamental objective of the Maryland Branch of the National Woman's Party was: "...to secure for women complete equality under the law with respect to their property, personal, social economic and civil rights and privileges____" The Maryland Court of Appeals held all the bequests charitable. Oppenheimer J., giving the judgment of the Court, said:[4]

> "The provisions of the testatrix's will make it evident to us that her primary objective was to provide funds for the elimination of discriminations against women and that support of the passage of the Equal Rights Amendment and other national or state legislation to this end was merely an incidental means to the accomplishment of the general purpose." "Realistically, a charitable purpose such as that of the testatrix, can often only be effectuated by legislative change. Recognition of that fact by the testatrix does not alter what we have found to be the essentially charitable nature of the bequests here involved."

The achievement of women's suffrage and of general equality between men and women may be a charitable objective because the policy of both the common law and the constitution of the United States of America is that all persons are equal before the law. If it is a charitable objective, it is certainly no objection that ancillary or incidental legislation was expressly envisaged,[5] though the terms of the *Cook* bequests seem to go beyond what is incidental or ancillary by way of reference to legislation. So far as *Taylor* v. *Hoag* is concerned, promotion of *improvements* in government must be charitable, provided the settlor did not pre-empt the judgment of what was an improvement by making the trust for securing the introduction of the features to which he required special reference. No one would contend that the promotion of political controversy or of proposals for constitutional change violates the law. It is important to a democracy that public debate should occur, but that does not mean that a trust for provoking it should be charitable, with perpetual existence (aided, if necessary, by the *cy-pres* doctrine and its American

[3] 22 A.L.R. (3d) 872 (1966).

[4] 22 A.L.R. (3d) 882.

[5] See also *Old Colony Trust Co. v. Welch,* 25 F. Supp. 45, 49 (1938) (n 8, *post)*; *International Reform Federation* v. *District Unemployment Compensation Board,* 131 F. 2d 337, 342 (n.28, *post);* and cases from Commonwealth jurisdictions (nn. 30-36, *ante).*

alter ego, deviation) and immunity from taxation. Political associations and gifts to them are valid. It is true that trusts for non-charitable purposes are narrowly constricted in most jurisdictions, and that may require attention, but it does not inhibit the well-advised donor, who can use the legal tool-kit of powers, contracts, societies and corporations. I should have thought, *pace* the Pennsylvania Supreme Court, that the wisdom of the proposed change was one of the concerns of the court, for without public benefit there is no charity. The opinion of the donor that something is for the public benefit does not make it charitable (even in Ireland these days, except perhaps in relation to the advancement of religion in the South, although it is from Ireland that the contrary doctrine emanates most forcefully) or the California Court of Appeals would have held the Socialist Labor Party charitable. *Pace* all three courts, in Illinois, Pennsylvania and Maryland, I cannot find anything in the judgments indicating why any of the purposes in any of the cases was held charitable, unless there be a general rule that a trust for a public purpose is always charitable unless it is immoral or to be achieved by unlawful means.

In *Old Colony Trust Co.* v. *Welch*[6] a federal District Court held the New England Anti-Vivisection Society charitable although its objects included urging legislation and it had sponsored the presentation of bills to the legislature. Anti-vivisection propaganda was itself charitable because it was part of inculcating kindness to animals, thus bringing about the moral improvement of mankind. "That conscientious medical men believe that animal experimentation advances the science of medicine does not alter the situation one iota. It is of no consequence in this case that a difference of opinion exists as to what constitutes justifiable infliction of pain.[7] That was the state of the law in England, too, in 1938, but not now. To promote vivisection and to oppose it could both be charitable, the one for the advancement of education by furthering research, the other for the prevention of cruelty to animals. There is no difficulty in the courts accepting charities with different types of public benefit, perhaps opposed to each other, or there would not be missionaries all over the world charitably converting everybody (perhaps even each other) to everything. Ford J. also said:[8]

> "The circumstances of the society favoring the passage of the legislation … did not in any way place the society outside the provisions of the Act [exempting gifts to charity from estate taxes]. This legislation was merely incidental to carrying out the purposes and accomplishing the purposes of the society. The help of the Legislature was necessary to enable it to advance its aims.… This incidental activity does not militate against the contention that this organization was 'exclusively' organized and operated for charitable purposes."

That too, was how the English authorities stood before the House of Lords corrected them: indeed *Re Foveaux*[9] was cited by Ford J. Incidental political activity to further charitable objects is charitable to this day, but a stated object of prohibition by statute of vivisection goes beyond an incident of preventing cruelty to animals: it is aimed at preventing another public benefit and thwarting fellow-citizens; it

6 25 F. Supp. 45 (1938).
7 25 F. Supp. 49, *per* Ford J.
8 25 F. Supp. 49.
9 [1895] 2 Ch. 501.

is not calculated to improve man morally by feeling kind to animals (being prosecuted when feeling indifferent is quite different from feeling kind); it is calculated to cause feelings of resentment against anti-vivisectionists and legislators. It has been held not charitable in England and Victoria (though much later than 1938).

Prohibition legislation has been the darling of several courts. In *Farewell* v. *Farewell*[10] the relevant terms of a will were:

> "I give and bequeath to my trustees the sum of $2,000, upon trust, to apply the same in such lawful ways as in their discretion they may deem best in order to promote the adoption by the Parliament of the Dominion of Canada of legislation prohibiting totally the manufacture or sale in the Dominion of Canada of intoxicating liquor to be used as a beverage, and in order to give practical aid in the enforcement of such legislation when adopted, and whether by educating and developing a strong public sentiment in its favour, or by other and more direct means, or in such other way as my trustees shall think best."

Boyd C., who held the bequest charitable, said:[11]

> "Regarded from a moral or humanitarian point of view it cannot be doubted that [that] charitable bequest is for a public purpose not only legitimate but praiseworthy. The Court however does not concern itself with the measure of commendation or disapprobation which may attach to the proposed charitable schemes of testators, provided only they are not detrimental to the well-being of society. A very notable instance of this indifference of the Court is to be found in the opinion of Lord Romilly in *Thornton* v. *Howe* ...."

The analogy or contrast between the advocacy of political action and circulation of religious tracts, however, may or may not be of legal significance. The advancement of religion is an established head of charity; the advancement of politics is not. Romilly M.R.'s remarks in *Thornton* v. *Howe*[12] related to bequests for printing and circulating works of a religious tendency. Such printing and circulation, if the works are not immoral, is apparently for the public benefit. Assuming that moderation in, or abstention from, imbibing alcoholic beverages is for the public benefit (as courts seem to think, though it is difficult to see why in the case of total abstinence), it does not follow that prohibition legislation is also for the public benefit. If it is not, it is not charitable, but Boyd C. declined to face that issue. On the political aspect of the matter of seeking to promote legislation, the learned Chancellor said[13] it was not a question of the law stultifying itself by holding that it is for the public benefit that the law itself should be changed. "... the judges frequently say that the law is not right as it stands — they suggest amendments of the law..." It is as well to shatter the illusions Tyssen[14] induced, for it is indeed not a question of stultification. But all charity is a question of public benefit and, although never overruled, the next remarks[15] of Boyd C.

[10] (1892) 22 O.R. 573. In England, in *Commissioners of Inland Revenue* v. *Temperance Council of the Christian Churches of England and Wales* (1926) 136 L.T. 27, where *Farewell* v. *Farewell* was not cited, Rowlatt J. came to the opposite conclusion. In *Knowles* v. *Commissioner of Stamp Duties* [1945] N.Z.L.R. 522, where *Farewell* v. *Farewell* was cited, Kennedy J. preferred the English decision in the *Temperance Council* case.

[11] 22 O.R. 579.

[12] (1862) 31 Beav. 14, 19-20 (n. 69, *ante).*

[13] 22 O.R. 579-580.

[14] *Charitable Bequests,* p. 177.

[15] 22 O.R. 580-581.

stand in isolation (apart from cases of religion and cases which *have* been overruled) outside the borders of the United States of America:

> "The Court in affirming the validity of a charitable bequest does not so declare because satisfied that it is or that it will be a public benefit — the question is first: Is it for a public purpose? then: Is that purpose a lawful one? If both interrogatories can be answered *'yea'* it is not for the Court to frustrate the intentions of the testator. He is the judge of the benefit or the wisdom of the scheme he seeks to foster, and if that does not offend against the Christian religion, public morality, or public policy, the Court should not interfere, even if dubious about the practical results."

The testatrix in *Buell* v. *Gardner,*[16] "... for the purpose... of helping the cause of temperance in the county of Ontario...", gave income "to be used for temperance and the annihilation and overthrow of the liquor traffic in the county of Ontario, to defray the expenses of the No License League, the Anti-Saloon League, the Prohibition Party, or any kindred organization in Ontario county most in need of financial support..." That gift was held charitable (although another New York judge could say,[17] eleven years later: "A trust for the attainment of political purposes has always been held invalid.") Clark J. said:[18]

> "... while it would be possible perhaps so to construe that item that the fund could seemingly be used for an improper and illegal purpose, such as defraying the expenses of a political party..., still a careful reading of the clause shows that the testatrix had in mind, not the advancing of the fortunes of a political party, but her purpose was the benevolent and charitable one of advancing the cause of temperance in Ontario county through its agency, and she sought to do that by defraying certain expenses of the No License League, the Anti-Saloon League, and the Prohibition Party. Her entire scheme was to help the cause of temperance in the county of Ontario, and not to advance the fortunes of any league or political party, and no matter how much any trustee might seek to advance... fortunes ... of the Prohibition Party, he could be held in check by the court, to the end that this lady's charitable and benevolent purposes should be carried out, and they are perfectly clear."

Certainly a non-charitable corporation or society may be made trustee or trustees of a charitable trust. Nevertheless, Clark J.'s conclusion was wrong. The testatrix may well have thought she was trying to have blessings imposed on the population of Ontario county, except for those engaged in the liquor traffic, and to that extent may have been benevolent. But the very seeking to *impose* good should make the endeavour non-charitable; and it is difficult to understand how a political party is not advanced in its fortunes by receiving a donation for the furtherance of its main policy (if its name is to be believed); unless one takes the cynical view that a political party's greatest misfortune is to achieve what it stands for, so that it subsequently withers away. It is possible, of course, that Clark J. was whistling to keep his courage up, for he admitted:[19] "It is a fact perhaps that each one of the items of the will under consideration would be susceptible of different constructions, and that is especially so with reference to the temperance fund ...; but a construction should be adopted, if possible, which would sustain the

[16] 144 N.Y.S. 945 (1914).
[17] Slater S. in *Re Killen's Will,* 209 N.Y.S. 206, 208 (n. 84, *ante).*
[18] 144 N.Y.S. 948.
[19] 144 N.Y.S. 949.

trust to the end that the fund may be devoted to the purposes intended by the testatrix." The cause of temperance has also been held charitable in Massachusetts,[20] although they do not generally hold political trusts charitable in that state, and in California,[21] where almost anything political except a party is charitable.

In *Girard Trust Co.* v. *Commissioner of Internal Revenue*[22] the United States Third Circuit Court of Appeals held charitable, as being for the advancement of religion, a gift to a corporation whose objects were: "To promote the cause of temperance by every legitimate means" (even though one of those means was influencing legislation); "to prevent the improper use of drugs and narcotics; to render aid to such causes as in the judgment of the board of trustees, tend to advance the public welfare." Goodrich J., giving the judgment of the court, said:[23]

> "A bright line between that which brings conviction to one person and its influence on the body politic cannot be drawn....The Advocacy of such regulation [as Sunday observance and prohibition of alcohol] before party committees and legislative bodies is a part of the achievement of the desired result in a democracy. The safeguards against its undue extension lie in counter-pressures by groups who think differently and the constitutional protection, applied by courts, to check that which interferes with freedom of religion for any.... Nor has the law sought to draw such a bright line between the exercise of private and public influence."

Nor, it might be added, are there bright lines between that which is religious and that which is secular, or between that which advances religion and that which does not. Holding the Girard trust for the procurement of prohibition legislation to be for the advancement of religion is a surprise. There was no pressure to hold the gift charitable to effectuate it. It was valid anyway, being made to a corporation. The result seems to be loaded democracy. There is no tax relief for a society of agnostics seeking by legitimate means to oppose legislation restricting production, sale and consumption of alcoholic drinks, drugs and narcotics as part of their general policy of opposing religion. There is a bright line for you.

The object of the Federation in *International Reform Federation* v. *District Unemployment Compensation Board*[24] was:

> "the promotion of those reforms on which the churches sociologically agree while theologically differing, such as the enactment and enforcement of laws prohibiting the alcoholic liquor traffic, the white slave traffic, harmful drugs and kindred evils in the United States and throughout the world; the defense of the Sabbath and purity; the suppression of gambling and political corruption; and the substitution of arbitration and conciliation for both industrial and international war."

[20] *Bowditch* v. *Attorney General,* 28 A.L.R. 713 (1922) (n. 58, *ante).*

[21] *Collier* v. *Lindley,* 266 P. 526 (1928), where that particular object of a trust with many objects was to "assist in securing, maintaining, enforcing and strengthening prohibition and other legislation, national, state and/or local, affecting the manufacture, and use, and/or disposition of alcoholic beverages and/or intoxicating liquors and/or narcotic drugs by all lawful means..."

[22] 138 A.L.R. 448 (1941).

[23] 138 A.L.R. 451.

[24] 131 F. 2d 337 (1942).

The Court of Appeals for the District of Columbia held it charitable. Groner C.J., giving the judgment of the majority, said:[25] "…as Chief *[sic]* Justice Fitzgibbon in an Irish case said, if the benefit is one which the founder believes to be of public advantage and his belief is rational and not contrary to the general law of the land or the principles of morality, the gift is charitable in the eyes of the law."[26] That statement (the subject of dissent in the Irish case in which it was made) has never been followed or applied in the Commonwealth — it has been explicitly rejected in England and Northern Ireland — and in the Republic of Ireland prior to the passing of the Charities Act, 1961, it was applied only to religious trusts. Later, Groner C.J. said:[27]

> "Undoubtedly some cases may be found sustaining the view that organizations seeking changes of law are engaged in political activity and therefore neither charitable nor educational, whatever the motive. The ground for such holdings is that the court has no means of judging whether a proposed change in the law will or will not be for the public benefit. But this reasoning is not convincing, and we prefer the more modern view that so long as the purpose can be thought by some to be in the public interest, the court is not concerned with its wisdom."

Indeed, the ground stated as not convincing is not convincing. But "the more modern" view, which I shall for the sake of clarity call the more old-fashioned view, is based on a mistaken policy. The policy of the law should be (and in most places is) to uphold as charitable social welfare and religious trusts *which are* for the public benefit. There is no reason why a trust for an unselfish purpose dreamed up by a large group of bigots should be charitable just because *they believe* it would be good for everybody to agree with them or be forced to comply with their views, just as there is no reason why the law should impede their purpose merely because it is not charitable. Moreover, the policy is not applied uniformly. For example, bigots who know there is a God and what he wants are more adept at dreaming up purposes which are held charitable than bigots who know there is no God. The courts are not bad at deciding whether something is or is not for the public benefit when they put their minds to it, and if it cannot be proved that an objective is for the public benefit, why should it be charitable? Groner C.J. went on to point out that the Federation

> "… keeps in touch with, and on occasion prepares, bills, and appears before legislative committees, State and Federal, when these subjects are under consideration. It would seem to us to be going very far to say that these legislative activities accomplish a metamorphosis in [the Federation's] character whereby it is changed from a charitable or educational to a political organization. Such activities have never been classified as lobbying in the sense in which that activity has been either prohibited or licensed. Hence we see no actual difference between the education of the individual — admittedly proper — and the education of the legislator, where both are directed to a common end, and that end, not the advancement, by political intrigue or otherwise, of the fortunes of a political party, but merely the accomplishment of national social improvement."

[25] 131 F. 2d 339.
[26] The reference is to *Re Cranston* [1898] 1 I.R. 431, 446-447, *per* Fitzgibbon L.J.
[27] 131 F. 8d 340.

That charming way of putting the matter cannot be faulted as pure law, but it is only remotely related to the facts of the case. The object of the Federation was doubtless *thought by them* to be the accomplishment of national social improvement; but their object was, not the supply of facts to legislators or anybody else, but the enactment and enforcement of laws restricting *(inter alia)* pleasure and commerce. I cannot interpret the Federation's constitution in Groner J.'s way:[28] "...the Federation's primary purpose is the establishment of higher codes of morality and manners throughout the world, and its contribution to or even its advocacy of legislation to these ends merely 'mediate' or 'ancillary' to the primary purpose." It was not ancillary: it was a stated object. Illiberal trusts need not be invalid, but compulsion to comply with an illiberal point of view should not be a charitable objective.

The *American Restatement*[29] declares: "A trust for the improvement of the structure and methods of government is charitable, as for example, by promoting direct control over legislation by the electors through the initiative and referendum. So also, a trust to promote representative government is charitable." In that passage, "improvement" seems to be used as a synonym for "amendment" rather than in its colloquial sense of "making better." The same equation of improvement and change is hinted at in *Taylor* v. *Hoag*;[30] though doubts about whether any particular changes will be for the better should not obscure the perfectly correct proposition that a trust for the improvement of government can be so drawn as to be, in equity, charitable. Another case that supports the *American Restatement* is *Collier* v. *Lindley*.[31] Two of the objects of the trust in that case,[32] as summarised[33] by Richards J., giving the judgment of the Supreme Court of California, were: (i) "Promoting and assisting in promoting improvements in the structure and methods of government in the United States." (ii) "Promoting justice for the American Indians." The achievement of both those objects was envisaged as involving, or possibly involving, legislation. The whole trust was held charitable, being regarded[34] as mainly for the advancement of education. One passage from the judgment makes me wonder where the law of charities is going in California, and why. Richards J. said:[35]

> "The ideas of the creators... may be altruistic to the point of seeming to be impractical or even foolish, but it does not follow that the trust would for that reason, if otherwise unobjectionable from the viewpoint of ethics or morals, be invalid. As it is tersely but truly said in Zollman on Charities, at page 149, 'a charitable gift may be both absurd and valid.' "

If it is truly said, what regression that is from the practical Elizabethans.

[28] 131 F. 2d 342.
[29] Trusts 2d, s. 374, comment j. Cf. *Re The Trusts of the Arthur McDougall Fund* [1957] 1 W.L.R. 81, 85 (n.79, *ante).*
[30] 21 A.L.R. 946 (1922) (n. 1, *ante,* p. 59).
[31] 266 P. 526 (1928).
[32] For a third object, see (n. 21, *ante,* p. 64).
[33] 266 P. 2d 529.
[34] 266 P. 2d 531.
[35] 266 P. 2d 529-530.

Improvement of the law, or technical law reform which is not matter of political controversy, is presumably a charitable purpose even if to be achieved by statute. It is analogous to publishing law reports, research, publication of scholarly works and other aspects of achieving justice. That is not to say that campaigning for a particular enactment is charitable. In *Dulles* v. *Johnson*[36] the United States Second Circuit Court of Appeals held bequests to Bar Associations charitable. According to Waterman J., who gave the judgment of the court,[37] among the manifold activities of the associations,

> "Through their various committees the Associations study and report on proposed and existing legislation.... The major portion of this work is of a technical nature involving the adequacy of proposed and existing legislation in terms of its form, clarity of expression and its effect on and relation to other law. The Associations' work has been expressed in expert reports on matters uniquely within the fields of experts and has avoided questions which are outside those fields, i.e., questions which turn largely on economic or political decisions. These activities serve no selfish purpose of the legal profession — rather they constitute an expert's effort to improve the law in technical and non-controversial areas. In our opinion these activities are… charitable. … The cases upon which the Government relies are inapposite. Those cases involved organizations whose principal purpose was to implement legislative programs embodying broad principles of social amelioration. … Here, on the other hand, approval of or opposition to proposed legislation constitutes but a small portion of the total activity of the Association.... Moreover, the legislative recommendations of the Associations, insofar as these recommendations do not involve matters the responsibility for which has been entrusted to the Associations by the Legislature, are designed to improve court procedure or to clarify some technical matter of substantive law. They are not intended for the economic aggrandizement of a particular group or to promote some larger principle of governmental policy. These two factors lead us to the conclusion that the recommendations of the Associations concerning impending legislation are not such as to cause the forfeiture of charitable status …."

III

PROPAGANDA DOES NOT ADVANCE EDUCATION BUT IS SOMETIMES CHARITABLE SOMEWHERE IF SOMEONE THINKS IT DOES GOOD

> "If the general purposes for which a trust is created are such as may be reasonably thought to promote the social interest of the community, the mere fact that a majority of the people and the members of the court believe that the particular purpose of the settlor is unwise or not adapted to the accomplishment of the general purposes, does not prevent the trust from being charitable. Thus, a trust to promote a religious doctrine is charitable although the doctrine has few adherents. So also, a trust to publish books or pamphlets or to give lectures advocating the doctrine of the single tax is charitable, even though the doctrine may have few adherents. One of the great advantages resulting from charitable trusts is in the fact that they permit experimental tests of ideas which have not been generally accepted. The courts do not take sides or attempt to decide which of two conflicting views of promoting the social interest of the community is the better adapted to the purpose, even though the views are opposed to each other. Thus, a trust to promote peace by disarmament, as well as a trust to promote peace by preparedness for war, is charitable."[38]

[36] 273 F. 2d 362 (1959).
[37] 273 F. 2d 367.
[38] *American Restatement,* Trusts 2d, s. 374, comment 1.

> "... while a charitable trust cannot be created for a purpose which is illegal,... the object of the trust does not have to be the advancement of a majority view. It must not, of course call for violation of the law nor must it be 'irrational.' It is only when the court is convinced that the purpose of the trust can serve no rational object that the court will declare it invalid."[39]

> "I do not think that the fact that the testator and a number of other people are of opinion that the step would be a benefit proves the case, for undoubtedly there are a great many more people, at present at any rate, who think the exact contrary. That is why the testator directs the steps which he recommends to be taken They are intended to overcome the opposition and sloth of the great majority who prefer to stick to what they know and to use that to which they are accustomed. I do not see how mere advertisement and propaganda can be postulated as being beneficial.... I feel unable to pronounce that the research to be done is a task of general utility. In order to be persuaded of that, I should have to hold it to be generally accepted that benefit would be conferred on the public by the end proposed."[40]

> "Political propaganda masquerading ... as education ... is not charitable."[41]

Dr. Bushnell made his will in 1940 and died in 1941, and when his widow died in 1972 there was to be a trust of his residuary properly for the "advancement and propagation of the teaching of socialised medicine." The fund was to be used towards furthering knowledge of socialised medicine, and showing that such medicine could only be enjoyed in a socialist state, by various means including engaging lecturers and publishing literature. Goulding J. held[42] that that trust failed. Its validity in 1941 had to be determined; at that time there was not national health service, and the testator's scheme of socialised medicine would then have required major legislation; therefore the trust failed as being for a political object. The argument that it was primarily educational, and that some political motive was not fatal to charity, did not succeed because the main or dominant or essential object was a political one. The testator was trying to promote his own theory, not to educate the public the better to choose theirs. Counsel submitted that, though it was impossible to ascertain whether or not it was so in 1941, the national health service must be taken to be for the public benefit in 1975 (when the case was decided), since it had been established by Act of Parliament. (Goulding J. did not rule on the submission, because the introduction of the health service actually established was not the purpose of the testator's trust and because he regarded the position in 1975 as irrelevant.)

While it is clear that healing the sick is a charitable purpose, I have reservations about something becoming for the public benefit when Parliament has enacted it, as I have about advocacy of some point of view being charitable (as the *American Restatement* would

[39] Goodrich J., giving the judgment of the Third Circuit Court of Appeals in *Girard Trust Co.* v. *Commissioner of Internal Revenue,* 138 A.L.R. 448, 450-451 (1941), a case of a trust for the advancement of religion (n 22, *ante,* p. 64).

[40] Harman I. in *Re Shaw* [1957] 1 W.L.R. 729, 740, a case of a trust for designing and advocating the adoption of a bigger alphabet.

[41] Vaisey J. in *Re Hopkinson* [1949] 1 All E.R. 346, 350, a case of a trust for the advancement of socialism.

[42] *Re Bushnell* [1975] 1 W.L.R. 1596.

have it) merely because those who advocate it think its universal adoption would be for the public benefit. The latter view importunes us to give tax concessions to cranks who often wish to thwart our heart's desire. The former seems to imply three dubious propositions. One is that the will of Parliament is the general will, which is probably sometimes the case (and probably is the case with regard to the provision of a national health service) and sometimes not. (The majority in the House of Commons does not always correspond to the majority of the votes cast at a general election.) The second is that Parliament, in adjudging something to be for the public benefit, has in view a notion of public benefit relevant to the law of charities. The third is that the introduction of a scheme by legislation is not the general will, or the will of Parliament, until an Act is passed. If it is now known that a national health service has been for the United Kingdom public benefit since 1946, it seems possible, even if not inescapable, to conclude now that advocating its introduction was for the public benefit in 1941. What is for the public benefit is a question of fact for the court. I wonder what an English court's reaction would be to a trust for resistance to abolition of the national health service, and particularly if its abolition became the policy of a political party putting forward candidates for election to the House of Commons. At all events, it would be misleading to claim that, outside the United States of America, one of the great advantages of charitable trusts is facilitating experiment. Other common-law jurisdictions share the view of the English authorities that, in general, trying to persuade people to adopt an opinion is not, unless the opinion is a religious one, a charitable purpose.

One of the gifts in the Ontario case of *Re Knight*[43] was to the Henry George Foundation of Canada, and Rose C.J.H.C. held it valid but not charitable. The foundation's purposes and objects, as stated in its letters patent, were:

> "(a) To promote an understanding and acceptance of the principles enunciated by Henry George in his book, entitled Progress and Poverty, and in his other writings; (b) To engage in such printing, publishing, advertising, publicity and instructional work as shall have for its purpose the furthering of the aforementioned objects; (c) To engage in such political, educational and advocacy work and enterprise as shall have for its purpose the understanding and acceptance by individuals or by the public and by governing authorities of the said principles and the incorporation thereof in political and social institutions; and (d) To seek and accept subscriptions and bequests for the purpose of furthering the above mentioned objects."

The learned Chief Justice said:[44] "These purposes and objects are perfectly lawful but, in my opinion, they are political rather than charitable ...."[45]

[43] [1937] 2 D.L.R. 285. See also *Leubuscher* v. *Commissioner of Internal Revenue,* 54 F. 2d 998. (Can *Re Knight* be reconciled with the earlier Ontario case of *Farewell* v. *Farewell* (1892) 22 O.R. 573 (n. 10, *ante,* p. 62)? Is compulsory teetotalism less political than single tax? Fortunately the courts are free to decide without conflict: Henry George's proposed single tax was not excise duty on alcoholic drinks.)

[44] [1937] 2 D.L.R. 288.

[45] He went on to quote from the speech of Lord Parker of Waddington in *Bowman* v. *Secular Society Ltd.* [1917] A.C. 406, 442 (n. 9, *ante,* p. 43). Similar views are to be found in *Re Wilkinson* [1941] N.Z.L.R. 1065 (n. 89, *ante)* and *Re Hopkinson* [1949] 1 All E.R. 346, 350 (n. 63, *ante).*

There is a thin line, difficult to discern and possibly without great legal significance, but there all the same, between trying to convert people to a point of view and informing them of its existence and of the reasons for it — between propaganda and education. Expounding important points of view, religious and otherwise, is part of the advancement of education, as when students of economics consider the works of Henry George or students of law or philosophy and gifts to them are valid. It is true that trusts for non-charitable consider those of Jeremy Bentham. The only point of view the teacher should try to put across is the desirability of the pursuit of truth, but a school or university does not cease to be charitable merely because the teacher's opinions obtrude in the classroom. An interesting borderline case in England was *Russell* v. *Jackson*[46] where Turner V.-C. held that a trust "for the purpose of establishing a school for the education of children in the doctrines of Socialism" was either charitable or illegal. The learned Vice-Chancellor said:[47]

> "... I am not quite satisfied on the question which has been raised of the nature of the doctrines of Socialism. What is said on that subject is this, that the leading principle of the society or sect is, 'to establish a new system, called the rational system of society, derived solely from nature and experience, and ultimately to terminate all existing religions, governments, laws and institutions.' Now those are stated to be the doctrines of Socialism as propounded by Robert Owen; but whether this testator was clearly referring to the doctrines of Socialism as propounded by Robert Owen, or not, rests, I think, on rather loose evidence ...."

He ordered the Master to "inquire what are the doctrines of socialism referred to by the testator."[48] In *Re Loney Estate*,[49] in the Manitoba Queen's Bench, DuVal J. held a gift "for the purpose of promoting and propagating the doctrines and teachings of Socialism" void for uncertainty, it not having been contended that it was charitable.

In *Parkhurst* v. *Burrill*[50] there was a gift to the World Peace Foundation, a body corporate. Its purpose was:

> "educating the people of all nations to a full knowledge of the waste and destructiveness of war and of preparation for war, its evil effects on present social conditions and on the well-being of future generations and to promote international justice and the brotherhood of man: and generally by every practical means to promote peace and good will among all mankind."

Rugg C.J., in the Supreme Judicial Court of Massachusetts, said:[51]

> "The final establishment of universal peace among all the nations of the earth manifestly is an object of public charity.... A bequest aimed at effecting a change in the existing laws and constitutions cannot be sustained as a charity.... The work done by the corporation up to the beginning of the great war ... does not come within the inhibition of the principle just stated. It consisted chiefly in the... attempt to propagate an opinion among the peoples of earth in favor of the settlement of international disputes through some form of international

46 (1852) 10 Hare 204.
47 10 Hare 214-215.
48 10 Hare 216.
49 (1953) 9 W.W.R. (N.S.) 366.
50 117 N.E. 39 (1917).
51 117 N.E. 40.

> tribunal.... It cannot justly be said that the purpose was political, or the means other than educational."[52]

The trust in *Peth* v. *Spear*[53] was for the benefit of the "membership now existing and hereafter to exist of the Brotherhood of the Co-operative Commonwealth" — a society of people "acting together for the purpose of owing, acquiring, operating, conducting and maintaining a communal industrial institution and the education of the people in the principles of Socialism." Giving the judgment of the Supreme Court of Washington, Fullerton J. said:[54] "Since the purpose of its donors was to provide a place where the doctrines of socialism could be taught by example as well as by precept, the trust can be said to belong to that species of charitable trusts known as educational." One of the objects of the trust in *Ross* v. *Freeman*[55] was demonstrating by practical experiment the workability and desirability of the single tax theory as a method of raising revenues for community support (by running a village at Arden). That was held charitable in the Court of Chancery of Delaware. The learned Chancellor said:[56] "Education may be by precept and example as well as by the printed word. If so, in so far as the experiment of Arden was motivated by a purpose to educate the public by concrete demonstration to accept and practise the George theory of the single tax, the trust in the instant case becomes exactly analogous to the gift which was sustained" in *George* v. *Braddock*.[57]

The status of the printed word as charity is precarious. Newspapers seem to be associated in the judicial mind with the purveying of opinions rather than the supply of information. At least, that is how they figured in dicta in *Re Tetley*[58] and *Re Strakosch*.[59] Books of a religious turn are governed by the doctrine of *Thornton* v. *Howe*[60] that making and circulating them is charitable, even if they are foolish or unfounded, so long as they are moral. That seems to apply to other books as well, with the added proviso that they be not anti-religious. In *Thompson* v. *Thompson*[61] there was a gift on trust to select and pay "a worthy literary person, who hath not been successful in his career, and as far as possible to enable him to assist in extending the knowledge of those doctrines in the various branches of literature to which I have turned my attention and pen, in order to ascertain what appeared to be the truth, and to teach it to those who would listen." Knight Bruce V.-C. held the gift charitable, "Understanding it to be admitted that the testator's writings, published and unpublished, contain nothing irreligious, illegal or immoral..." and "... supposing

[52] Then follows (117 N.E. 40-41) a detailed refutation of the idea that to bring about a desire for new laws by education is a political object.
[53] 115 P. 164 (1911).
[54] 115 P. 65.
[55] 180 A. 527 (1935).
[56] 180 A. 532-533.
[57] 18 A. 881 (1889) (n. 62, *post).*
[58] [1923] 1 Ch. 258, 262, *per* Russell J.: "Subsidising a newspaper for the promotion of particular political or fiscal opinions would be a patriotic purpose in the eyes of those who considered that the triumph of those opinions would be beneficial to the community. It would not be an application of funds for a charitable purpose."
[59] [1949] Ch. 529, 538 (n. 31, *post,* p. 79).
[60] (1862) 31 Beav. 14 (n. 69, *ante).*
[61] (1844) 1 Coll. 381, 398.

neither atheism, sedition, nor any other crime or immorality to be inculcated by the works." In *George* v. *Braddock*[62] the Court of Errors and Appeals of New Jersey held charitable, relying on *Thornton* v. *Howe*[63] and *Jackson* v. *Phillips*,[64] a gift for circulating the works of Henry George. Beasley C.J., giving the judgment of the court, said:[65]

> "It is not to be doubted that the public circulation, by virtue of a charitable use, of the works of Sir Robert Filmer, which maintain the divine right of kings, would be entitled to the judicial *imprimatur* equally with a treatise on government under the signature of John Locke.... the entire restriction imposed by the law on such donations is that comprised in a single sentence: The writings to be circulated must not be, when considered with respect to their purpose and general tendency, hostile to religion, to law, or to morals."

The motive for making a gift for circulating the works of Henry George must be conversion of readers to the author's point of view. Although that be not stated as the purpose of the trust, donors do not give their money away for the spread of works by a particular author maintaining a particular opinion unless they share that opinion and would like more people to do so. Nevertheless there is a valid distinction between a trust whose funds are to be spent on converting people to a specified political objective and one whose funds are to be used to make knowledge of the arguments for a specified political objective more readily available. I find Beasley C.J.'s approach[66] irresistible, except that I do not see why books arguing against religion, law or morals should not come within the notion of advancing education, so long as the books themselves are not illegal; so that the distinction would be taken between rationalism and blasphemy, anarchism and sedition, hostility to morals and obscenity. It does not seem to be a relevant consideration that the knowledge to be spread is of political doctrine. Just as Beasley C.J. equated the works of Sir Robert Filmer with those of John Locke, would it not also be necessary to offer the judicial *imprimatur* to *The Thoughts of Chairman Mao, Mein Kampf,* and the *Manual of the Primrose League?* Just after what has already been quoted from his speech in *Bowman* v. *Secular Society Ltd.*,[67] Lord Parker of Waddington continued: "The same considerations apply when there is a trust for the publication of a book. The Court will examine the book, and if its objects be charitable in the legal sense it will give effect to the trust as a good charity: *Thornton* v. *Howe*;[68] but if its object be political it will refuse to enforce the trust: *De Themmines* v. *De Bonneval.*"[69] That does not seem to be workable; there is no authority for the remark about a book with a political object, and it is contrary to *George* v. *Braddock,* which case Lord Parker did not mention; and Leach M.R.'s decision in *De Themmines* v. *De Bonneval* involved a book that was not only political but expressed a view that was then contrary to

62 18 A. 881 (1889).
63 (1862) 31 Beav. 14 (n. 69, *ante).*
64 96 Mass. 539 (1867) (n. 50, *ante,* p. 50).
65 18 A. 882.
66 The distinction between exposition and advocacy was expressly made by the United States Second Circuit Court of Appeals in *Leubuscher* v. *Commissioner of Internal Revenue,* 54 F. 2d 998 (1932).
67 [1917] A.C. 406, 442 (n. 9, *ante,* p. 43).
68 (1862) 31 Beav. 14 (n. 69, *ante).*
69 (1828) 5 Russ. 288.

public policy (asserting the absolute supremacy of the pope in ecclesiastical matters over the sovereignty of the state).

IV

PARTIES AND PARTY GAMES

According to the *American Restatement*,[70] with the part of whose statement I have italicised any disagreement would be mere flippancy:

> *"A trust to promote the success of a particular political party is not charitable. . . . There is no social interest in the community in the underwriting of one or another of the political parties.* If, however, the promotion of a particular cause is charitable, the mere fact that one or another of the political parties advocates the cause, does not make the promotion of the cause non-charitable. Thus, a trust to promote temperance through statutory prohibition or through local option or through public control of the sale of liquor, is charitable although one of the political parties advocates and another opposes such methods of promoting temperance. So also, a trust to promote an economic doctrine, such as the desirability of free trade or of protective tariffs, is charitable although the political parties take different stands on these questions."

Political parties have been said not to be charities in New York,[71] United States federal revenue law,[72] New Zealand[73] and England;[74] and held not charitable in several jurisdictions too. The earliest such decision I have been able to find, and apparently the only direct English authority, is that of Finlay J. in 1933, in *Bonar Law Memorial Trust* v. *Inland Revenue Commissioners*,[75] where he struck down a trust which actually operated as one for the promotion of Conservative principles after stripping off its mask as a trust for education in political science. The learned judge said:[76] "A trust for the furtherance of the principles of a particular political party" is not charitable. All the other authorities seem to be American.

Workmen's Circle Educational Center of Springfield v. *Board of Assessors of City of Springfield*[77] was a case rather like that of the *Bonar Law Memorial Trust,* which *(inter alia)* the Supreme Judicial Court of Massachusetts cited and followed in holding the Socialist Party not charitable. Ronan J., giving the judgment of the court, said:[78]

> "The occupancy of premises primarily and substantially for meetings and assemblies for fostering and inculcating the principles and theories of a particular political party, for the purpose of securing converts to that political philosophy to which the members subscribed and thus increasing the strength and influence of the party, is not the use of premises in furtherance of any object that can rightly be held to come within the established concept of a public charity."

70 Trusts 2d, s. 374, comment k.
71 *Buell* v. *Gardner,* 144 N.Y.S. 945 (1914) (n. 16, *ante,* p. 63).
72 *Vanderbilt* v. *Commissioner of Internal Revenue,* 93 F. 2d 360 (1937).
73 *Re Wilkinson* [1941] N.Z.L.R. 1065 (n. 89, *ante).*
74 *Re Strakosch* [1949] Ch. 529 (n. 31, *post,* p. 79).
75 49 T.L.R. 220.
76 49 T.L.R. 221.
77 51 N.E. 2d 313 (1943).
78 51 N.E. 2d 316.

In New York, there are two reported cases on the Socialist Labor Party. In the earlier, *Re Andrejevich's Estate*,[79] Howell S. held that a bequest to that party was not charitable in the absence of proof (of which none was offered) that its purposes were charitable. Two years later, in *Re Grossman's Estate*,[80] there came before the court a bequest "unto the Socialist Labor Party... because I am convinced that the principles and the program advocated by it are the only sane ones to bring Society out of chaos and into sanity." Henderson S. regarded[81] the later words as "merely expressive of the reasons which motivated the making of the gift" and not as imposing a charitable trust for the abolition of chaos and the advancement of sanity. The learned Surrogate held the bequest to be a non-charitable gift because it was for the general purposes of a political party.[82] Two Pennsylvania cases held not charitable a gift on trust for the Democratic National Committee, to be used for presidential campaigns,[83] and the Socialist Labour Party of the United States of America,[84] which last association even failed to qualify as a charity in California.[85]

There is a whisper of a suggestion in *Re Strakosch*[86] that an English Court might hold a trust to be non-charitable if its objects could be found among those of a political party, but that cannot be right, as most political parties profess to be concerned with matters, such as the relief of poverty, which constitute the central core of charity. Probably what the Court of Appeal meant was that, if in doubt whether the objects of a trust were charitable or not, the fact that it would appear to be carrying out the trust if the trust property were handed over to a political party would help to resolve the doubt in favour of holding them not charitable. The New York case of *Buell* v. *Gardner*[87] and part of the judgment of Helsham J. in New South Wales in *Re Stone*[88] support the view of the *American Restatement* that an object does not cease to be charitable merely because it is the object of a political organisation.

That view is also supported by the notion that a political organisation can be made the trustee of a charitable trust.[89] Appointing such a trustee does not make the trust non-charitable; yet the objects of the political society or corporation must include that of the charitable trust, otherwise it would be acting *ultra vires* in accepting the trusteeship. It is, indeed, possible to imagine a political party all of whose stated objects, viewed in isolation, were charitable. Such a party might stand "for the relief of poverty, the advancement of religion, the advancement of education and the achievement of

[79] 57 N.Y.S. 2d 86 (1945).
[80] 75 N.Y.S. 2d 335 (1947).
[81] 75 N.Y.S. 2d 338.
[82] 75 N.Y.S. 2d 337.
[83] *Re Boorse Trust,* 64 Pa. D. & C. 447 (1948).
[84] *Liapis' Estate,* 88 Pa. D. & C. 303 (1954).
[85] *Estate of Carlson,* 41 **A.L.R.** 3d 825 (1970).
[86] [1949] Ch. 529 (n. 31, *post).*
[87] 144 N.Y.S. 945 (1914) (n. 16, *ante,* p. 63).
[88] (1970) 91 W.N. (N.S.W.) 704, 718-719.
[89] See *Buell* v. *Gardner,* 144 N.Y.S. 945, 948 (1914) (n. 18, *ante); Re Grossman's Estate,* 75 N.Y.S. 2d 335, 338 (1947) (n.81, *ante); Re The Trusts of the Arther McDougall Fund* [1957] 1 W.L.R. 81.

all good works for the public benefit" or for prohibition of liquor. That would not make the party a charity,[90] for its unstated object of securing power in government is not charitable, nor would its members when in power be constrained by the party's stated objects; nor would it make those objects non-charitable when professed by a nonpolitical body.

Furthering the principles of a political party has been before the courts more often than furthering the fortunes of the party itself as the immediate object of a trust. Either way, the trusts have not scored a high mark in the testing of their charitable status.

Prohibition Party in the United States. A trust to be used for temperance and the annihilation and overthrow of the liquor traffic was held valid in New York,[91] although the trustees were authorised to use the income of the trust fund to defray the expenses of the Prohibition Party. On the other hand, the learned judge who decided the case said the court would hold in check any trustee who tried to use trust funds to advance the fortunes of that party.

Democratic Party in the United States. Held not charitable in Pennsylvania.[92]

Republican Party in the United States. The Republican Women's Club of Pennsylvania was held not charitable in *Re Deichelmann's Estate*.[93]

Conservative Party in England. In *Re Scowcroft*[94] Stirling J. held charitable a gift of "the Conservative Club and Village Reading-room … to be maintained for the furtherance of Conservative principles and religious and mental improvement and to be kept free from intoxicants and dancing." The learned judge said:[95] "It is either a gift for the furtherance of Conservative principles in such a way as to advance religious and mental improvement at the same time, or a gift for the furtherance of religious and mental improvement in accordance with Conservative principles..." How else, you may wonder, could you do either? All the same, Eve J. held the Primrose League of the Conservative cause not charitable in *Re Jones*,[96] and Finlay J. held a trust for the furtherance of Conservative principles not charitable in *Bonar Law Memorial Trust* v. *Inland Revenue Commissioners*.[97]

Liberal Party in England. In *Re Ogden*[98] there was a gift "to the Right Honourable Sir Herbert Samuel to be by him distributed amongst such political federations or associations or bodies in the United Kingdom… having as their objects or one of their objects

[90] See *Buell* v. *Gardner,* 144 N.Y.S. 945, 948 (1914) (n. 18, *ante).* Cf. *Re Andrejevich's Estate,* 57 N.Y.S. 945 (1945) (n. 79, *ante).*
[91] *Buell* v. *Gardner,* 144 N.Y.S. 945 (1914) (n. 16, *ante,* p. 63).
[92] *Re Boorse Trust,* 64 Pa. D. & C. 447 (1948).
[93] 21 Pa. D. & C. 2d 659 (1955).
[94] [1898] 2 Ch. 638.
[95] [1898] 2 Ch. 641.
[96] (1929) 45 T.L.R. 259.
[97] (1933) 49 T.L.R. 220.
[98] [1933] Ch. 678.

the promotion of Liberal principles in politics as he shall in his absolute discretion select, and in such shares and proportions as he shall in the like discretion think fit." Lord Tomlin held there was no trust but a power, which was valid, not void for uncertainty, so that it was unnecessary to decide whether it was charitable or not.

Socialism all over the place. What could the testator have meant by the doctrines of socialism, in which he desired children to be educated?[99] The court in Washington knew what they were, because in that state teaching the doctrines by practical demonstration of them in operation in a small way was held charitable.[1] In the Manitoba Queen's Bench it was not known what was meant by promoting and propagating the doctrines,[2] but in England[3] and United States federal revenue law[4] it is known that advancing socialism is not charitable. The Socialist Labor Party of America is not charitable,[5] nor is the Labour Party of Great Britain.[6]

V

ADVANCEMENT AND PROTECTION OF CIVIL RIGHTS: CHARITABLE EXCEPT WHEN NOT

It is not charitable in Massachusetts to promote a change in the law and constitution in order to achieve equality of political rights,[7] nor is it so under United States federal revenue law.[8] But it is charitable in Illinois,[9] California[10] (of course) and Maryland.[11] The promotion and protection of civil rights is also charitable in Ontario,[12] and, if to be done without political campaigning, is probably so everywhere.

Negroes. In *Re Lewis's Estate*[13] the testator gave his residuary property on trust:

[99] Wondered judicially in England in *Russell* v. *Jackson* (1852) 10 Hare 204 (n. 47, *ante, p.* 70).

[1] *Peth* v. *Spear,* 115 P. 164 (1911) (n. 53, *ante, p.* 71).

[2] *Re Loney Estate* (1953) 9 W.W.R. (N.S.) 366 (n. 49, *ante, p.* 70).

[3] *Re Hopkinson* [1949] 1 All E.R. 346; *Re Bushnell* [1975] 1 W.L.R. 1596 (n. 42, *ante, p.* 68).

[4] *Marshall* v. *Commissioner of Internal Revenue,* 147 F. 2d 75 (1945) (n. 25, *ante,* p. 65).

[5] *Workmen's Circle Educational Center of Springfield* \. *Board of Assessors of City of Springfield,* 51 N.E. 2d. 313 (1943) (n. 77, *ante,* p. 73); *Re Andrejevich's EstateA* 57 N.Y.S 2d 86 (1945), (n. 79, *ante, p.* 74); *Re Grossman's Estate,* 75 N.Y.S. 2d 335 (1947) (n. 80, *ante,* p. 74); *Liapis' Estate,* 88 Pa. D. & C. 303 (1954); *Estate of Carlson,* 41 A.L.R. 3d 825 (1970).

[6] *Re Hopkinson* [1949] 1 All E.R. 346.

[7] *Jackson* v. *Phillips, 96* Mass. 539 (1867) (nn. 50 and 53, *ante,* pp. 50, 51); *Bowditch* v. *Attorney General,* 28 A.L.R. 713 (1922) (nn. 57 and 59, *ante,* p. 52).

[8] See *Vanderbilt* v. *Commissioner of Internal Revenue,* 93 F. 2d 360 (1937); *Marshall* v. *Commissioner of Internal Revenue,* 147 F. 2d 75 (1945) (n. 25, *ante,* p. 45).

[9] *Garrison v. Little,* 75 111. App. 402 (1897) (n. 99, *ante,* p. 59).

[10] *Collier* v. *Lindley,* 266 P. 526 (1928) (n. 31, *ante,* p. 66), *Re Murphey's Estate,* 62 P. 2d 374 (1936) (n. 1, *ante,* p. 42).

[11] *Register of Wills for Baltimore County v. Cook,* 22 A.L.R. 3d 872 (1966) (n. 3, *ante, p.* 60).

[12] *Lewis* v. *Doerle* (1898) 25 O.A.R. 206 (n. 14, *post).*

[13] 25 A. 878 (1893). On slavery, see *Jackson* v. *Phillips,* 96 Mass. 539 (1867) (nn. 50 and 52, *ante, pp.* 50, 51).

> "To promote, aid, and protect citizens of the United States, of African descent, in the enjoyment of their civil rights, as provided by the first section of the fourteenth amendment to the constitution of the United States, and the civil rights acts of congress based thereupon, and so, also, of the fifteenth amendment thereof, and such as are publicly accorded all other classes of American citizens."

The Supreme Court of Pennsylvania held the trust valid (presumably as being charitable). It was held charitable on appeal in Ontario.[14]

Red Indians. Promoting justice (possibly by promoting legislation) for the American Indians was held charitable in California in *Collier* v. *Lindley*.[15]

Jews. Putting them in political power in Palestine was held not charitable in England in 1851,[16] but developing their national home there and safeguarding their rights generally everywhere was held charitable in California in 1936.[17]

Women. A trust to promote legislation securing women equal rights with men was held not charitable in Massachusetts in 1867 in *Jackson* v. *Phillips*.[18] That decision was flushed away in California in *Collier* v. *Lindley*,[19] a case not specifically concerned with women's rights, where Richards J., giving the judgment of the Supreme Court, said:

> "The passing of the epoch in which this decision was written has caused its language to have little relation to social problems and its conclusions touching the political and other rights of women to be widely dissented from in later decisions from other jurisdictions. The trend of modern authority has been toward the upholding of trusts which have for their object the creation of a more enlightened public opinion, with a consequent change in laws having to do with human relations and rights in a republic such as ours; and hence it is that bequests of money to trustees for the attainment of woman's suffrage and other rights in the United States have been upheld."

The wide dissent from other jurisdictions is probably *Garrison* v. *Little*.[20] The trend of authority since *Collier* v. *Lindley* was

[14] *Lewis* v. *Doerle* (1898) 25 O.A.R. 206.

[15] 266 P. 526 (1928) (n. 31, *ante,* p. 66).

[16] *Habershon* v. *Vardon,* 4 De. G. & Sm. 467 (n. 87, *ante,* p. 57).

[17] *Re Murphey's Estate,* 62 P. 2d 374 (n. 1, *ante,* p. 42). In *Re Schechter* (1963) 37 D.L.R. (2d) 433, in British Columbia, Wootton J. held charitable a trust "for the purchase of a tract or tracts of the best lands obtainable, in Palestine, the United States of America or any British Dominion, and the establishment thereon of a Jewish colony or colonies …" There does not seem to be any political aspect to that trust, and the learned judge so decided, pointing out (p. 437) that there was no intention to establish a revolution in, or conflict with the national policy of, any of the places in which the colony or colonies might be established. The report does not disclose the date of the testator's death, but states that the will declaring the trust was made in 1932. The learned judge seems to have taken the date of deciding the case as the relevant one to the question of whether the trust was charitable. Cf. *Re Bushnell* [1975] 1 W.L.R. 1596 (n. 42, *ante,* p. 68). For another case with no apparent political aspect, where a trust for the acquisition of land in Israel for the purpose of settling Jews on it was held charitable, see *Re Stone* (1970) 91 W.N. (N.S.W.) 704.

[18] 96 Mass. 539 (nn. 50 and 53, *ante,* pp. 50, 51), followed in *Bowditch* v. *Attorney General,* 28 A.L.R. 713 (1922) (nn. 57 and 59, *ante,* p. 52).

[19] 266 P. 526, 529 (1928).

[20] 75 111. App. 402 (1897) (n. 99, *ante,* p. 59).

decided is to the effect that campaigning for women's rights is not charitable[21] or is charitable.[22] The epoch when men had more political rights than women has passed in most places; but the epoch of the non-charitable nature of campaigns for new laws and constitutions is still with us nearly everywhere.

VI

WAR AND PEACE

It will be recalled that the *American Restatement*[23] restated that "a trust to promote peace by disarmament, as well as a trust to promote peace by preparedness for war, is charitable." Of course, promoting preparedness for war is charitable, whether done with the motive of promoting peace or not, for the preamble to the Act of 1601 refers to the setting out of soldiers. Peace is, I believe, for the public benefit; certainly it is for the benefit of that section of the community not, or whose friends, lovers, husbands and relations are not, killed or maimed in the war that does not take place because of the promotion of peace. Promoting it is not the subject of much authority, but it was held charitable in *Tappan* v. *Deblois*[24] and *Parkhurst* v. *Burrill*.[25] *Tappan* v. *Deblois* was concerned with a bequest to the American Peace Society, whose object was: "to illustrate the inconsistency of war with Christianity, to show its baleful influence on all the great interests of mankind, and to devise means for insuring universal and permanent peace." That was argued to be a political purpose but it was held charitable. The League of Nations was a different proposition,[26] perhaps because it was not universal and could (try to) require members to go to war in support of each other. Good relations between countries was one of the objectives of the court in holding not charitable in *Habershon* v. *Vardon*[27] an object whose execution might mar them, and possibly the same is true of *Re Killen's Will*,[28] but the court in *Re Murphey's Estate*[29] was not moved in the same way. Nevertheless, in England, a shadow is cast over the status of promoting good international relations, good race relations and good relations between citizens of different countries by *Re Strakosch.*

In *Re Strakosch*[30] there was a direction to apply part of the testator's residuary estate "to a fund for any purpose which in their opinion is designed to strengthen the bonds of unity between the Union of South Africa and the Mother Country, and which incidentally will conduce to the appeasement of racial feeling between the Dutch

[21] *Vanderbilt* v. *Commissioner of Internal Revenue,* 93 F. 2d 360 (1937).
[22] *Register of Wills for Baltimore County* v. *Cook,* 22 A.L.R. 3d 872 (1966) (n. 3, *ante,* p. 60).
[23] Trusts 2d, s. 374, comment 1.
[24] 45 Maine 122 (1858). See also *Re Harwood* [1936] Ch. 285.
[25] 117 N.E. 39 (1917) (n. 50, *ante,* p. 70).
[26] *Re Wilkinson* [1941] N.Z.L.R. 1065 (n. 89, *ante,* p. 57).
[27] (1851) 4 De G. & Sm. 467 (n. 87, *ante,* p. 57).
[28] 209 N.Y.S. 206 (1925) (nn. 83 and 84, *ante,* p. 56).
[29] 62 P. 2d 374 (1936) (nn. 1 and *2, ante,* p. 42).
[30] [1949] Ch. 529. See also *Anglo-Swedish Society* v. *Commissioners of Inland Revenue* (1931) 47 T.L.R. 295; *Buxton* v. *Public Trustee* (1962) 41 T.C. 235.

and English speaking sections of the South African community." The direction was treated as creating a trust, not a power, and was not held void on the ground that any silly thing might commend itself to the opinion of the trustees; but it was held not charitable because it was a political trust in the main, and, perhaps, in a subsidiary way one whose money could be frittered away on entertainment. The trustees wanted to apply the fund for a purpose which was charitable (for the advancement of education), but this is one of those cases in which they were stopped *because the terms of the trust could be construed as authorising them to do non-charitable things which they did not want to do.* The Court of Appeal found[31]

> "it impossible to construe this trust as one confined to educational purposes. These may be the best methods but they are certainly not the only methods. The problem of appeasing racial feeling within the community is a political problem, perhaps primarily political. One method conducive to its solution might well be to support a political party or a newspaper which had such appeasement most at heart.[32] This argument gains force in the present case from the other political object, namely, the strengthening of the bonds of unity between the Union and the Mother Country.[33] it would also we think be easy to think of arrangements for mutual hospitality which would be conducive to the purposes set out but would not be charitable.[34] We may mention that the words do not, at any rate to us, suggest the support or promotion of legislation."

While it may be impossible to find anything in the preamble to the Statute of Charitable Uses to suggest that the promotion of harmonious relations between two sovereign states is within its spirit and intendment, it is difficult to reconcile that objective's non-charitable status with the decisions and assumptions that a trust for the promotion of international peace is charitable. As for the appeasement of racial feeling, if counsel's line of thought in *Re Bushnell*[35] is followed that would be charitable in the case of provision made for it after the enactment of the Race Relations Act (in England, and of equivalent legislation in other jurisdictions) (and similar observations may be

[31] [1949] Ch. 538.

[32] Suppose, for a delightful moment, instead of those two sentences, their lordships had said: "The appeasement of racial feeling within the community is a charitable purpose. One method conducive to that appeasement might well be to support a political party or a newspaper which had such appeasement most at heart, but the trustees could not do that in this case because the general funds of a political party or newspaper are not charitable and so it would be a breach of trust." Cf. *Buell* v. *Gardner,* 144 N.Y.S. 945, 948 (1914) (nn. 16 and 18, *ante,* p. 63).

[33] In fact, that appears to be the only object, the appeasement of racial feeling being incidental.

[34] The Union of South Africa, at the time, was a Dominion, part of the British Commonwealth, a former colony, and there was still hope for governmental policies there that would conform to the rule of law; so strengthening the bonds of unity between the Union and the United Kingdom was not, and was not argued to be, contrary to public policy or even a change of political direction. In the course of a grand scheme for international and inter-cultural relations, people may be entertained to board and lodging, but that is so trivial that it seems absurd to imagine that that would have been intra vires if selected by the trustees as the main object of expenditure of the trust funds. (The endowment of an annual series of public lectures on an academic topic, for example, is not the less charitable because members, or selected members, of the audience are invited to meet the lecturer over afternoon tea, or because the lecturer's hotel bill is paid during the series.)

[35] [1975] 1 W.L.R. 1596 (n. 42, *ante, p.* 68).

made about women's rights after the Sex Discrimination Act, and so on as Parliament pleases).

VII

INTRODUCTION

The discernment of the extent to which charitable and political activities are incompatible is no easy enterprise. An examination of the authorities will show that there is variation from one jurisdiction to another, with a particular cleavage between the United States of America and the Commonwealth; and that within any given jurisdiction no coherent philosophy or policy has been propounded.

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