
Charity Law and Policy: Looking Forward

JENNIFER SIGAFOOS AND JOHN PICTON

I. Researching the Regulatory State

At one point in the not-so-extensive history of nonprofit research in law, traditional precedential analysis made up the staple of academic work.¹ But over time, the case-based method has ceded significant ground to a different type of research, one which has a focus on the nature of regulation, regulatory agencies and – crucially – the relationship between nonprofits and the state.²

In explaining this shift in research focus, it would also be wrong to say that traditional nonprofit cases, often located in trust law, no longer come before the courts – although they no longer stream out of the doors as they once did. It would also be wrong to say that they are old-fashioned or removed from the concerns of the contemporary sector. Modern cases have facts that strike a chord with the contemporary world. To take one example, in *Phillips v Royal Society for the Protection of Birds*,³ a testator, who was apparently an animal lover, made a specific bequest of her pet parrot, and then left a part of her estate to an owl sanctuary. Unfortunately, that sanctuary was in the process of winding up at the time of her death. Its closure appears to have been linked to a BBC investigation focusing on the killing of the birds to avoid veterinary fees. If the gift had failed, 16 relatives, none of whom appear to have been very close to the testator, stood to achieve a share. Such a set of circumstances is undoubtedly modern, if a little unusual, revealing a great deal about donative motivation and the reasons that cases come to court. At the same time, in saving the gift for charity, the court used timeworn charitable principles to modern effect.

¹For pioneering concept-driven precedential work, see EL Fisch, ‘The Cy Pres Doctrine and Changing Philosophies’ (1952) 51 *Michigan Law Review* 375. For an elegant mid-twentieth example of precedential writing, see C Crowther, *Religious Trusts* (Oxford, George Ronald, 1954).

²An indication of coming change was W Beveridge, *Voluntary Action: A Report on Methods of Social Advance* (London, George Allen & Unwin, 1948), where nonprofit law is assessed in the context of an expanded welfare state.

³*Phillips v Royal Society for the Protection of Birds* [2012] EWHC 618 (Ch), [2012] WTLR 89.

There are also some heavy storm clouds brewing in trust-relevant fields – and these are complex clouds of just the type that precedent-based researchers like. In the US, for example, there is now considerable interest in the regulatory challenges posed by charitable donor-advised funds.⁴ The concept behind these arrangements is that donors hand over formal control of capital to an investment fund, providing an efficient way to dispose of tax inefficient assets. Yet the very same donors continue to informally direct the fund on how their capital should be dispersed. Such a system, in which donors feel a moral right to control wealth but have no strict legal control over it, seems almost guaranteed, over time, to create litigation. Complex nonprofit issues, of the type that generate case-law, are likely also to arise simply from the enormous amount of philanthropic wealth held by a new class of ‘venture capitalists with a conscience’. This has already been seen in the English case, *Lehtimäki v The Children’s Investment Fund Foundation*,⁵ which turned on whether an independent member of a jointly-founded charity fund, set up by an ultra-wealthy divorcing couple, could be compelled to transfer £280 million to the wife’s new nonprofit. That is certainly a divorce with a difference.

In consequence, it cannot be said that judicial precedents have become irrelevant in nonprofit research. They still form the basis of some serious modern legal-conceptual challenges and pose interesting research questions relating to who generates the case law and whose purposes it serves. In this volume, John Picton in Chapter 4 analyses many old wills cases – which form the basis of the rule that established charities last forever – to assess the motivations behind establishing charities that last forever. And John Tribe in Chapter 5 proposes that old trust concepts should be adapted to the dramatic and modern context of charitable corporate insolvency. Jennifer Sigafoos in Chapter 6 analyses *Catholic Care (Diocese of Leeds) v The Charity Commission for England and Wales*,⁶ a case with a distinctly modern policy fault line, to illustrate how courts have struggled to adapt to modern statutory law in charity law cases. Adam Parachin in Chapter 7 looks deep into the law’s precedent-based focus on charitable purposes in order to argue that the conceptual legal structure makes it difficult to regulate charitable activities.

What has changed, and what much research into nonprofit law now reflects, is that the non-judicial branches of the state have a very great interest in charity. Precedent no longer rules the roost, and nonprofit law is no longer an entirely judicial creation. The grandfather of the regulatory agencies is the Charity Commission for England and Wales (‘the Commission’). Its role has changed over time. At the advent of the Charities Act 1960, which established the register of charities in England and Wales, nonprofits were still seen as somewhat peripheral, and the

⁴ See, eg, R Colinvaux, ‘Donor Advised Funds: Charitable Spending Vehicles for 21st Century Philanthropy’ (2017) 92 *Washington Law Review* 39.

⁵ *Lehtimäki v The Children’s Investment Fund Foundation* [2018] EWCA Civ 1605.

⁶ *Catholic Care (Diocese of Leeds) v The Charity Commission for England and Wales* [2010] EWHC 520 (Ch), [2010] 4 All ER 1041.

modern world of regulation and guidance was still a long way off. Back then, nonprofits played second fiddle to a muscular welfare state, which was thought to have largely displaced the need for charity. Written in the 1960s, David Owen's *English Philanthropy* charts a world in which nonprofits are relatively independent from government, but also not treated as politically important.⁷ He presents charities as 'Junior Partner[s] in the Welfare Firm', and as 'Auxiliaries of the Welfare State'. At this time, the state did not think to intervene greatly with nonprofits, preferring instead to let them mop up the residue of social challenges that it did not, or could not, deal with directly.

Nowadays, no-one would call the nonprofit sector an 'auxiliary'. The modern state cares very deeply about what nonprofits do, and crucially, it is prepared to intensively monitor them.⁸ Nonprofits are now wrapped up in the regulatory state, the mass of rules and regulations that frame the way government works and delivers welfare. In turn, it is the nature of that regulatory state which has become a core focus for nonprofit research. In Chapter 2, Matthew Harding theorises as beneficial the diverse range of altruistic goods that independent charities might produce, but notes that where government seeks to control nonprofits through contractual funding arrangements, there is a risk that their character might change. Debra Morris in Chapter 11 also charts this change, weighing carefully the development of Payment by Results contracting and the risk that nonprofits might lose their independent voices. Much nonprofit research has become focused on regulation – a web of different agencies, statutes, soft rules, hard rules, and downloadable guidance. This is the brave new world that Oonagh Breen analyses in Chapter 8. It is also true of the tightly regulated and under-funded housing sector described by Warren Barr in Chapter 13. This is a new research-world, a place of compulsory registration for nonprofits, and jostling regulatory agencies working together – or attempting to work together – in complex systems.

There is in place a new regulatory-world that still nods to the old will trust cases, as they are summarised and digested in regulatory guidance, but it is also distinct from it, being far less dependent on precedent and more concerned with the efficient management of bureaucracy. A new research space has opened up, analysing the relationship between nonprofits and the state.

II. Nonprofit Controversy within the Regulatory State

Even as new academic ground has opened, it cannot be said to be a happy terrain that has been revealed. The state's relationship with nonprofits has proved to be controversial. In England and Wales, the charity sector has been beset by dramatic scandals.

⁷ David Owen, *English Philanthropy: 1660–1960* (Oxford, Oxford University Press, 1965).

⁸ This is certainly not just an English phenomenon. See O Breen, A Dunn & Mark Sidel, *Regulatory Waves* (Cambridge, Cambridge University Press, 2017).

The scandals are not where they might be expected. Few people have problems with the regulator itself. The Commission is reasonably transparent. Although far fewer cases have gone up into the tribunal system than was anticipated when that route of appeal against Commission decisions was initially opened up,⁹ those cases that have been heard place a check on Commission power. There is no widespread disquiet against the regulator. As Eddy Hogg notes in Chapter 10, most people are happy not to know too much about the system, so long as they can be sure that there is one in place. It is also only fair to acknowledge that the regulator has a great deal on its hands, as Matthew Shillito demonstrates in Chapter 12, the boundaries of sectoral regulation are flexible and fast-changing.

Instead, controversy relates to the *nature* of nonprofit links with the state, which has an ultimate responsibility for the delivery of essential welfare services. In the summer of 2015, news reports were dominated by the dramatic collapse of Kids Company, a very well-known nonprofit, whose charismatic founder – Camilla Batmanghelidjh – had long been a household name in the UK. She had influence at the very highest level of government, representing her child welfare organisation which focused on a very poor area of South London. Batmanghelidjh had been particularly well connected with the former Prime Minister, David Cameron. In her book, *Kids*,¹⁰ Batmanghelidjh says directly that she was a: ‘politically desirable product of the Big Society Agenda.’¹¹ Or, put another way, her nonprofit was a key element in the former Prime Minister’s policy plans to enlarge the role of charities in state welfare delivery.

Bringing charities directly into essential state welfare provision is a risky business. When Kids Company fell apart, unable to balance its books, the press had a field day. Allegations, denied by the founder, poured forth in the newspapers about extravagant uses of the nonprofit’s funds, such as giving away money directly to clients, or using nonprofit money to buy luxury items, such as trainers, for individual children.

The Kids Company insolvency raised policy questions about the relationship of the nonprofit sector to the state. The most obvious questions turned on why and how the government had funded an organisation which, upon its insolvency, appeared to be chaotically run and lacking in charitable reserves.¹² But with hindsight, it is possible to understand why Kids Company seemed so attractive to government. It was, before its collapse, a high-profile child welfare organisation. It provided free meals, community support, and education to very poor children. It appeared to have many of the positive characteristics that are said, in theory, to

⁹ See B Crumley & J Picton, ‘Still Standing? Cy-près and Charitable Service Users in the First-tier Tribunal (Charity)’ (2018) 82 *Conveyancer and Property Law* 262.

¹⁰ C. Batmanghelidjh, *Kids* (London, Biteback, 2017).

¹¹ *Ibid.*, 346.

¹² See: House of Commons Public Administration and Constitutional Affairs Committee, *The Collapse of Kids Company: Lessons for Charity Trustees, Professional Firms, the Charity Commission and Whitehall* (HC 2015–2016, 433).

be unique to nonprofits. The organisation, although undoubtedly flawed, was in many ways dynamic and innovative. For example, it used art to help very disadvantaged children develop, and there can be no doubt that it was a mission-based nonprofit, seeking energetically to change the world.

The problem – the cause of public anger – was not that such an organisation might exist, or even that it could close down, but rather that it should be in large-scale receipt of public funds, and that those funds were badly spent. Some of the most bitter claims were that Kids Company had been well-favoured with money at a time when state social services were being rolled back. And so, this was not a direct regulatory problem, even if it is true that Kids Company should have had a much better financial reserves policy. There was no anger at the system of legal rules and guidance which regulate nonprofits per se. There was no anger at the Charity Commission either. When distilled and reflected upon, it can be seen that public anger flowed from a perceived problem relating to the relationship that the organisation had with the state. The bad feeling and surprise at the organisation's shock closure stemmed from the fact that a risky organisation like Kids Company, working in partnership with government, was being relied upon to deliver the most essential type of services – ie child welfare provision.

service

Nonprofits can be highly dynamic. Having a spirit and ethos of their own, they might capture the commitment of workers, whether voluntary or otherwise. They might innovate in ways that bureaucracies find difficult to do. Patrick Ford in Chapter 9 notes that the continued popularity of the independent school sector in Scotland can be attributed in part to failings on the part of the state to deliver adequate quality secondary education. But the cost of this innovative and sometimes idiosyncratic character of nonprofits is risk. Organisations that are given the freedom to do as they think best will often make mistakes. This means that the regulatory state, which is responsible for the delivery of welfare, has a dilemma. It can fund high-risk organisations, or it can attempt to tie them down tightly with regulation to ensure that money is well spent. The Kids Company scandal can be understood as an example of the first option – giving a risky organisation free rein. There is no doubt that Kids Company was an unusual organisation, or that its founder was a risk-taker. It was that dynamic brand which had attracted the attention of government in the first place.

The second side of the dilemma for the state – the temptation to heavily regulate nonprofits – is shown by the even more troubling scandal at St Mungo's Community Housing Association. That nonprofit is a very large rough sleeper charity. A series of reports in *The Guardian* newspaper revealed it to be caught up as a player in the government's hostile environment policy,¹³ which is designed to make life as tough as possible for illegal immigrants. Proceeding on the basis,

¹³ See, eg, J Picton, 'Making a Profit from Rough Sleepers: The Perils of Social Impact Bonds' *The Guardian* (London, 10 May 2018) www.theguardian.com/voluntary-sector-network/2018/may/10/making-profit-rough-sleepers-perils-social-investment.

since ruled unlawful, that EU citizens who were also rough sleepers had no right to be in the UK,¹⁴ the Home Office sought, in conjunction with local government in London, to collect data as to the whereabouts of homeless people, so that they might be removed from the country. St Mungo's, ostensibly a constitutionally independent organisation, co-operated with government to pass on the details of certain people within its client base. Its outreach workers were seen working with Home Office officials out on the streets.

That a large and influential nonprofit should get involved in activities that are fundamentally against the interests of its clients is unsettling. At the level of theory, this ought not to happen. Nonprofits are said to have a democratic function in representing the needs of their clients to government. The reasons that St Mungo's became involved in deportation are complex, but directly connected to its relationship with the regulatory state. The nonprofit was in a Payment by Results contract agreement with local government in London, such as those discussed by Morris in Chapter 11. That contract – a social impact bond – was designed to deliver profits to investors based on the number of people removed from the streets. Within this profit-incentivised frame, the deportation of potentially extremely vulnerable clients became a method to achieve St Mungo's contractual goals.

The problems at St Mungo's were the opposite of those at Kids Company. The homelessness nonprofit, through its social impact bond, was kept on an extremely tight regulatory leash. This had the effect that it was unable to serve the best interests of its client group. It was directly incentivised not to do so. By contrast, at Kids Company, the organisation was well funded and largely left to its own devices – a scenario which eventually led to the collapse of an organisation providing essential services to London's poorest, and the apparent waste of funds devoted to welfare provision.

Yet these two cases pose a challenge to nonprofit researchers: is there a healthy middle ground? As the state has deliberately become more and more reliant on nonprofits, it seems very unlikely that the scandals will go away. Either the state will seem negligent in funding essentially risky organisations, as in the case of Kids Company, or if it attempts to control individual nonprofits, it will be seen to smother their moral spirit, as in the case of St Mungo's. In answering the question, it is necessary for researchers to think very carefully about the role of the Commission in regulating a very diverse sector. Specifically, when the government makes such diverse and unpredictable demands of nonprofits, is it possible for the regulator to keep good order?

III. Problems of Size

The question cannot be answered without attention to both the size of the overall sector and the greatly varying sizes of different nonprofits. The charity sector

¹⁴ *R (Gureckis) v Secretary of State for the Home Department* [2017] EWHC 3298 (Admin).

presents challenges for the regulatory state, as it comprises a large part of the economy throughout the common law world. It is clear that regulatory oversight is needed. Moreover, the size of the registered charitable sector itself is only a fraction of the larger nonprofit sector. There are approximately 200,000 registered charities in the UK.¹⁵ The size of the nonprofit sector as a whole is at least twice this number, however. In 2012, the National Audit Office assessed the nonprofit sector and its regulation. It noted that the income of the sector as a whole was approximately £113 billion.¹⁶ Registered charities had less than half of this income (£55.4 billion), and unregistered charities had £57.7 billion.¹⁷ Of these unregistered charities, a large number – more than 100,000 in 2012 – were very small charities, with income of less than £5,000 annually, which are excepted from registration. The distribution between registered charities and unregistered nonprofit organisations is estimated to be similar in Canada, with 86,000 registered charities and 80–100,000 unregistered nonprofit organisations.¹⁸ An even larger split exists between unregistered and registered nonprofit organisations in Australia – in 2014, approximately one in 10 nonprofit organisations was registered as a charity.¹⁹

Most of the income of the non-registered charities in the UK was concentrated in exempted charities, which are not required to register with the Charity Commission because they are regulated by another entity. These include academies and other school trusts, higher education institutions, museums and other fine arts, the Royal Botanic Gardens at Kew, and a majority of nonprofit housing associations.²⁰ Oonagh Breen in Chapter 8 discussed how a similar issue with multiple potential regulators has created problems for the new charity regulator in Ireland. The lack of regulatory ‘space’ creates issues for emerging regulators, but equally exposure to multiple regulators may well dilute compliance for over-stretched nonprofit organisations unable to cope with the regulatory burden.

The large variation in size between organisations in the charitable sector also presents regulatory challenges. The same concentration in the wealth of the sector into a few organisations seen in the unregistered sector in the UK is also seen in the registered charity sector: 1.3 per cent of registered charities accounted for 72 per cent of total income in 2016.²¹ The work of economists such as Kate Pickett,

¹⁵ nfpSynergy, ‘Facts and Figures: UK Charity Sector 2018’ (nfpSynergy, 2018).

¹⁶ National Audit Office, ‘Regulating Charities: A Landscape Review’ (National Audit Office, July 2012). Estimates of the income of the charitable sector vary widely. The Charity Commission estimated that it was £73.1 billion in 2016; nfpSynergy estimated £48 billion in 2018; NCVO estimated £45.5 billion in 2014/15.

¹⁷ Ibid.

¹⁸ M Blumberg, ‘Key Statistics on Canada’s Charity and Non-Profit Sector’ (GlobalPhilanthropy.ca, May 2018).

¹⁹ M McGregor-Lowndes, ‘The Not for Profit Sector in Australia: Fact Sheet’ *ACPNS Current Issues Information Sheet* 2014/4 (ACPNS, 2014).

²⁰ National Audit Office, ‘Regulating Charities’ (2012) (n 16).

²¹ R Keen and L Audickas, ‘Charities and the Voluntary Sector: Statistics’, *House of Commons Library Briefing Papers* SN05428 (16 August 2017).

Richard Wilkinson and Thomas Piketty has raised awareness of the issue of the injustices of wealth inequality among individuals, but the inequality in wealth distribution in nonprofits is equally, if not more, severe and is worsening. The largest charities have increased their share of the sector's income over time – charities with annual incomes in excess of £10 million annually controlled 43 per cent of the sector's income in 1999 and 57 per cent in 2011.²²

What is more, large charities are likely to be very different from small charities in terms of the makeup of their funding. In the UK, large charities are more likely than small charities to be reliant on government for the majority of their income.²³ Small charities are more likely to rely on individual donations as their main source of funding. In Canada, government-affiliated nonprofit organisations, such as hospitals and universities, are more likely to rely on government funding than community-based nonprofit organisations.²⁴ Large charities are thus more likely to be exposed to the pressures of state funding on mission drift and the best interests of their beneficiaries.

All of this means that it is difficult to speak of the charitable sector as a whole or the nonprofit sector as a whole and say much of anything at all beyond a very general statement about what should be motivating these entities' actions: a charitable purpose and public benefit. This presents challenges when designing effective regulation for the sector. Considering the charitable sector in the UK, the sector with which we are the most familiar, a chasm exists between the regulatory environment appropriate for the overwhelming majority of charities with no paid staff and that appropriate for the approximately one per cent of charities that control nearly three-quarters of the income of the sector. Perhaps we should be considering this chasm from the grassroots side of the divide. In previous empirical work,²⁵ we have encountered the view from a number of charity lawyers and umbrella bodies that large charities are better, more professionally, run. The implication is that there is less to worry about from larger charities.

It must be the case, however, that larger charities present larger risks. Large charities will have larger budgets and more beneficiaries depending on the efficient administration of those charitable assets for the designated charitable purpose. A failure on the part of the charity will leave those beneficiaries going without. In situations where charities are engaged in the provision of government services, the failure of a charity to deliver on a contract can mean disruption or delay for people who need vital services. This can be seen in the message from the Chief Executive of the Charity Commission, in its 2018–19 annual report: 'Charities are increasingly vital to the delivery of services to the public and to communities, and,

²² National Audit Office (2012) (n 16).

²³ *Ibid.*

²⁴ Imagine Canada, 'Non-profit sector continues to grow' (Imagine Canada, 5 March 2019).

²⁵ D Morris, A Morris and J Sigafoos, *The Impact of the Equality Act 2010 on Charities* (Charity Law and Policy Unit, University of Liverpool, 2013).

by extension those services are increasingly dependent on the effective regulation of charities.²⁶

Larger charities also present larger risks to public trust and confidence. First of all, the public is more likely to have heard of large charities and to have an opinion of what they ought to do. When people are asked to think of a word associated with charity, they are most likely to name large charities, such as Oxfam, Cancer Research UK, or the British Heart Foundation, rather than local charities.²⁷ More members of the general public will feel a personal stake in the organisation, as more members of the public are likely to have donated or used a service, or to know others who have used a service from that organisation. If a mega charity errs, it is news. We see the discussion of it in the tabloid press; perhaps politicians will try to score political points by raising the story again and again. A risk-based regulator, such as the Charity Commission, would do well to focus its regulation on large entities.

Yet the regulatory system of the Charity Commission is not always capable of reaching seeming misfeasance by trustees. In 2019, the Charity Commission issued its decision on its investigation into the Garden Bridge charity, which spent £50 million of taxpayer money and failed to deliver anything of public benefit. It concluded that there had been no failures of governance or mismanagement and that trustees would not face penalties. The Commission tried to distance the ‘failure of charity’ that took place with the Garden Bridge from the risk to other charities delivering public services, noting that the trustees of the Garden Bridge had little independence from the government funders who had designed the project and contrasting this with ‘the usual flexibility and discretion that allows trustees of charities with broader charitable purposes contracting with national or local government to continually assess whether doing so is the best way to deliver on those purposes for the public benefit.’²⁸ It is debatable, though, to what extent trustees of other large charities engaged in government contracts really do have flexibility and discretion in an era of austerity. To surrender government contracts would likely mean cuts to staff, as well as a reduction in the services that could be offered to beneficiaries. One charity that has recently exercised such flexibility is Scope, which has divested itself of its social care services in favour of refocusing on what it perceives as its core mission of advocacy for an equal society for disabled people. This came at a loss of two-thirds of its staff and 40 per cent of its annual income.²⁹

²⁶ Charity Commission, ‘Charity Commission Annual Report 2018–2019’ (Charity Commission, 2019) 8.

²⁷ Populus, ‘Trust in Charities, 2018: How the public views charities, what this means for the sector, and how trust can be increased’ (Charity Commission, July 2018) 4.

²⁸ Charity Commission, ‘The Garden Bridge project: Charity Commission concluding report’ (Charity Commission, April 2019) 3.1.

²⁹ M Atkinson, ‘How we’re building a greater scope for greater impact’ (NPC, 20 July 2017) www.thinknpc.org/resource-hub/how-were-building-a-greater-scope-for-greater-impact/.

When considering the future lessons to be learned from the Garden Bridge, the Commission concluded that policymakers should ‘think very carefully’ before setting up charities created to deliver major public projects. It stated: ‘[w]e consider it unlikely that the public would expect risks that are inherent in a major public infrastructure project to be outsourced to such a charity.’³⁰ There are indications in the report that the Commission will itself in the future be more careful about allowing such an entity to be registered, looking beyond the assessment of charitable purposes to determine if it is appropriate to pursue a particular project in terms of the risk to the sector. If this is indeed the case, it is welcome. Nevertheless, in framing the lessons learned as being for those outside the Commission looking to set up charities, the Commission is shifting responsibility that should rest with the regulator. Where, as seems to have been the case with the Garden Bridge, an arm of the state is trying to shift or outsource its risk onto the charity sector, then a robust regulator must be able to push back. If £50 million in public funds could be wasted without trustee mismanagement, then the boundaries of trustee action are set at too broad a level.

Perhaps the smaller, grassroots organisations are truer to the original ideas of charity. Matthew Harding argues in Chapter 2 that the charitable sector, as a site for voluntarism and altruism in the production of plural goods, merits independence from the state and is bound by various types of accountability to the state. This argument seems stronger when the discussion is framed around smaller organisations, with a clearer link to voluntarism and a closer tie to communities. Research by the Lloyds Bank Foundation has showed that smaller charities are different – they are more distinctive and have features orientated to local needs.³¹ We have already seen that larger organisations are more likely to receive government funding and to be providing government services via contracts. It does not seem as suitable to argue for greater independence in those situations, and indeed the contracts themselves may bind the charity in ways far more stringent than the regulator. Smaller charities, reliant on the good will of their donors and embedded in their communities, will have checks on their actions from their constituents.

IV. Hope for the Future?

Research by Populus in July 2018, commissioned by the Charity Commission, has indicated that in addition to transparency, public trust in charities is grounded in authenticity and demonstrating that they live their values.³² Lower levels of

³⁰ Charity Commission, ‘The Garden Bridge project’ (2019) (n 28) 3.1.

³¹ LSE Social Business Hub, ‘Giving big: when it comes to charities, does size matter?’ (*LSE Social Business Hub Blog*, 11 December 2018) <https://blogs.lse.ac.uk/socialbusinesshub/2018/12/11/giving-big-when-it-comes-to-charities-does-size-matter/>.

³² Populus, ‘Trust in Charities, 2018: How the public views charities, what this means for the sector, and how trust can be increased’ (Charity Commission, July 2018).

trust had the effect of reducing willingness to volunteer money or time to charities. In response, the Commission made it clear that this was beyond the remit of the Commission and was up to charities themselves. Nevertheless, the picture for charities and public trust is not as dim as it is frequently made out to be. Public trust in the charitable sector has plateaued after a fall, but the sector has moved up in the public's trust relative to other sectors, perhaps reflecting a general loss of trust in society's institutions.

This is an important point. In an era when we frequently despair at the news awaiting us, we need the charitable sector more than ever to improve social cohesion. The potential for the nonprofit sector and civil society to focus and mobilise the public is strong. Indeed, we see from Mark Sidel's Chapter 3 that concerns over the threat posed by overseas civil society have led to increased state control of their activities in China. The mobilising spirit of nonprofits as a threat to authoritarian state control is an extreme case, but the potential role of the sector is a powerful one in all societies.

Although we have discussed the potential for big charities to propose bigger risks, we also need the sector to be entrepreneurial and to tackle big challenges that are beyond the reach of a state. An obvious case is global climate change, a worldwide threat that is both beyond the reach of an individual state's control and seemingly beyond the reach of current political will. For situations such as this, it is appropriate for the regulator to give nonprofits a long leash. The risk is merited and with big risk may well come a big reward.

On the other hand, it is not appropriate for the state to try to shift risks that it should appropriately be carrying itself. We see this when unachievable contracts are tendered out to nonprofits to deliver core social services, placing nonprofits under state control and compromising their independence, while still shielding the state entity in the (sometimes inevitable) event that services cannot be delivered. Another example is a project such as the Garden Bridge, where the state shifted risk, but not the flexibility or the independence to mitigate that risk or to make other decisions. In these instances, the regulator should act robustly to protect the sector from the potential reputational damage.

We need a global regulatory framework that is suitable for enabling charities to tackle big challenges – that allows charities to be innovative; to be risky when the potential rewards merit it. But it should not allow charities to be exploited.

Research in nonprofit law and policy is an exciting area that has opened up beyond the precedents. The contributions to this volume illustrate that the modern scholarship in the field engages with law, policy, philosophy and other disciplines. As nonprofits occupy such a prominent place in society in much of the world, research into the fault-lines for charity law allows the researcher to engage with society's big questions. It has been our privilege to curate one such collection of outstanding efforts to understand what is at stake in today's debates in charity law.

