***The Patronage Bargain and English and Welsh Charity Law: Non Liquet or Vacuous Theory?***

By

Dr. John Tribe[[1]](#footnote-1)♣

***Abstract***

*Using ideas and relations rooted in historical patronage and patronage literature, i.e. obligation, dependency, kudos, responsibility and indebtedness (here collectively referred to as the Patronage Bargain), this article critically examines the role of charity patrons in modern English and Welsh charity law.*

*This article sets forth two novel points which provide a foundation point of understanding for future work on charity patrons. First, the charity patron is situated amongst other economies of patronage as patronage has been deployed over time in the diverse fields or art, literature and politics. It is shown that the current charity patron and client dyad continues to exhibit the ingredients of the Patronage Bargain. However, it is argued that this does not inhibit the charity patron or wider charity engagement with the patronage relationship. Indeed, patronage is thriving, particularly Royal patronage. It is critically argued that the Patronage Bargain is neither positive or negative, but a mutual bargain.*

*Secondly, inconsistency is highlighted between patrons of trusts and patrons of charitable companies. Two contrasting streams of doctrinal concept demonstrate that whereas patrons of charitable companies may be deemed shadow directors, no such treatment exists for patrons of trusts. The solution to this imbalance, it is argued, is that patrons should be treated in the same way for both charitable trusts and charitable companies. There should be no inconsistency. It is argued that this inconsistency can be remedied by examining and applying the rules of trustee de son tort to charity patrons.*

*Some tightening up of the patron relationship is required. This would assist with a general raising of standards in the charity sector at a time when charity governance is under increasing scrutiny. If patrons enjoy associated kudos from charity engagement, then they should also shoulder some of the governance responsibility when things go array. The introduction of a new Patron Personal Duty may achieve this policy objective.*

**Introduction**

Despite their enormous economic and cultural significance little has been written on patrons and patronage within the context of the English and Welsh law of charity, or indeed, in other jurisdictions.[[2]](#footnote-2) The focus of officeholder examination tends to fall on charity trustees, and their duties and powers,[[3]](#footnote-3) when charity governance is considered. Similarly, the spotlight falls on charity donors when original charity finance issues come to the fore.[[4]](#footnote-4) Patrons are largely neglected despite the fact that they play a significant, and arguably invaluable, role in a large number of English and Welsh charities.

This article examines the nature, role and any potential duties of charity patrons in England and Wales. These individuals are figure heads appointed to a titular position with no power, at least internally within the charity. However, externally they are potentially incredibly powerful in attracting funds, press attention, and such like, which benefits the given charity. Patrons’ significance in, *inter alia*, helping to facilitate donations and general charity engagement by the public cannot be underestimated. Notable charity patrons include the British Royal family, whose current members are patrons of over 3,000 organisations (see Table Two below) and who in engaging in charity patronage have followed the approach taken by their Royal forebears.[[5]](#footnote-5) Members of the aristocracy have also lent their names to charitable activity, as have celebrities, naturalists, philanthropists, cardinals and many others, including “micro-patrons”, i.e. those that patronise very small charitable activities.[[6]](#footnote-6)

The widespread use of patrons in the charitable sector makes it all the more puzzling that no in depth work has been undertaken on this officeholder. This article addresses that grave lacuna. Due to the complete dearth of writing on the subject of charity patrons this article treatment fills a lacuna in the academic field of charity law by providing a touchstone point from which future researchers will commence their work. More broadly in the wider world the article impacts charity patrons who have hitherto had no substantial material on their role and functions. This article changes our appreciation of the role and nature of the charity patron and highlights how they sit within the wider patronage literature.

From a critical perspective this article responds to the argument that patronage is not uniformly positive. Whilst on the surface the relationship of patron and beneficiary is positive, there are negative aspects, particularly in certain versions of patronage. As will be demonstrated patronage has not always been seen as positive, particularly by the client beneficiaries. The critical contribution this article makes is the argument that the *Patronage Bargain* is not positive or negative, but a bargain. It is a relationship constructed from multiple views from different standpoints embarked upon for a plethora of reasons and motivations. It is to that bargain that we now turn.

The *Patronage Bargain*

This article places charity patrons in context within wider debates on the nature of patronage. This interdisciplinary aspect of the article touches on patronage in art, literature, education and more broadly. Patronage as a relationship has attracted a significant amount of scholarship in these fields. This body of work has never been applied to the charity patronage relationship. Historical patronal dyads and patronage literature evince that numerous relationship qualities and conditions arise as a result of the patronage relationship. These patronage components include, *inter alia*, obligation, reciprocity, responsibility, dependency, kudos and indebtedness (see *Table One: The Patronage Bargain - Ingredients*). In this article these features are collectively referred to as the *Patronage Bargain*. This article seeks to place the charity patron within this body of thought and these *Patronage Bargain* relationship ingredients. It is shown that the current charity patron and client relationship, or dyad, continues to exhibit many of the ingredients of the *Patronage Bargain*. However, it is argued that this does not inhibit patron or charity engagement with the patronage relationship. Indeed, charity patronage, as well as other types of patronage, is thriving.

***Table One: The Patronage Bargain – Ingredients[[7]](#footnote-7)***

|  |  |  |
| --- | --- | --- |
| **Patron** |  | **Client** |
| Components that touch the Patron | Mutual Components for both Patron and Client | Components that touch the Client |
|  | *Reciprocity* |  |
| *Morals* | *Influence* | *Indebtedness* |
| *Responsibility* | *Ethical* | *Obligation* |
| *Dominance* | *Kudos* | *Subservience* |
| *Control* | *Ethical* | *Obedience* |
| *Hereditary Requirement* | *Dependency* | *Protection* |
| *Embellishment* | *Status* | *Wanted/Cared For* |
| *Knowledge Improvement* | *Political Alignment* | *Accomplishment* |
| *Adoration* | *Influence* | *“Dog like” loyalty* |
| *Vanity* | *Friendship* | *Devotion* |
| *Folly* | *Love* | *Moral Support* |
| *Immortality* | *Affection* | *Betrayal* |
| *Benevolence* | *Posterity* | *Loss of Manuscripts* |
| *Edification* | *Gifts* | *Resentment* |
| *Honour* | *Mutual Debts* | *Subservience* |
| *Defence* | *Companionship* | *Professional Advancement* |
| *Generosity of Heart/Purse* | *Aggrandisement* | *Funding* |
| *Happiness* | *Social Status* |  |
| *Furthering Religion* | *Inspiration* |  |
| *Compassion* | *Diligence* |  |
| *Social Justice concern* | *Perseverance* |  |
| *Discernment/Section* | *Encouragement* |  |
| *(Book) Dedication* | *Criticism* |  |
| *Public Spirit* | *Loyalty* |  |

This article also examines whether the descendants of Saint Vincent de Paul, the patron saint of all charity, should be held to account by English and Welsh charity law by virtue of their status as non-member officeholders who are not trustees. In short should charity patrons owe any legal duties? To demonstrate the unusual position of charity patrons an inconsistency is highlighted between patrons of trusts and patrons of charitable companies. Whereas patrons of the later may be deemed shadow directors,[[8]](#footnote-8) no such treatment exists for patrons of trusts. The solution to this doctrinal conceptual imbalance, it is argued, is that patrons should be treated in the same way for both charitable trusts and charitable companies. There should be no inconsistency. Part of the *Patronage Bargain* should include some form of accountability. The article suggests that one route to achieve this policy objective is using trustee de son tort liability for charity patrons.

Some tightening up of the charity patron relationship is required. This would assist with a general raising of standards in the charity sector at a time when charity governance is a pressing concern. If patrons enjoy associated kudos from charity engagement, then they should also shoulder some of the governance responsibility when things go array. The introduction of a new Patron Personal Duty may achieve these policy objectives. These areas are discussed in Part (3) below.

The Boundaries of Examination

In terms of boundary setting charity patrons are the main focus of examination in this article. This officeholder is distinct from patrons and patronage in the historical sense. Elements of ecclesiastical patronage,[[9]](#footnote-9) literary patronage,[[10]](#footnote-10) and political patronage[[11]](#footnote-11) are discussed to place charity patronage, and the *Patronage Bargain*, in context. We are not concerned with other modern forms of patronage such as neopatrimonialism,[[12]](#footnote-12) where a patron/client dyad exists but within the context of State level deployment of elements of the *Patronage Bargain*. Use of these various historical sources necessitates a contextualisation of the different versions of patronage within their historical context.

We are concerned with what has broadly been described as a vision of patronage and patrons where, “well known or illustrious individuals… lend their name and support to the organisation…”[[13]](#footnote-13) This patron officeholder has been further described as, “Usually an honorary position which confers no rights or obligations on the holder (who is often a member of the 'great and good' whose association with, and support for, the charity is intended to enhance its reputation and standing).”[[14]](#footnote-14)

As briefly noted above, there is also a distinction between charity donors and charity patrons. The former provide money to facilitate the purposes of the charity.[[15]](#footnote-15) We are dealing with non-monetary patronage,[[16]](#footnote-16) so no philanthropic behaviour[[17]](#footnote-17) need necessarily have occurred in terms of bequests, gifts or other activity other than the association of an illustrious name, or on occasion, a corporation sole title or hereditary position, in relation to the patron. Philanthropy may still have occurred as regards the specific charity and its public benefit and charitable purposes, but the patron may not be the sole source of that value.[[18]](#footnote-18) With charity law patronage time and association is the currency. This is as distinct from earlier and different kinds of patronage, e.g. literary patronage, where money exchange frequently, although not exclusively,[[19]](#footnote-19) formed the nexus of the patron and client relationship.[[20]](#footnote-20)

As noted above the geographical boundaries of this article are England and Wales although the issues under discussion are played out in many other jurisdictions[[21]](#footnote-21) and on an international scale, including some of the charities mentioned in this article.

This article is divided into three parts. First, the idea and history of patronage is examined. This section also examines what motivates individuals to seek out this office in the context of charities. The second part considers charity law and patronage. Here the paucity of English and Welsh legislation, case law and secondary sources on the subject of charity patronage is highlighted. Part three considers the division between trustees and patrons against the backdrop of trustees’ various statutory duties, shadow director liability and trustee de son tort liability.

A conclusion then follows which argues that charity patronage in the modern context is the direct descendant of earlier forms of patronage. The attendant qualities that came with earlier forms of patronage, i.e. dependency, obligation and indebtedness still exist. It is further argued that patrons of charitable companies may be held to account as shadow directors if their involvement in the charity oversteps the normal remote patron relationship and instead becomes one that is invested with all the qualities of the charity trustee. Finally, it is argued that the *Patronage Bargain* is not positive or negative, but a complex relationship made up from the summation of multiple views from different standpoints embarked upon for a plethora of reasons and motivations.

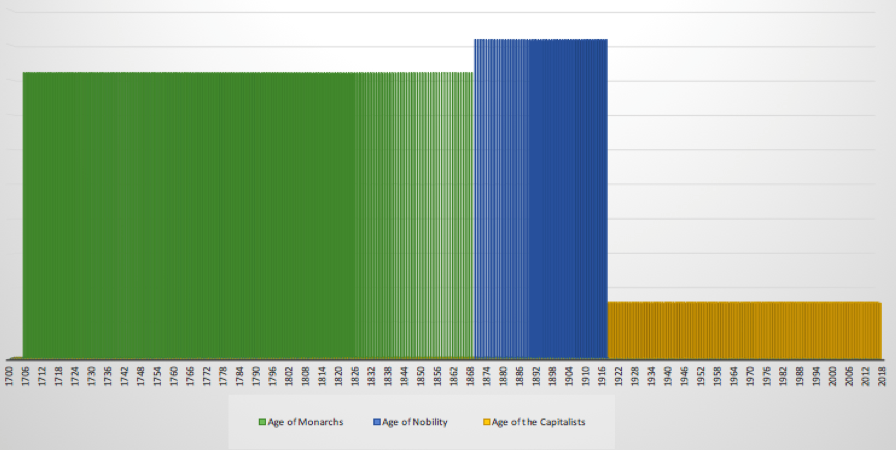
1. **Patronage: economies and motivation**
2. Economies of Patronage

Economies of patronage have existed for thousands of years,[[22]](#footnote-22) with the aristocracy, marketplace and church all fulfilling some role at various points in time. The word itself is something of a portmanteau term. Derived from the Latin *“Fautor”* patronage broadly conceived includes supportive and protective behaviour, at least in the historical sense. This activity is mirrored in what flows from patronage, i.e. an obligation to the patron and dependency and indebtedness. These sinews form the interconnected substance of the multifaceted patronage relationship which exists between the patron and the beneficiary. Here that relationship and its ingredients are referred to as the *Patronage Bargain*. At different points in time these sinews, and therefore the relationship and the *Patronage Bargain*, have meant different things to the parties who are engaged in the patronage exchange. Indeed, the language of the relationship itself has changed. Beneficiary and client are used to denote the recipient of the patronage, but both terms have very different connotations.

From the renaissance phase of 17th century literary patronage[[23]](#footnote-23) through to modern day charity patronage we see a shifting movement of patronage which says much about the location of wealth in society and the cycles of wealth movement. Where the Crown once dominated[[24]](#footnote-24) we saw a movement to wider elements of the aristocracy,[[25]](#footnote-25) including the *“Earls of Creation”,* namely, the Earls of Bathurst,[[26]](#footnote-26) Burlington, Pembroke, Leicester, and Oxford with their “pronounced sense of duty towards…posterity.”[[27]](#footnote-27) The exercise of aristocratic patronage reached its zenith in the early to mid 18th century. As Lees-Milne has noted, “Never in this country did it [patronage] amount to greater consequence than during the reigns of the first two Georges.”[[28]](#footnote-28) Of this period between 1714 and 1760 he continued noting that (aristocratic) patronage, “was a feat as skilled as that of fencing or leaping. It could be allowed to lie fallow like the mind. It could be misdirected and abused. Often it was grossly abused.”[[29]](#footnote-29) Poetry, the arts, painting, music, sculpture and architecture were its principal beneficiaries. More recently we again see the Royals dominating, at least in time currency (see Table Three), as opposed to the super-donor business people whose cash rich approach to charity engagement has brought vast fortunes to bare on charitable objectives.[[30]](#footnote-30) These individuals also have their own patron ancestors. For example without the interjection of non-aristocratic patrons such as Alderman Josiah Boydell[[31]](#footnote-31) many galleries, publishers, painters, and engravers would have gone out of business.

Broadly conceived the largest movements of value have been from the Royal and aristocratic munificence of the renaissance period through to the era of the great 19th century and early 20th century philanthropists and philanthropic foundations.[[32]](#footnote-32) One of the leading authorities on private purposes trusts (as opposed to public purpose trusts) flows from gifts that the 2nd Viscount Astor made in his will.[[33]](#footnote-33) The names of these great philanthropists, such as Andrew Carnegie,[[34]](#footnote-34) JP Morgan, Viscount Leverhulme and Sir Henry Tate, are still recognisable today as are the buildings which they funded during the 19th century and early 20th century. These erections to posterity included University buildings,[[35]](#footnote-35) libraries, museums, galleries,[[36]](#footnote-36) public parks, and music venues. The third and current phase is that of the philanthro-capitalists, such as Jeff Bezos and Bill Gates, of Amazon and Microsoft respectively.[[37]](#footnote-37) This movement also shows how the patronage bargain has shifted over time. Patron donors have in the large majority of cases morphed to a new settlement where they are now solely donors, with no attendant patron position or influence.

**Table Two: *The Ages of Patronage and Philanthropy***



Patronage has also shaped and formed different fields of endeavour. Literary patronage grew and changed form during the 18th century. A shift can be seen from wealthy aristocratic patrons, towards subscription patronage,[[38]](#footnote-38) that is ordinary members of the public patronising a specific publication that might otherwise not have been published. This not only impacted on the specific publications, i.e. they were published, but also changed the employment relationship of the beneficiary who received the benefit of the patronage. There is less dependency and subservience if income flows from a much broader group of mini-patrons. The traditional client-patron relationship was changing.

Indirect financial patronage has occurred as part of literary patronage during the 18th century where book sellers and the purchasing public in effect patronised authors.[[39]](#footnote-39) In the modern setting this sort of group patronage has occurred with museums, where donors are labelled patrons and placed on patron boards within the museum. The phenomena of crowd-funding has also added to this type of group funding of the arts. This is not patronage is the traditional sense of an individual providing patronage through associated kudos. Instead, groups of individuals come together to ensure a common object is fulfilled, be it a museum or a local social enterprise. Anecdotal evidence suggests that the tax advantages of these crowdfunded activities,[[40]](#footnote-40) in terms of social investment tax relief, are seldom taken up.[[41]](#footnote-41)

This indirect patronage is as compared with direct patronage of literature, through prize awards such as the Booker prize (UK), the Pulitzer prize (USA) or the Goncourt (France).[[42]](#footnote-42) The phenomena of indirect financial patronage is perhaps less obvious with charities, but it does occur. For example, with charities this third removed involvement may appear in the guise of donations of time to a charity for a given purpose, i.e. raffling off a masseur’s time in a charity auction, the masseur having given their time for free.

Political patronage has also been exercised by members of the nobility by virtue of their control of pocket boroughs[[43]](#footnote-43) and rotten boroughs.[[44]](#footnote-44) The 3rd Earl of Burlington, for example, was able to exercise political patronage during the mid 18th century in the boroughs he controlled by placing his choice of member of parliament in post for that constituency.[[45]](#footnote-45) In terms of the *Patronage Bargain* this version of patronage contains some of the most extreme elements of the relationship, certainly in terms of subservience and indebtedness.

As noted above, the *Patronage Bargain* has not always been seen as positive, particularly by the client beneficiaries. For example, in the field of literary patronage the relationship has been viewed pejoratively, “as an unfair external influence responsible, in whole or in part, for the success of a person whose merit is slight.”[[46]](#footnote-46) Elements of the *Patronage Bargain* have been seen as a fetter on the client. Hamstrung by financial constraints and not wishing to displease her patron, the would be author behaves sycophantically and bends her prose to placate the patron. Censorship comes from a lack of independence. In this sense the relationship breeds dependency. Prominent artistic figures have commented on the destructive effects of patronage on various creative activities. For example, William Blake took aim at Royal patrons when he stated:

*“The wretched State of the Arts in this country…Demands a firm & determinate conduct on the part of Artists to Resist the Contemptible Politicians as Louis XIV & originally set on foot by Venetian Picture traders, Music traders & Rhime traders, to the destruction of all true art as it is this Day.”*[[47]](#footnote-47)

It has however been argued that Blake’s own work benefited from the productive, diverse and inspirational patronage relationship that he had with his patron, William Hayley.[[48]](#footnote-48) Samuel Johnson was keen to distance himself, and other authors, from patrons. In relation to the Earl Bathurst and Alexander Pope patronage dyad Johnson observed that Pope’s noble friends (including Lord Bathurst) were “such as that a good man would wish to have his intimacy with them known to posterity.”[[49]](#footnote-49) Writing in 1751 the famous lexicographer adopted a more acerbic tone when he noted in relation to patronage in the *Rambler*:

*“It is dangerous for mean minds to venture themselves within the sphere of greatness. Stupidity is soon blinded by the splendour of wealth, and cowardice is easily fettered in the shackles of dependence. To solicit patronage is, at least, in the event, to set virtue to sale. None can be pleased without praise, and few can be praised without falsehood; few can be assiduous without servility, and none can be servile without corruption."*[[50]](#footnote-50)

Patronage can also lead to severe financial issues. Edward Harley, the 2nd Earl of Oxford, was driven towards insolvency during the final period of his life.[[51]](#footnote-51) This was due to both his own indolence, but also from his patronage activity. In relation to his estate it has been observed that “dependents had battened upon his generosity, that spongers had thriven on his bounty, and that dishonest stewards had profited from his casualness…”[[52]](#footnote-52) Death followed shortly thereafter on the 16th June 1741 whereupon it was noted that, “Jaundice and death speedily put an end to that life, that had been the support cherisher and comfort of many, many others, who are left to lament…”[[53]](#footnote-53) Those many others included Pope, Jonathan Swift and Matthew Prior.

The *Patronage Bargain* is constructed from multiple views from different standpoints. If the relationship does turn sour an irenic approach will be needed to ensure that the positive elements of the *Patronage Bargain* continue. In the context of charity, the charity’s own public purposes can then prosper. The patronage relationship highlights numerous questions about the nature of patronage and its place in society. Does it do good? Does it facilitate nepotism? Does it harm the very charitable objects it is seeking to benefit? In the context of this article we can question if the relationship ultimately benefits the charity and its public purposes.

B. Motivation - why become a patron?

Why do individuals engage in patronage and commit themselves to the ingredients of the *Patronage Bargain*? In short, what are patrons’ motivations? There are myriad reasons why individuals may wish to engage with a charitable organisation and encumber themselves with the multifaceted relationship that is the *Patronage Bargain*. Indeed, many of the qualities that make up the *Patronage Bargain* are in themselves motivating factors in causing patrons to engage with charity.

Some of these reasons mirror donor motivation. Over time these motivations have included, furthering religion, compassion, vanity, social status, fashion, disinheriting spite (as well as more general family avoidance), ostentation, concerns for social justice, love of power, and altruism, egoism, and superstition.[[54]](#footnote-54) Whatever the donor motivation the effect of their giving was generally to placate a human need[[55]](#footnote-55) and in so doing go some way to reflect the Greek roots of the word philanthropy, namely, love of mankind.[[56]](#footnote-56) Patronage is part of the same narrative. The patron seems to be giving something, usually time and historically money, back to society for public benefit. Here we see cultural capital coming into play. Patrons convey and garner cultural capital through acts of patronage. Reciprocity within the context of the *Patronage Bargain* arises within the dyad.

As noted in the introduction patrons are not donors however. Different considerations are at play in terms of motivation. Historically a willingness to engage as a patron has included a desire to appear altruistic and morally upstanding.[[57]](#footnote-57) There is no doubt that the associated kudos, or cultural capital, that came as a corollary of charitable activity was, and perhaps still is, attractive for some individuals. Some have patronage foisted upon them due to hereditary obligation. Here motivations are specific to individual patrons and relate to their accidental position in society, e.g. the monarch or nobility. Here part of the incumbent’s hereditary duty to the country and wider function as hereditary title holders, including corporation soles which include, *inter alia*, the Monarch, Dukedoms, Marquisates, and Earldoms, is to engage in charitable activity. In this hereditary manner patronage is used to perpetuate power deployment and control in what remains the last vestiges of the feudal system. Without this patronage artists’ “genius withered when the aristocratic streams went dry.”[[58]](#footnote-58) On his charitable activity the 1st Earl Bathurst observed, “My charitable vanity or folly supplies bread to many industrious labourers.”[[59]](#footnote-59) These hereditary links are not reserved to the monarchy and wider aristocracy. Familial or community ties may exist which a non-royal patron may wish to keep up in her own lifetime. She may also hope her descendants, or the local community, continue the association with the charity through subsequent generations.[[60]](#footnote-60)

Another motivation for patrons may be a willingness to do good in non-monetary terms. This may mean that the patron lends their name and reputation to the charity. It is the name of the patron that has the cache and attraction, not monetary value, which might already be plentiful. Or the name might be required to help bolster respectability and a sense of seriousness for the charity.[[61]](#footnote-61) This extension of associated kudos from an influential society figure, i.e. lending a name by way of support instead of monetary value, could have mutually beneficial outcomes for the charity and the patron. If for the charity these include a better execution of their public benefit aims then more power to their elbow.

Using celebrity status to facilitate charitable aims has a double edged aspect.[[62]](#footnote-62) The charity will obviously benefit, but so will the patron, perhaps with a flattering dedication in a forthcoming publication.[[63]](#footnote-63) There is no doubt that the office of patron can potentially obtain increased and potentially beneficial media exposure, or more generally, this type of engagement may well help facilitate a patron’s given charitable interests and causes. The charity in turn will gain advantages through the conferring of credibility.

Other motivations may include a willingness by the patron to use their contacts in a quasi-exploitative sense to assist charitable activity. The *Patronage Bargain* would stipulate that there is an expectation on the part of the patron to use their connections to benefit the client charity. Or alternatively the willingness to engage as a patron may be motivated by a desire to assist a charity in its efforts to affect change to government policy leading ultimately to legal change. This policy change motivation could involve close synergies between the interests of the patron and the charity. In this was the *Patronage Bargain* bonds of indebtedness are narrowed.

A patron’s own interests may lead them to patronise a specific area of scholarship or intellectual activity that has not previously been either supported or seen as a distinct area of scholarship. It was this type of scholastic interest that lead Henry Herbert, the 9th Earl of Pembroke, to express his interest in archaeology by being the first patron of the Egyptian Society.[[64]](#footnote-64) Pembroke also went on to co-found the Antiquarians’ Club in London in 1723.[[65]](#footnote-65) His patronage activities commenced early in life. As a nineteen year old undergraduate he contributed £20 towards the building of Peckwater Quad in Christ Church.[[66]](#footnote-66) Kindness also motivated the Earl. He “gratuitously undertook the whole cost of the publication [of Palmer’s *History of Printing*] on hearing of the sudden death of the author who was unknown to him.”[[67]](#footnote-67)

Modern charity patronage may cause benefit to the charity as literary patronage caused benefit for writers over time.[[68]](#footnote-68) The cultural exposure which may be attendant with a noteworthy person must go some way to rubbing off on the charity, particularly a charity’s ability to raise funds. Indeed, this seems to be the *raison d’etre* of some forms of patronage. However, this allure is not all encompassing as a number of charities do not have patrons.[[69]](#footnote-69)

Patronage could be viewed as the lesser of two evils by some individuals, or at least by their professional advisors. In the realm of literary patronage for someone like William Blake patronage equated to creative regulation and this may be true for most artists and authors who have engaged with the *Patronage Bargain*. This ‘patronal dilemma’ highlights the fact that an artist needs patronage, but realises patronage restricts creative expression.[[70]](#footnote-70) In the modern context of charities where individuals are seeking to limit the exposure of office individuals may instead become charity patrons instead of taking on the demanding role of a trustee. This route might be perceived as less onerous than taking office as a trustee with all the duties that entails.[[71]](#footnote-71) In this regard different titles may be used, such as President of the charity. This office may still carry vestiges of the trustee role but have the effect of moving the incumbent closer to the role of a patron.

A personal connection to a specific charity may cause a patron to become involved.[[72]](#footnote-72) This could be because of a gender specific form of patronage.[[73]](#footnote-73) Or it could be that hereditary position motivates the patron. Royal patrons are much in demand.[[74]](#footnote-74) Nearly all of the senior members of the royal family have positions as Royal patrons. This activity is part and parcel of their daily role and activity and has almost taken the form of hereditary altruism in terms of the time and effort donated to this charitable work. Such close contact with charities can be problematic for some patrons, particularly when the relationship is more in the nature of general interest in charities of a specific ilk and the relationship has qualities that are closer to that of *parens patriae*,[[75]](#footnote-75) than a close trustee relationship or even a normal patron who has few charities with which to concern themselves. For example, when *Save the Children* was involved in a sexual misconduct allegations,[[76]](#footnote-76) the charity’s patron, the Princess Royal, HRH Princess Anne,[[77]](#footnote-77) could potentially have been tarnished with the charity’s own reputational and governance problems. This could be referred to as reducing cultural capital, namely, the very opposite reason why some patrons engage with a charity in the first instance. Careful management of the patron’s own reputation and a potential withdrawal from the patronage bargain might be appropriate in such circumstances. However, reputational traffic is not one way. If a patron disgraces themselves in some way,[[78]](#footnote-78) or goes through legal procedures that could reflect on the charity,[[79]](#footnote-79) then the charity also may need to consider the *Patronage Bargain* and how the relationship should continue. In the Royal context the furore surrounding HRH the Duke of York, Prince Andrew, has caused a number of charities to question their relationship with him. This includes charities such as the Outward Bound Trust, of which he is a patron.[[80]](#footnote-80) There are also reports that funding is being withdrawn from charities of which he is a patron. His patronage turned toxic with some donors suggesting that they will continue support the given charity if he is replaced as patron. It has been reported that a British Telecom (BT) spokesperson has said, “In light of recent developments we are reviewing our relationship with the organisation [iDEA] and hope that we might be able to work with them, in the event of a change in their patronage.”[[81]](#footnote-81) There could no more damming indicator of when the *Patronage Bargain* is broken than when its remnants feature only negative and damaging qualities. When the Duke of Edinburgh withdrew from public life, under different circumstances, his patronages passed to other members of the Royal family. For example, “the Duchess of Cambridge and the Countess of Wessex were among the royals to take on his former patronages.”[[82]](#footnote-82)

Superabundance and over-commitment in terms of patron positions can also be an issue for Royal patrons.[[83]](#footnote-83) Being a patron of over 600 charities must be discombobulating for Her Majesty the Queen, as well as her staff and professional advisors.[[84]](#footnote-84) As the Queen’s involvement demonstrates patronage is forthcoming from both sexes,[[85]](#footnote-85) although her office symbolizes an institution that has engaged in patronage, mainly for political reasons, for approximately nine hundred years. In the twenty-first century patronage, if not entirely gender neutral, does not feature gender as playing as significant a role, or as significant as it did in previous centuries. Patronage has been, traditionally, a vehicle for those (men) in power to exercise, cultivate, and entrench, their power.

The Queen’s heir, His Royal Highness, Prince Charles, the Prince of Wales, is patron of over 420 charities.[[86]](#footnote-86) Loosing track of activity with such vast commitments is a real possibility. Umbrella like management structures are required to administer such vast patronage and general charitable commitments. The *Prince’s Trust* and *The Prince’s Charitable Fund* achieve this objective and have along the way amassed some colossal sums for charitable purposes. This includes raising approximately £140m a year for good causes and adding value to the UK economy in the last ten years of approximately £1.4 billion.[[87]](#footnote-87) This value is reflected in the work which has been undertaken at the various charities that have benefited from funding in the areas of youth opportunity, environmental sustainability, education and the arts.

**Table Three – Royal Patrons[[88]](#footnote-88)**

|  |  |  |
| --- | --- | --- |
| **Senior Members of the Royal Family** | **No’ of Charities Patronised** | **Charities**  **(examples)** |
| Her Majesty The Queen | Over 600 | Aberdeen Association of Social Service, Cancer Research UK, Dogs Trust, Hospital of Sir John Hawkins, Knight, in Chatham, Nacro, National Churches Trust, National Council for Voluntary Organisations, Seashell Trust, The Fire Fighters’ Charity, The Gurney Fund, The Printing Charity, The Norfolk and Norwich Association for the Blind, The Royal School for the Blind, Liverpool, The Stroke Association. |
| Prince Phillip | Over 300 | Buxton Conservation Trust, Bowles Rocks Trust Ltd, Cumbria Wildlife Trust, Edwina Mountbatten & Leonora Children's Foundation, Friendly Societies Convalescent Home, Game and Wildlife Conservation Trust, London School of Hygiene and Tropical Medicine, Manchester and Salford Students Rag Charities Appeal, Sutton's Hospital in Charterhouse. |
| Prince Charles | Over 420 | The Prince’s Trust, The Prince’s Charitable Fund, Age UK, Caring for God's Acre, Corporation of the Hull Trinity House, Hospice at Home West Cumbria, Penny Brohn UK, Longfield, Send a Cow, The Bath Preservation Trust, St Luke's Hospice, The War Widows Association of Great Britain, The Weldmar Hospicecare Trust. |
| Duchess of Cornwall[[89]](#footnote-89) | Over 90 | Wiltshire Air Ambulance Service, Age UK, Age, Cymru, Animal Care Trust, Barnardo’s, Battersea Dogs and Cats Home, British Red Cross, Gurkha Welfare Trust, Coram Beanstalk, Community First, Helen & Douglas House, Floral Angels, St’John’s Foundation, St John's Smith Square Charitable Trust, The London Taxi Drivers' Charity for Children. |
| Princess Anne | Over 60 | Save the Children UK, Benenden School, The Canal Museum Trust, Catch22, Dorothy House Hospice Care, Liverpool School of Tropical Medicine, Motor Neurone Disease Association, Racing Welfare, Railway Convalescent Homes, RedR UK, Riders for Health, Riding for the Disabled Association. |
| Prince Andrew | Over 20[[90]](#footnote-90) | London Metropolitan University, Alderney Maritime Trust, Aycliffe Centre for Young People, Broughton House Home for Ex-Service Personnel, Children North East, Police Treatment Centres, City Gateway, Royal Free Charity, Studio Schools Trust, |

Close bonds of friendship, affection and even love could emanate from the patron and client relationship. These close personal ties highlight how the patronage relationship is not a one-way avenue with the positive elements flowing from the patron down to the client. The relationship operates in both ways as the qualities within the *Patronage Bargain* demonstrate. This two-way quality is illustrated by the gifts that Alexander Pope left in his will for his patron Allen, the 1st Earl Bathurst. As Lees-Milne notes when Pope died in 1744 he, “bequeathed as a small gesture of gratitude to his protector and patron three canvasses in grisaille by Sir Godfrey Kneller of the statues of the Farnese Hercules, the Venus de Medici, and Apollo.”[[91]](#footnote-91) In a similar way the poet Matthew Prior left the Earl of Oxford and his countess a portrait of Queen Elizabeth.[[92]](#footnote-92) The *Patronage Bargain* is a multifaceted, amorphous and changing bargain which even death does not terminate.

1. Who are the recipients of patronage?

The tensions that exist within the *Patronage Bargain* must be endured for some outcome. Over time the language of patronage, and the deployment of patronage generally, could cause befuddlement in terms of ultimate beneficiaries if not handled with care. This is because over time the objects of patronage, to use a term from express trusts, have changed and morphed. Specific individuals can benefit from patronage, as we have seen from the forgoing historical exposition.[[93]](#footnote-93). The charity itself which has benefited from money raised from the association can be deemed to be the beneficiary of the *Patronage Bargain*. In the context of charities for some form of public benefit must be extant. The patron is helping a public purpose trust achieve its charitable aims and in turn public benefit.

If the *Patronage Bargain* is disrupted and patronage is withdrawn, whether that is because of civil war and the abolition of the monarchy, liquidity issues with the patron, change in taste, etc, this could have profound consequences for the recipient of patronage. After the removal of patronage artists could show, “the familiar marks of despair, mournful, drunken or reckless and come to no good end.”[[94]](#footnote-94) Legal consequences might also ensue leading to the eventual bankruptcy of the client.[[95]](#footnote-95)

1. **Charity Law and Patronage**

How does the law manage the *Patronage Bargain*?

Charity patrons are individuals who are neither members of the charity or encumbered with the responsibilities that charity trustees have, but whom have nevertheless become engaged in charitable activity[[96]](#footnote-96) for the reasons examined above.

There is little guidance in the modern books of authority on the role of patrons.[[97]](#footnote-97) What does exist tends to differentiate patrons from trustees[[98]](#footnote-98) and deal with patrons in a cursory manner, at best. For example, whilst we are informed that they may receive notice of meetings,[[99]](#footnote-99) seldom little else is forthcoming in terms of guidance. In terms of formalities a charity’s constitutional documents will stipulate if a patron forms part of that given charity. On occasion the judiciary have also referenced charity patrons.[[100]](#footnote-100) Annual reports from charities often contain a message from the charity’s patron(s).[[101]](#footnote-101) But all of this is noteworthy for its brevity.

There is also relatively scant historical guidance and discussion of the role of patrons during charity law’s separate and distinct historical development.[[102]](#footnote-102) Where it does exist it is cursory. For example, the sixth edition of *Tudor on Charities* notes that, “Patronage is the right of nominating the objects of a charity.”[[103]](#footnote-103) The authors then go on to briefly differentiate patronage from visitation, a subject which is taken up below. In this context patronage is closer to ecclesiastical patronage than modern charity patronage, the former also being alienable.[[104]](#footnote-104) This takes us to some terminological issues with the terms “founder” and “visitor” and how these terms of art link to patrons.

In the 19th century, and before, the term patronage was used in the context of charities to denote the person who founded the charity and set its aims.[[105]](#footnote-105) In this way founder and patron appear to have been synonymous. If the term founder is used then this can bring certain ongoing obligations and commitments that the charity must subsequently follow, and which are not directly applicable to the founder in the personal sense because they have died. Such an obligation could be celebrating founder’s day.[[106]](#footnote-106) Other terms of art are also used in this educational context which have close synergies with the office of patron. The most obvious example of this is the office of Visitor of, *inter alia*, a University[[107]](#footnote-107) or Inn of Court.[[108]](#footnote-108) This officeholder continues to uphold the original founder’s wishes in relation to a given educational institution, for example. Visitors are normally high profile public figures, a quality which makes their relationship seem close to the role of patron. Visitors over time have included the British monarch, the Archbishop of Canterbury, the Lord Chancellor, the Lord President of the Council, and the Lord Chief Justice.

Visitors do have are particular and idiosyncratic powers and duties, a feature which bridges the gap between the trustee, who owes duties within a broad set of fiduciary duties, and the patron, who does not currently owe any duties (save perhaps as a shadow director of a charitable company – see below). The visitor’s duties can include determining questions of construction in relation to the statutes of the corporation and appointing and removing members of the corporation.[[109]](#footnote-109) Most importantly though visitors must regulate the management of the corporation’s property.[[110]](#footnote-110) Their position is no sinecure. Visitors have serious obligations to fulfil. These are analogous to some of the ingredients of the *Patronage Bargain*, and certainly give patron officeholders the appearance of lacking accountability.

In terms of the distribution of the benefits of a charity these founding individuals mentioned above, or “nominating” patrons, had the power to nominate who would benefit from the original foundation. So the founder of an almshouse could nominate the almspeople.[[111]](#footnote-111) The right of the founder to nominate the objects of charity could be forfeited[[112]](#footnote-112) as well as assigned[[113]](#footnote-113) and alienated.[[114]](#footnote-114) The close link between an original donor to a philanthropic activity and subsequent patronage of those activities has given rise to definitional ambiguity but show that a given individual, e.g. Thomas Holloway, can be both a donor and a patron.[[115]](#footnote-115) Holloway, we are told, “wanted to leave [his] mark as a reminder to later generations…he was…a philanthropist on a colossal scale.”[[116]](#footnote-116) Crook has suggested that Holloway’s motivations as a donor were, “the expression of a remarkable ego. But it was an ego with little sense of direction.”[[117]](#footnote-117)

Overall, charity law offers little in terms of regulation of the patron, particularly in the modern context. That is perhaps up and until the patron descends into matters of management and influence. It is to that potential involvement that we can now turn.

1. **Trustees v. Patrons: Function, Substance and Specific Duty**

Do we need patron-specific legislation to manage the *Patronage Bargain* relationship? Whilst trustees and patrons are distinct in law both officeholders are occasionally grouped together.[[118]](#footnote-118) But as a matter of law trustees alone owe fiduciary duties to the charitable trust.[[119]](#footnote-119) In the context of charitable companies it is the charity’s directors who owe duties to the company.[[120]](#footnote-120) This difference in function and status of the trustee and patron gives rise to questions regarding how close and intricately linked the patronage relationship is to the running of the charity. Should patrons be held to the same standards as trustees, particularly if they are closely involved in the day to day running of the charity? Or would this put patrons off from undertaking any form of patronage office. This will in turn damage “their” specific charity and charities more generally.

The Charity Commission have differentiated between trustees and patrons. In *CC21* under the heading 'Registering as a Charity', the Charity Commission states:

*''Trustees need to be able and willing to give time to the efficient administration of the charity and the fulfilment of its trusts. We recommend that they be selected on the basis of their relevant experience and skills and need to be prepared to take an active part in the running of the charity. They ought not to be appointed for their status or position in the community alone; this is the function of patrons.''*[[121]](#footnote-121)

This functional definition of patrons raises a number of important points. First, it can be inferred from the Charity Commission’s statement that patrons are not imbued with the same duties as trustees. Patrons by contrast seem to be “appointed for their status or position in the community alone.”[[122]](#footnote-122) This eminence or ranking element to the definition of a patron by the Charity Commission indicates that the sole function of a patron is to operate as a wallflower or a mere useful ornament. No substantial management, ownership or other duties appear to be extant for the patron. Secondly, if it is the “function of patrons”[[123]](#footnote-123) to be people of “status…[and] position”[[124]](#footnote-124) something must flow from those qualities. In other words, what is it exactly that the patron brings to the charity by virtue of having status and position. Is there some legal duty or do these qualities help only with fund raising and kudos? The answer appears to be that there are no legal duties that are owed by a patron to a charity other than those that are recorded in the charity’s constitution.

Shadow director, trustee *de son tort* and trustees’ duties liability?

As a non-duty owing and relatively remote “outsider” the patron does exhibit partial similarities with “Presidents” or other figure heads of early joint stock companies.[[125]](#footnote-125) There is also a partial analogy with non-executive and executive board directors of profit wealth maximising companies. Patrons, with their relatively infrequent contact with the charity might be viewed like the non-executive director who dips in and out of the company. However, with both “Presidents” and non-executive directors’ duties are most certainly owed to the company by both species of officeholder. The same is true with any attempted analogy with *de facto*[[126]](#footnote-126) and *de jure[[127]](#footnote-127)* directors of companies, including charitable companies. The directors, including those appointed to charitable company boards, owe a raft of duties to the company including both fiduciary and negligence based duties.[[128]](#footnote-128)

On occasion charities fail and pass into formal insolvency procedures.[[129]](#footnote-129) In circumstances of insolvency trustees can be held to account, albeit inconsistently,[[130]](#footnote-130) but what of charity patrons? Currently there is no redress for those harmed by a charity’s insolvency. It is readily obvious why creditors of charities might be interested in any claims that could be brought against wealthy patrons. Is there scope for making patrons liable in some way, particularly when the *Patronage Bargain* composite elements are closely examined?

There are three areas where charity patrons may face legal consequences depending on their actions (or inaction) in relation to a charity. One relates to charitable companies of which they are a patron, namely, shadow director liability. The second relates to potential trustee *de son tort* liability for both charitable trusts and charitable companies. The third and final area relates to the general extension of trustees duties to patrons. These areas are now considered.

1. Shadow Director liability?[[131]](#footnote-131)

Much depends on the extent to which the patron is engaged with the day to day management of the company, as opposed to supplying a mere notional figure head or operating in some sort of affiliated status role who seldom engages with the charitable company. As the *Kids’ Company* saga demonstrates it is possible for a director of a charitable company, as with profit wealth maximising companies, to be held to have breached their duties because they are held to be a shadow director.[[132]](#footnote-132) A shadow director is a person with whose advice the executive board of the company is accustomed to act.[[133]](#footnote-133) Real influence, including mere advice, are sufficient to satisfy the test for shadow director culpability.[[134]](#footnote-134) There is little by way of reported case law on shadow directors of charity companies, although the forthcoming *Kids’ Company* director disqualification hearing[[135]](#footnote-135) may yield some guidance for trustees and any other officeholders, i.e. patrons, or other individuals involved in charities.[[136]](#footnote-136)

Patrons need to exercise caution when engaging with charitable companies to ensure that they do not act in a manner that oversteps the boundary and give advice to the board of directors. To do so would open up the possibility of being deemed a shadow director of an insolvent charitable companies, with all the legal responsibility that entails, including potential personal financial exposure.

1. Trustee *de son tort* liability?[[137]](#footnote-137)

Paradoxically, the shadow director provisions that have just been examined do not exist in the context of a charitable trust which is operated as a trust. This could mean that a patron of a trust is less vulnerable than their charitable company equivalent. However, if the patron of a charitable trust (or indeed a charitable company) is exhibiting the kind of behaviour that could lead to shadow director liability, then they will also be potentially liable as a trustee *de son tort.*

So, if a patron were to interfere with the running of a charity to an extent that would give rise to liability as a *de facto* director were it incorporated, it is hard to see how she would not be a trustee *de son tort*, and so held to owe very similar duties, even if it were not incorporated.

1. Trustees’ duties extended[[138]](#footnote-138)

The apparent lack of legal duties for the charity patron can be starkly contrasted with the position of the trustee. From the early 18th century these duties have been strict[[139]](#footnote-139) and remain relatively onerous as they are mandatory. This is befitting for a raft of provisions that protect the beneficial interests or public benefit when legal title is controlled by the trustee.

The modern express trust trustee owes a number of legal duties that must be carried out. The trustee owes a duty of care.[[140]](#footnote-140) The trustee must exercise care and skill as is reasonable in the circumstances having in mind any special knowledge or experience he or she has.[[141]](#footnote-141) If she is a professional trustee she must exhibit the special knowledge that is reasonable to expect of a person acting in that profession.[[142]](#footnote-142) This duty of care is now codified by the duty has a long common law history.[[143]](#footnote-143) The trustee must also act in the charity’s best interests and manage the charity’s resources in a responsible manner.

A trustee also has powers and discretions, as compared to duties.[[144]](#footnote-144) For example, a trustee has a general power of investment[[145]](#footnote-145) and can take advice on that investment.[[146]](#footnote-146) A trustee may also acquire freehold or leasehold land in the United Kingdom as an investment, for occupation by a beneficiary, or for any other reason.[[147]](#footnote-147)

In the context of charities trustees have some further considerations to mull on.[[148]](#footnote-148) For example, the Charity Commission can suspend a trustee if they are satisfied that there has been misconduct or mismanagement.[[149]](#footnote-149)

Finally, a trustee’s duties of care, as set out in the Trustee Act 2000 or under common law, can be excluded by the trust’s express terms. If a rule were introduced imposing some kind of duty of care on a patron patron’s lawyers might always insist on exclusion clauses.

Trustees, Patrons, and *Patronage Bargain* cross-over

The *Patronage Bargain* contains a number of ingredients that replicate and cross-over with the duties that trustees owe. This gives rise to a number of questions for patrons. For example, if there is cross-over between the *Patronage Bargain* and trustees’ duties

should this be formalised so that patrons owe duties? If the answer is no, what is the justification for refusing to formalise this existing relationship? Put another way, why should patrons continue to escape liability when their relationship with the charitable trust includes elements of a trustee like nature.

Formalising aspects of *Patronage Bargain* would achieve this patron accountability objective. The most relevant trustee duty is the duty of care. Why should this duty not be properly extended to the patron as an officeholder? If they are prepared to take the kudos that forms part of the charity bargain then why can’t they also expect some responsibility when things go wrong at the charity. Should the trustees be the only officeholders who are held to account pursuant to their legal duties when another officeholder exhibits patterns of behaviour that might reasonably be said to bring them within the purview of being held to act responsibly. Such behaviour would include controlling and directing the charity in the same manner as a trustee exercising their legal duties.

An Increase in Patron Professionalism?

If trustees’ duties, or something close to them in terms of a duty of care, are imposed on patrons as an extension and recognition of qualities within the *Patronage Bargain* then this would mark an upshift in that which is expected of patrons. Patrons would no longer be amateurs. They would start to inhabit a professional environment with the concomitant exposure which that entails. This of course may have a discouraging, although not necessarily detrimental, effect by putting some individuals off from becoming patrons.

An analogous increase in professionalism occurred with the main parallel fiduciary officeholder, namely, the company director. Directors owed both fiduciary[[150]](#footnote-150) and common law duties of care and skill up to the consolidating Companies Act 2006. In their early guise company director officeholders owed common law negligence-based duties that were low and subjective.[[151]](#footnote-151) In the mid to late 19th century directors were encouraged to participate in the management of the corporate form. It was a new legal structure promulgated to boost investment in canals, railways and other large-scale infrastructure projects.[[152]](#footnote-152) If duties were too onerous directors would be put off from participation. This would in turn damage the investment vehicle which the legislature had enacted for general economic growth.

However, as time elapsed and the 20th century progressed the judiciary sought to increase the standards of behaviour of company directors through the imposition of ever more stringent common law negligence-based duties. Greater professionalism was required of company directors. Too many high profile scandals and catastrophic collapses had occurred. Sharp practice in takeovers and employee relations tainted the corporate world and those who managed the corporations that constituted its main engine.

As time has progressed the director has moved from a gentleman amateur towards a cadre of professional managers. Objective tests have been added to what was hitherto solely a subjective test in terms of competence. This is exemplified by *Dorchester Finance v. Stebbing*[[153]](#footnote-153) where we see the introduction by Foster, J of a part objective and part subjective test.[[154]](#footnote-154) This new standard of care reflected the ever changing world of business and the increased sophistication of the business environment.

If patrons do attract legal responsibilities this could raise similar tensions to those that existed within the realm of directors in the 19th century. As noted above, duties were low and subjective to encourage engagement. If we set onerous duties for patrons this may have consequences. Instead of attracting patrons, we may put them off. The *Patronage Bargain* would be acquiring a new and onerous quality with the imposition of patron duties. It would be less a bargain than a legal relationship. But who would object if charity governance was improved by this innovation? Is it desirable that people who do not want to live up to the required standards should be placated? The answer must surely be no.

Specific Patron Powers – undermining issues?

One major impediment to the extension of trustees duties to patrons is that, generally speaking, patrons have no powers to exercise to which a duty can then attach. A trustee’s duties of care relates to the exercise of her powers as a trustee. For instance, a trustee cannot be sued for breach of duty of care and skill for failing to properly invest trust assets, where there is a bare trust.[[155]](#footnote-155) Likewise, company directors historically were treated simply as trustees, and even today their duties relate to the powers they have over the company. It’s not enough to say a patron owes a duty of care and skill, without explaining to what that duty of care and skill relates—such a duty cannot be freestanding. Where the patron, perhaps like a Visitor, is given powers under the terms of the trust, it makes sense to say that a duty of care and skill is owed in respect of how that power is exercised. In the absence of any such powers, it’s hard to see what the content of such a duty could be.

A new Patron Personal Conduct Duty?

An argument might be made that a patron, by identifying herself with a charity, should owe duties in respect of her personal conduct. So a celebrity who becomes a patron of a charity, incurs liability to the charity if she behaves negatively in her personal life, and this becomes public knowledge and reflects badly on the charity. This duty is not analogous to that owed by a trustee or company director. It would be a specific patron personal conduct duty owed in charity law to the charity from the patron.

**Conclusion**

The *Patronage Bargain* encapsulates the multifaceted nature of the patron and client dyad. This article has demonstrated that vestiges of the early modern Royal and aristocratic patron and client dyads have survived in the modern context of charity and patron. This has been most clearly demonstrated with the Royal patrons that have been examined. The *Patronage Bargain* is not positive or negative. It is a multifaceted relationship constructed from multiple views from different standpoints embarked upon for a plethora of reasons and motivations.

This article has examined the extent to which a patron should or should not owe a duty of care to the charity of which they are a patron. We have seen that they may be shadow directors of charitable companies if the *de jure* directors are accustomed to act on the patron’s instructions. We have also suggested that charitable trust and charitable company patrons could be liable as trustees *de son tort* for similar behaviour. This means there may be some liability for patrons. The position is not the safe harbour where patrons can bask in kudos in a mutually beneficial relationship that appears to have no negative consequences for the patron. Patrons may be called to account if something goes dreadfully wrong at the charity and they are deemed to have descended into the arena and gone beyond a mere titular role.

If trustees’ duties are not extended to non-trustee patrons then the parameters of patrons’ role, and any legal accountability they do have, must be clearly set. What duties and powers, if any, do they owe? Patrons can no longer languish as minor footnotes or obscure passages in the murky and abstruse appendices of practitioners’ texts. Neither can they continue to exist solely as glamorous and distant letterhead figureheads with no actual substance in terms of charity governance.

We can no longer countenance a lack of proper understanding of their legal position and potential responsibilities, as shadow directors or otherwise. This obscurity must be vanquished and Saint Vincent de Paul’s successors must be brought into the light.

1. ♣ Senior Lecturer in Law, School of Law and Social Justice, University of Liverpool and Academic Associate, Exchange Chambers. Email: [j.tribe@liverpool.ac.uk](mailto:j.tribe@liverpool.ac.uk). I would like to thank Dr. Karen Atkinson, Dr. Stephen Baister, Ms. Susan Morgan, Mr. Julian Smith, Dr. Mark Crosby, Professor Pádraig McAuliffe, Dr. John Picton, Dr. Jen Sigafoos, Professor Warren Barr and Professor Debra Morris for their helpful and constructive feedback on earlier drafts of this article. This article is better for all their efforts. Any errors or omissions are the sole responsibility of the author. [↑](#footnote-ref-1)
2. For broader discussion see: Tamburrini, G. *Non-profit organizations and patrons' protection: a comparative legal and economic analysis of civil law and common law systems* (2009) E.J.C.L.,13(3). [↑](#footnote-ref-2)
3. On which see: Newey, G. *Constraints on the exercise of trustees’ powers*, in. Turner, PG. *Equity and Administration*. Cambridge University Press, Cambridge, 2016, pp.36-64. [↑](#footnote-ref-3)
4. On donor intention see: Picton, J. *Donor Intention and Dialectic Legal Policy Frames*. In H. Matthew (Ed.), *Research Handbook on Not-For-Profit Law* (pp. 189-209). Cheltenham: Edward Elgar Publishing, 2018. See also: Picton, J. *Supreme Court legacy ruling: leaving a gift to charity can be egoistic as well as altruistic.* The Conversation. March 15, 2017. [↑](#footnote-ref-4)
5. Jones, GS. *History of the Law of Charity, 1532-1827*. Cambridge University Press, Cambridge, 1969, p.90 (hereafter *Jones Charity*) who noted in relation to Charles II, “…Charles II’s known interest in the welfare of social and education charities, such as Christs’ and Chelsea Hospitals…Stuart kings were not unconscious of the political importance of social patronage, and realised full well that the Crown’s reputation as *pater patriae* could not fail to be enhanced by acts of charity with the money of others.” [↑](#footnote-ref-5)
6. Term coined by the author. See the Patreon website which facilitates micro-patronage for musicians: <https://www.patreon.com/> [↑](#footnote-ref-6)
7. The table is not exhaustive. There may well be more ingredients that make up the *Patronage Bargain*. Qualitative empirical work would help to hone definitions and shed light on the nature of the multi-faceted and complex relationship. [↑](#footnote-ref-7)
8. See the discussion below on shadow directors and more broadly in: Tribe, J. P. (2019). *Charity Insolvency*. In M. Mullen (Ed.), *Tolley's Insolvency Law* (Vol. 125, pp. C35-1-C35-22). 2019, London: LexisNexis. Hereafter: *Tribe Insolvency.* [↑](#footnote-ref-8)
9. Jowitt defines a patron as: “Patron: The holder of the legal right to nominate a person for appointment to an ecclesiastical office.” *Jowitt’s Dictionary of English Law*. Sweet & Maxwell Ltd, London, 4th Ed. 2015. On this species of patronage see: Patronage (Benefices ) Measures 1986; Church Patronage Act 1870, Church Patronage Act 1846, Church Patronage Act 1737. See also: Sutton, T. *Advowsons and Private Patronage* (2019) 21 Ecc LJ 267 pp. 267-288. See also the 1735 pamphlet written by “Generosus” entitled: *The Nature of Patronage and the Duty of Patrons*. London, 1735. [↑](#footnote-ref-9)
10. Korshin, PJ*. Types of Eighteenth-Century Literary Patronage* (1974) Eighteenth-Century Studies, Vol. 7, No. 4 (Summer), pp. 453-473 (Hereafter *Korshin Patronage*). [↑](#footnote-ref-10)
11. See further: Sorauf, FJ. *Patronage and Party* (1959) Midwest Journal of Political Science, Vol. 3, No. 2 (May, 1959), pp. 115-126. See also: Lorde Martin, S. *Patronage Employment: Limiting Litigation* (2012) 49 San Diego L. Rev.669. [↑](#footnote-ref-11)
12. See further: Bach, D & Gazibo, M. (Eds). *Neopatrimonialism in Africa and beyond (Routledge Studies on African Politics and International Relations)*. Routledge, London, 2012. [↑](#footnote-ref-12)
13. *The Russell-Cooke Voluntary Sector Legal Handbook* (undated). [↑](#footnote-ref-13)
14. Alexander, C. *Charity Governance.* 2nd ed. Jordans Publishing, Bristol, 2014. “other posts” para.8.4. which goes on to note in relation to the post of president, “Usually another way of describing a Patron and, often a 'Patron in chief'. The past Chairman of a charity may sometimes become a president of the charity after he or she has ceased to be a trustee. Again, this is usually (although not always) an honorary position with no rights or obligations in relation to the charity.” [↑](#footnote-ref-14)
15. On philanthropy see further: Cunningham, H. *Philanthropy and its critics: a history*, in: Morvaridi, B. *New philanthropy and social justice - Debating the conceptual and policy discourse*. Bristol University Press, 2015, p.17. On the changing nature of philanthropy see: Rimel, RW. *Charity and Strategy: Philanthropy's Evolving Role. Proceedings of the American Philosophical Society*, Vol. 145, American Philosophical Society, No. 4 (Dec., 2001), pp.587-595. See further: Cunningham, H & Innes, J. *Charity, Philanthropy and Reform. From the 1690s to 1850*. Macmillan, London, 1998. [↑](#footnote-ref-15)
16. Although patrons can of course give, see: Paul, A & Priestley, C & McEwan, G & Gibson, P & Austin, T (Eds). *Tolley’s Charities Manual*. LexisNexis, 2019, (hereafter *Tolley’s Charities*), para. 18.13. [↑](#footnote-ref-16)
17. For a summary of this behaviour see further: Zoellner, D. *Philanthropic behaviour, in: Education and Training: The Northern Territory’s history of public philanthropy*. ANU Press, 2017, pp.11-34. See also: [↑](#footnote-ref-17)
18. For an international discussion of these interconnected themes of civil society, philanthropy and patronage see: Adams, T (Ed). *Philanthropy, Patronage, and Civil Society: Experiences from Germany, Great Britain and North America*. Indiana University Press, 2004. [↑](#footnote-ref-18)
19. In some cases, patron’s provided writers with cultural currency: i.e. legitimacy (hence the dedicatory letters that preface publications, particularly in the 17-18th centuries). See further: Griffin, D. *Literary Patronage in England 1650-1800.* Cambridge University Press, Cambridge, 1986, chapters 2 & 3. [↑](#footnote-ref-19)
20. *Korshin Patronage*, p. 454. See also: Fletcher, J. *Literary Patronage*. Writing Ulster, no.2/3 (1991/1992) p.136-142. [↑](#footnote-ref-20)
21. See for example: Cavallo, S. *Charity and Power in Early Modern Italy: Benefactors and Their Motives in Turin, 1541-1789*. Cambridge University Press, Cambridge, 1995 (Italy). See also: Cropper, CA. *Understanding Charity Patronage: Two Approaches to Segmenting Donors.* Unpublished MA thesis. Southern Connecticut State University, 2002 (USA). [↑](#footnote-ref-21)
22. e.g. in the administrative sense, see the Roman experience at: Gibbon, E. *The Decline and Fall of the Roman Empire*. Oliphant Smeaton ed, EP Button & Co, 1910, (1776). [↑](#footnote-ref-22)
23. See further: Brown, CC (Ed). P*atronage, Politics, and Literary Traditions in England, 1558-1658*. Wayne State University Press, 1991. [↑](#footnote-ref-23)
24. See further: Levy Peck, L. *Court Patronage and Corruption in Early Stuart England 3-4*. 1990. [↑](#footnote-ref-24)
25. Foss, M. *The Age of Patronage: The Arts in England, 1660-1750*. Ithaca, New York, 1972. Hereafter *Foss Patronage.* [↑](#footnote-ref-25)
26. On Lord Chancellor Bathurst’s contribution to international insolvency law see: Tribe, J, & Baister, S. *Lord Bathurst’s Gift: The Genesis of the Golden Thread, being the Early History of Cross-Border Insolvency and the Theory of Universalism, with particular reference to the original Solomons v. Ross case papers of 1764* (2019) Insol.Intel, 32(1), 7-15. [↑](#footnote-ref-26)
27. See further: Lees-Milne, J. *Earls of Creation: Five Great Patrons of 18th Century Art*. Penguin, London, 2001, p.13. Hereafter *Lees-Milne Earls.* [↑](#footnote-ref-27)
28. *Lees-Milne Earls*, p.106. [↑](#footnote-ref-28)
29. *ibid.* [↑](#footnote-ref-29)
30. See further: Picton, J. *Jeff Bezos has asked for charitable giving advice – here’s what he should do with his money.* The Conversation. July 11, 2017. See also: Picton, J. *Forget Mark Zuckerberg’s charity – we need corporate tax reform*. The Conversation. December 11, 2017. [↑](#footnote-ref-30)
31. See further: Fagan, L., & Painting, V. *Boydell, Josiah (1752–1817), artist and publisher.* Oxford Dictionary of National Biography. (2004, September 23). [↑](#footnote-ref-31)
32. e.g. The Wellcome Trusts, The Mellon Foundation, The Nuffield Trust, The Leverhulme Trust, etc. [↑](#footnote-ref-32)
33. See: *Re Astor's Settlement Trusts* [1952] Ch 534. [↑](#footnote-ref-33)
34. A steel and railroad industrialist who was prominent in establishing libraries. He was the world’s richest man in 1901. In 1889 his *The Gospel of Wealth* article expounded the virtues of philanthropy and encouraged a surge in giving. See: Tweedale, G. *Carnegie, Andrew (1835–1919), steelmaker and philanthropist*. ODNB. 2012. [↑](#footnote-ref-34)
35. The bells and clock in the tower of the Victoria Gallery & Museum building at the University of Liverpool were funded by Sir William Hartley, of Hartley’s jam. See: Kelly, T. *For Advancement of Learning – The University of Liverpool 1881-1981.* Liverpool University Press, Liverpool, 1981, p.83. [↑](#footnote-ref-35)
36. Tate Liverpool, as with the other Tate galleries, was originally endowed by Sir Henry Tate, the sugar refiner and benefactor. See: Munting, R. Tate, *Sir Henry, first baronet (1819–1899), sugar refiner and benefactor*. ODNB. 2004 [↑](#footnote-ref-36)
37. On modern philanthropic activity see: Picton, J. *Jeff Bezos has asked for charitable giving advice – here’s what he should do with his money*. The Conversation, July 11, 2017. See also: Picton, J. *Forget Mark Zuckerberg’s charity – we need corporate tax reform.* The Conversation, December 11, 2017. [↑](#footnote-ref-37)
38. *Korshin Patronage*, p.463. [↑](#footnote-ref-38)
39. *Korshin Patronage*, p.466. [↑](#footnote-ref-39)
40. e.g. Bold Street Coffee, 89 Bold Street, Liverpool, see further: <https://www.boldstreetcoffee.co.uk/> [↑](#footnote-ref-40)
41. I am grateful to Julian Smith of Farrer & Co LLP on this point. [↑](#footnote-ref-41)
42. On these prizes see: See also: Fletcher, J. *Literary Patronage* (1991/1992) Writing Ulster, No. 2/3, pp. 136-142. [↑](#footnote-ref-42)
43. See further: Beckett, JV. *The Making of a Pocket Borough: Cockermouth 1722-1756* (1980) Journal of British Studies, Vol. 20, No. 1, pp. 140-157. See also: Davis, RW. *Buckingham, 1832-1846: A Study of a "Pocket Borough"* (1971) Huntington Library Quarterly, Vol. 34, No. 2, pp. 159-181. [↑](#footnote-ref-43)
44. See: Schafer, RG. *The Parliamentary Influence of the First Duke of Chandos* (1962) The English Historical Review, Vol. 77, No. 303, pp. 318-320.See also: Schafer, RG. *A By-Election in a Rotten Borough* (1954) Huntington Library Quarterly, Vol. 17, No. 4, pp. 397-405. [↑](#footnote-ref-44)
45. See: Kingsbury, P. *Boyle, Richard, third earl of Burlington and fourth earl of Cork (1694–1753), architect, collector, and patron of the arts*. Oxford Dictionary of National Biography. 2008. See further: Lees-Milne Earls, p.105. [↑](#footnote-ref-45)
46. *Korshin Patronage*, p.453. [↑](#footnote-ref-46)
47. William Blake, *Public Address*. On Blake and patronage see further: Crosby, M & Essick, RN. *"The Fiends of Commerce": Blake's Letter to William Hayley, 7 August 1804* (2010) Blake, An Illustrated Quarterly, Volume.44, Issue.2, p.52. [↑](#footnote-ref-47)
48. See further: Crosby, M. *‘Train of Elephants’: Blake’s (Untamed) Beasts and Hayley’s Ballads*, in: Connolly, T & Bruder, H. *Beastly Blake*. Palgrave, Basingstoke, 2018. [↑](#footnote-ref-48)
49. *Lees-Milne Earls*, p.32. [↑](#footnote-ref-49)
50. Johnson, S. *Rambler #104* (March 16, 1751). [↑](#footnote-ref-50)
51. See further: Stoker, D. *Harley, Edward, second earl of Oxford and Mortimer (1689–1741), book collector and patron of the arts*. ODNB. 2010. On bankrupt peers see: Tribe, J. *Parliamentarians and Bankruptcy: The Disqualification of MPs and Peers from Sitting in the Palace of Westminster* (2014) KLJ, 25(1), 79-101. [↑](#footnote-ref-51)
52. *Less-Milne Earls*, p.217. [↑](#footnote-ref-52)
53. *ibid.* [↑](#footnote-ref-53)
54. See *Cunningham Philanthropy*, p.11. [↑](#footnote-ref-54)
55. It should be noted that the poor also gave to the poor, in addition to the rich giving to the poor. See Prochaska, FK. *Philanthropy*, in: Thompson, F M L (Ed). *The Cambridge social history of Britain 1750-1950*, vol 3, 1990, pp.362-6, and; Conybeare, W. *Charity of poor to poor: Facts collected in South London at the suggestion of the Bishop of Southwark,* London: SPCK, 1908, p6. [↑](#footnote-ref-55)
56. These early American philanthropy pioneers have their successors in the form of modern family foundations. The ten largest in American baring family names, i.e. Gates, Packard, Ford, Lilly, Getty, Johnson, Pew, Kellogg, MacArthur, and Mellon. (see further *Rimel Evolving*, p.6). [↑](#footnote-ref-56)
57. Shapely, P. *Charity, Status and Leadership: Charitable Image and the Manchester Man* (1998) Journal of Social History, Vol. 32, No. 1 (Autumn, 1998), pp. 157-177. [↑](#footnote-ref-57)
58. *Foss Patronage*, p.3. [↑](#footnote-ref-58)
59. *Lees-Milne Earls*, p. 31. [↑](#footnote-ref-59)
60. *Carla Lane Animals in Need Liverpool* (<https://carlalaneanimalsinneed.co.uk/about-us/>), a Liverpool based animal welfare charity, is one such community embedded example. [↑](#footnote-ref-60)
61. This sort of early associated kudos has been used in the corporate sphere. See for example *Re Cardiff Savings Bank* [1892] 2 Ch 100, where the company employed the Marquis of Bute, a Scottish aristocrat, to be a board member of the Cardiff Savings Bank. The Marquis was 6 months old, but nevertheless still a Marquis. He was not alone. As Cannadine has demonstrated the early 20th century many an impecunious peer lend their name to a company in exchange for some financial relief. See further: Canadine, D. *The Decline and Fall of the British Aristocracy*. Penguin, London, 2005. [↑](#footnote-ref-61)
62. Pryce, J. *Why charities and celebrity patrons are a winning combination*. The Guardian. Thu 12 Jan 2012. See also: Hodge, K. *Best bits: Working with celebrity charity patrons.* The Guardian, Fri 20 Jan 2012. [↑](#footnote-ref-62)
63. Historically dedications could include dedications within musical scores: Ham, RG. *Dryden’s Dedication for the Music of the Prophetesse* (1935) PMLA, L, 1065-75. Dryden also wrote a piece addressed to the Earl of Clarendon, Lord Chancellor, designed to advance the cause of poets with the Monarch. See further: Dryden, J. *To my Lord Chancellor* (1662). [↑](#footnote-ref-63)
64. *Lees-Milne Earls*, p.62. See also: Connor, T. *Herbert, Henry, ninth earl of Pembroke and sixth earl of Montgomery (c. 1689–1750), architect and patron*. Oxford Dictionary of National Biography. 2009. [↑](#footnote-ref-64)
65. The Society of Antiquaries of London continues its work to this day from its base in Burlington House. See: <https://www.sal.org.uk/> [↑](#footnote-ref-65)
66. *ibid,* p.63. [↑](#footnote-ref-66)
67. *ibid,* p.65. [↑](#footnote-ref-67)
68. See further: Ransom, H. *The Rewards of Authorship in the Eighteenth* (1938) University of Texas Studies in English. Austin Texas, pp.47-48. [↑](#footnote-ref-68)
69. e.g. the Hodgson Law Trust: <http://hodgsonlawscholarships.com/> [↑](#footnote-ref-69)
70. See further: Crosby, M. *'Sparks of Fire': William Blake in Felpham, 1800-1803.* Unpublished D.Phil thesis, University of Oxford, Oxford, 2008. [↑](#footnote-ref-70)
71. See Part Three below. [↑](#footnote-ref-71)
72. e.g. “Kids” (<https://www.kids.org.uk/pages/faqs/category/patrons>) and David Cameron. [↑](#footnote-ref-72)
73. Archer, IW. *The Charity of Early Modern Londoners* (2002) Transactions of the Royal Historical Society, Vol. 12 (2002), pp. 223-244, p.235. [↑](#footnote-ref-73)
74. Barford, V. *Why do charities want a royal patron?* BBC News, 5th January 2012. [↑](#footnote-ref-74)
75. On this relationship see: O’Halloran, K. *Charity Law*. 2nd Ed. Thomson Reuters. Dublin, 2009, para.1-14. (Hereafter *O’Holloran Charity*). See also *Tudor Charities*, para.13-001. [↑](#footnote-ref-75)
76. See further: Perkins, A. *Save the Children faces formal investigation over staff misconduct.* The Guardian, Wed 11 Apr 2018. See also: Kay, L. *Save the Children UK's income drops by more than £100m.* The Third Sector. 04 June 2019. [↑](#footnote-ref-76)
77. See further: <https://www.savethechildren.org.uk/about-us/who-we-are/our-organisation/our-patron-princess-anne> [↑](#footnote-ref-77)
78. e.g. Rawlinson, K. *Viscount jailed for offering money for killing of Gina Miller.* The Guardian, Thursday 13 Jul 2017 (discussing Viscount St. Davids). See also: Midgley, D. *The Dukes of disgrace: Bad behaviour runs in the family*. The Express, Wed, Jul 22, 2015 (discussing the Dukes of Manchester). One of the greatest philanthropist/patrons of the Victorian Age, Thomas Holloway, was imprisoned for debt at the Whitecross Street Debtors’ Prison during his early business career. See *Elliot Holloway*, p.6. [↑](#footnote-ref-78)
79. e.g. bankruptcy, see further: Tribe, J. *Parliamentarians and Bankruptcy: The Disqualification of MPs and Peers from Sitting in the Palace of Westminster* (2014) KLJ, 25(1), 79-101. [↑](#footnote-ref-79)
80. See further: Otte, J. *Prince Andrew: Huddersfield to consult students after union votes for duke to quit.* The Guardian, Tuesday 19th November 2019. [↑](#footnote-ref-80)
81. *“Prince Andrew: Letter casts doubt on when duke met Epstein”* BBC News, 20th November 2019. [↑](#footnote-ref-81)
82. *“Prince Andrew seen for first time since stepping back from royal duties.”* BBC News, Wednesday 21st November 2019. [↑](#footnote-ref-82)
83. A useful search tool that ranges across all charities associated with members of the Royal family can be found here: <https://www.royal.uk/charities-and-patronages?mrf=2> [↑](#footnote-ref-83)
84. See further: <https://www.royal.uk/queens-patronages> [↑](#footnote-ref-84)
85. For a discussion of female patronage see: McCash, JH (Ed). *The Cultural Patronage of Medieval Women*. University of Georgia Press, Georgia, 1996. [↑](#footnote-ref-85)
86. See further: <https://www.princeofwales.gov.uk/biographies/hrh-prince-wales> [↑](#footnote-ref-86)
87. *ibid.* [↑](#footnote-ref-87)
88. This table does not include junior royals who also hold patron positions, i.e. the Duke and Duchess of Cambridge and the Duke and Duchess of Sussex, or less well known senior royals who also hold patron positions, i.e. the Earl and Countess of Wessex, Prince and Princess Michael of Kent, and the Duke of Kent. On Royal patronage see further: O’Conor, M. *Prince Andrew: What do charities get from having a royal patron?* BBC News, 22 November 2019. [↑](#footnote-ref-88)
89. See further: <https://www.princeofwales.gov.uk/charities-and-patronages-duchess-cornwall> [↑](#footnote-ref-89)
90. Subject to change pending the fall-out from the ongoing Epstein affair. [↑](#footnote-ref-90)
91. *Less-Milne Earls*, p.32. [↑](#footnote-ref-91)
92. *Lees-Milne Earls*, p.192. [↑](#footnote-ref-92)
93. e.g. individual barristers, see further: *Jones Charity*, p.230. [↑](#footnote-ref-93)
94. *Foss Patronage*, p.3. [↑](#footnote-ref-94)
95. Famous literary figures who have been adjudicated bankrupt include, Daniel Defoe (see further: Quilter, M. *Daniel Defoe: bankrupt and bankruptcy reformer* (2006) Journal of Legal History, pp.53-73); Mark Twain, Oscar Wilde and Handel. [↑](#footnote-ref-95)
96. On the history of charity see: Archer, IW. *The Charity of Early Modern Londoners* (2002) Transactions of the Royal Historical Society, Vol. 12, pp. 223-244. [↑](#footnote-ref-96)
97. The following example volumes have no substantive discussion of charity patrons: Hayton, D & Matthews, P & Mitchell, C. *Underhill and Hayton Law of Trusts and Trustees*. 19th edition. LexisNexis, 2016; Faure Walker, A & Blake, J (Eds). *The Charities Acts Handbook Charities Manual*. Jordan Publishing, 2016. *Tudor Charities* does not contain patron in the index although there are brief mentions throughout the text, see: Henderson, W & Fowles, J & Smith, J. *Tudor on Charities*. 10th Ed. Sweet & Maxwell Ltd, London, 2015, page 1022. (Hereafter *Tudor Charities*). Earlier editions do however contain discussion of patrons and patronage, see *Birstowe Tudor Charities* (3rd Ed, 1889), pp.997, 998. [↑](#footnote-ref-97)
98. See Part 3 below. [↑](#footnote-ref-98)
99. e.g. Dawes, G & Gillard, C & Alexander, Con & Ebbage, J & Pinkerton, K. *Charities Administration Services*, LexisNexis, 2019, p.F0B. [↑](#footnote-ref-99)
100. See for example: *Q v. Q* [2014] EWFC 31 | [2015] 1 W.L.R. 2040, where Sir James Munby notes at para.17: “The Public Law Project is a non-political legal charity with a particular focus on the disadvantaged and marginalised. Its current patron is Sir Henry Brooke.” [↑](#footnote-ref-100)
101. For example *Plan International UK* had the following message from their Royal Patron, HRH, the Duke of Edinburgh, Prince Phillip, in their 2017 annual report: *“I am delighted to have this opportunity to offer my congratulations to Plan International on the occasion of its 80th anniversary. Founded in 1937 with the purpose of caring for the needs of children orphaned, or otherwise disadvantaged by the Spanish Civil War, it has continued to care for children wherever they may be in need. The charity could not offer this help without the generous support of its many loyal donors. Everyone connected with the charity can feel proud of its achievements, and confident that it will continue to fulfil its purpose long into the future.”* See further: <https://plan-uk.org/file/trustees-annual-report-2017pdf/download?token=5d0SfnuD> [↑](#footnote-ref-101)
102. See further: Dal Pont, GE. *Law of Charity*. LexisNexis Butterworths, Australia, 2010, pp.82-95. See also: *Jones Charity*. [↑](#footnote-ref-102)
103. See: McMullen, DH & Maurice, SG & Parker, DB. *Tudor on Charities*. 6th Ed. Sweet & Maxwell, London, 1967, p.428. [↑](#footnote-ref-103)
104. See further: *Attorney-General v. Boucherett* (1838) 25 B.116. See further *Burdett Tudor*, p.358. [↑](#footnote-ref-104)
105. See for example: Syer, L & Bristowe, C & Ivimey, W. *Law of Charities and Mortmain*. 9th Ed. Reeves & Turner, London, 1889, p.311. [↑](#footnote-ref-105)
106. See for example St. Hilda’s College, University of Oxford, celebrates founder’s day on the Wednesday closest to the 17th November. The college holds a service to give thanks to the founder, Dorothea Beale, and the college’s benefactors. Other founders include William of Durham who founded University College, Oxford in 1249; John Balliol who fathered a Scottish King and founded Balliol College, Oxford. Walter de Merton, a Lord Chancellor of England founded Merton College, Oxford. [↑](#footnote-ref-106)
107. See further: *Philips v. Bury*, Trin. 6 W. & M, K. B. 360; 89 E. R. 624 (with note), Skin. 447, &c., a case concerning the Visitor of Exeter College, Oxford. On visitors see *Birstowe Tudor Charities*, p.72. [↑](#footnote-ref-107)
108. *Tudor Charities*, para.14-001. See further: *R v. Lord President of the Privy Council, Ex p. Page* [1993] AC 682. [↑](#footnote-ref-108)
109. *Tudor Charities*, para. 14.018. [↑](#footnote-ref-109)
110. *ibid.* [↑](#footnote-ref-110)
111. *ibid*. See: *Attorney-General v. Leigh*, 3 P.Wms 146,n. See also: *Attorney-General v. Rigby*, 3 P.Wms 145. [↑](#footnote-ref-111)
112. *Attorney-General v. Leigh*, 3 P.Wms 146,n. [↑](#footnote-ref-112)
113. See: *Attorney-General v. Dean and Canons of Christ Church*, Jac.474. [↑](#footnote-ref-113)
114. *Attorney-General v. Master of Brentwood School*, 3B & Ad.59. [↑](#footnote-ref-114)
115. Elliot, J. *Palaces, Patronage & Pills – Thomas Holloway: His Sanatorium, College & Picture Gallery*. Royal Holloway, University of London, Surrey, 1996. Hereafter *Elliot Holloway.* [↑](#footnote-ref-115)
116. *ibid,* pp.2-3. [↑](#footnote-ref-116)
117. *ibid.* [↑](#footnote-ref-117)
118. See for example the Charity *Just For Kids Law*: <https://justforkidslaw.org/about-us/our-trustees-and-patrons> [↑](#footnote-ref-118)
119. On fiduciary duties generally see: Conaglen, M. *Fiduciary Loyalty – Protecting the Due Performance of Non-Fiduciary Duties*. Hart, Oxford, 2010. [↑](#footnote-ref-119)
120. See further: Tribe, J. *Charity Insolvency*. In Mullen, M (Ed.), *Tolley's Insolvency Law* (Vol. 125, pp. C35-1-C35-22). LexisNexis, London, 2019. [↑](#footnote-ref-120)
121. Quoted in Paul, A & Priestley, C & McEwan, G & Gibson, P & Austin, T (Eds). *Tolley’s Charities Manual*. LexisNexis, 2019, para. 2B.1. See also CC3, *“The Essential Trustee”* where it is noted, “Charity trustees should be selected for what they can contribute to the charity. They should not be appointed for their status or position in the community alone; this is the function of patrons.“ [↑](#footnote-ref-121)
122. *ibid.* [↑](#footnote-ref-122)
123. *ibid.* [↑](#footnote-ref-123)
124. *ibid.* [↑](#footnote-ref-124)
125. *Op cit*, n.28. See further: See for example *Re Cardiff Savings Bank* [1892] 2 Ch 100. [↑](#footnote-ref-125)
126. See further: s.22(4) Insolvency Act 1986. See: *Re Kaytech International Plc* [1999] BCC 390. [↑](#footnote-ref-126)
127. See further: s.22(4) Insolvency Act 1986. [↑](#footnote-ref-127)
128. e.g. s.174 Companies Act 2006. See further: Keay, AR. *Directors' Duties*. 3rd Ed. Bristol: LexisNexis, 2016. [↑](#footnote-ref-128)
129. For an argument that they should be saved where possible see: Tribe, J. *Deploying Communitarianism Bankruptcy Theory to Rescue Insolvent Charities and Maintain Charitable Purposes*. In A. J. Picton, & J. Sigafoos (Eds.), *Debates in Charity Law*. Oxford: Hart Publishing. 2020. [↑](#footnote-ref-129)
130. See further: Tribe, J. *Charity Insolvency*. In M. Mullen (Ed.), *Tolley's Insolvency Law* (Vol. 125, pp. C35-1-C35-22). London: LexisNexis, 2019. [↑](#footnote-ref-130)
131. For a discussion of shadow director liability (in this instance by a bank) see: Tribe, J. *The Privy Council and Brumark: a lingering shadow over book debts* (2001) Co.Law, 318-319. [↑](#footnote-ref-131)
132. Or at least this is the Secretary of State’s allegation against alleged Kids’ Company “shadow director” Camila Batmanghelidjh. See further: Greenhill, S. *Kids Company founder urges judge to spare her the 'stress' of a court case over the charity's financial meltdown after taking £42m of public money*. The Daily Mail, 13th May 2019. [↑](#footnote-ref-132)
133. s.22(5) Insolvency Act 1986 and s.251(1) Companies Act 2006. See further: *Secretary of State v. Deverell* [2000] 2 All ER 365. [↑](#footnote-ref-133)
134. *ibid*. See further: Davis-White, M & Walters, A. *Directors' Disqualification and Insolvency Restrictions.* 4th Ed. Sweet & Maxwell Ltd, London, 2020. [↑](#footnote-ref-134)
135. Currently scheduled to commence not before July 2020. The author attended the preliminary directions hearing. [↑](#footnote-ref-135)
136. For background on the case see further: *Tribe Insolvency.* [↑](#footnote-ref-136)
137. On the trustee *de son tort* generally see Lord Sumption’s judgment in: *Williams v. Central Bank of Nigeria* [2014] UKSC 10. See further: Yip, M & Lee, J. The *Commercialisation of Equity* (2017) L.S. 37(4), 647-671. On trustees *de son tort* see also: McFarlane, B & Mitchell, C. *Hayton and Mitchell on the Law of Trusts & Equitable Remedies.* 14th Ed, Sweet & Maxwell Ltd, 2015, Chapter 10. See also: Lynton Tucker, K & Le Poidevin, N & Brightwell, J. *Lewin on Trusts*. 20th Ed. Sweet & Maxwell Ltd, London, 2020, Chapter 34. See also: Singla, N. *I'm a trustee: get me out of here!* (2015) T. & T., 21(9), 999-1005. [↑](#footnote-ref-137)
138. See further: Pearce, R & Barr, W. *Pearce & Stevens’ Trusts and Equitable Obligations.* 7th Ed. OUP, Oxford, 2018, p.582, in the context of investment. (Hereafter *Pearce & Barr*). See also: Oakley, AJ. *Parker and Mellows: The Modern Law of Trusts.* 9th Ed. Sweet & Maxwell Ltd, London, 2008, p.639. (Hereafter *Parker & Mellows*). See also: *Tudor Charities*, para.17-001. [↑](#footnote-ref-138)
139. See for example: *Keech v. Sanford* (1726) Sel Cas 1 King 61, (1726) 25 ER 223 (C). [↑](#footnote-ref-139)
140. Trustee Act 2000, s.1. See further: See further: Lee, J & Glister, J. *Hanbury & Martin: Modern Equity.* 20th Ed. Sweet & Maxwell Ltd, London, 2015, para.18.003. Hereafter *Hanbury & Martin.* [↑](#footnote-ref-140)
141. Trustee Act 2000, s.1(a). See further: *Richards v. Wood* [2014] EWCA Civ 327. See also: *“The essential trustee: what you need to know, what you need to do.”* CC3. The Charity Commission for England and Wales. London, May, 2018. [↑](#footnote-ref-141)
142. Trustee Act 2000, s.1(b). [↑](#footnote-ref-142)
143. See: *Speight v. Gaunt* (1883) 9 App.Cas. 1 at 19, per Lord Blackburn. See also: *Re Lucking’s Will Trusts* [1968] 1 WLR 866. See also: *Ward v. Ward* (1843) 2 H.L.Cas.777. [↑](#footnote-ref-143)
144. See further: *Hanbury & Martin,* para.18.002. [↑](#footnote-ref-144)
145. Trustee Act 2000, s.3. [↑](#footnote-ref-145)
146. Trustee Act 2000, s.5. [↑](#footnote-ref-146)
147. Trustee Act 2000, s.8. [↑](#footnote-ref-147)
148. See *Hanbury & Martin*, para.15-096. [↑](#footnote-ref-148)
149. Charities Act 2011, s.76. [↑](#footnote-ref-149)
150. e.g. *Regal (Hastings) Ltd v. Gulliver* [1967] 2 AC 134. [↑](#footnote-ref-150)
151. See: *Re Cardiff Savings Bank* [1892] 2 Ch 100; *Re City Equitable Fire Insurance Co* [1925] Ch.407. [↑](#footnote-ref-151)
152. See further: Watson, SM. *How the Company Became an Entity: A New Understanding of Corporate Law* (2015) JBL (1), 120-141. See also: Jeffery, JB. *Trends in Business Organisation in Great Britain since 1856.* University of London, unpublished Ph.D. thesis. See also: McQueen, R. A *Social History of Company Law: Great Britain and the Australian Colonies 1854-1920*. Ashgate Publishing Ltd, Farnham, 2009. [↑](#footnote-ref-152)
153. *Dorchester Finance v. Stebbing* [1989] BCLC 498. [↑](#footnote-ref-153)
154. See also: *Norman v. Theodore Goddard* [1992] BCC 14 and *Re D’Jan of London* [1993] BCC 646, and now s.174 Companies Act 2006 and s.214 Insolvency Act 1986. [↑](#footnote-ref-154)
155. On trustees’ investment decisions see: *Cowan v. Scargill* [1985] Ch 270. [↑](#footnote-ref-155)