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# The Political Use of Private Benevolence: The Statute of Charitable Uses

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**THE POLITICAL USE OF PRIVATE BENEVOLENCE:  
THE STATUTE OF CHARITABLE USES**

**James J. Fishman**

**ABSTRACT**

This article examines the circumstances that led to the passage of the Statute of Charitable Uses of 1601, whose preamble unintentionally created a definition *charity* that resonates in the law today. The Statute was part of a legislative package of poor laws passed by Parliament to deal with an economic and political crisis that threatened the Tudor regime. The Statute's primary purpose was to provide a mechanism to make trustees accountable for the appropriate administration of charitable assets, which in turn would encourage increased private charity for the relief of poverty, lessening the tax burden of poor relief. Certain charitable beneficiaries were favored and others disadvantaged to spur private sector resources to resolve public problems, an approach used in times of crisis in the United States through tax incentives.

The article discusses the evolution of the laws regulating the poor, which culminated in the Poor Law Legislation of 1601, a process that developed attitudes toward the poor, concepts of need and of charity that remain with us today. A number of questions concerning the Statute are explored: why were some things included and others equally charitable, such as hospitals, not? Why does the wording of the Preamble paraphrase a part of the fourteenth century epic poem, *The Vision of Piers Plowman*? How did the Statute fit within the broader state effort to control the poor? What was the impact of the Statute on improving charitable accountability? Did the Statute encourage increased giving? Is there anything we can glean from the Tudor experience of dealing with an economic and social crisis to apply to disaster relief assistance and philanthropic giving today?

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## THE POLITICAL USE OF PRIVATE BENEVOLENCE: THE STATUTE OF CHARITABLE USES

James J. Fishman \*

A common American response to political or other crises is an outpouring of charitable giving.<sup>1</sup> This is often accompanied by governmental efforts to promote such efforts.<sup>2</sup> Though today philanthropy is enveloped by the intricacies of the Internal Revenue Code, which gives a

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<sup>1</sup> In the aftermath of September 11<sup>th</sup>, over \$2.7 billion contributed by private sources to the victims of the World Trade Center attack. An estimated two-thirds of American households donated money to charitable organizations. General Accounting Office, *September 11: More Effective Collaboration Could Enhance Charitable Organizations' Contributions in Disasters*, 1 (GAO-003-259)(Dec, 19, 2002). In the year after Hurricane Katrina devastated New Orleans and the Gulf Coast, forty-five of America's largest charities raised \$3.3 billion in donations plus another \$172 million of in kind goods and services. Harvy Lipman, *A Record Fund-raising Feat*, Chron. Philanthropy, Aug. 17, 2006 available at <http://philanthropy.com/premium/articles/v18/i21/21002201.htm>.

A study by the Center on Philanthropy at Indiana University examined what happened to the economy and to charitable giving in the years surrounding thirteen major events of terrorism, war, and political or economic crisis, including the World War II fall of France, Pearl Harbor, and the Korean War. The study found that in the aftermath of political and military crises the amount of charity contributed rose greater in the year after an event than during the year of the event and grew at a greater rate than the year before the event. Giving generally grew more than the increase in gross domestic product. However, While conventional wisdom in fundraising maintains that donors of all types give in response to need, analysis of contributions from 1939 to 1999, including years of 17 national crises ranging from war, natural disaster, political crisis, and terrorism, showed that economic variables strongly associated with giving, whereas crisis is seldom a significant factor. Crisis seems to matter in bivariate (giving/crisis) analysis, but not after controlling for economic changes in multivariate analyses. Melissa S. Brown & Patrick Rooney, *Giving Following a Crisis: An Historical Analysis* (Working Paper 2005) available at <http://www.philanthropy.iupui.edu/Research/Giving/Crisis%20Giving%20paper%203-24-031.doc>

<sup>2</sup> See, Victims of Terrorism Tax Relief Act, P.L. 107-134, 115 Stat. 2427 (2002), which provided relief for those who died or were injured in the September 11<sup>th</sup> terrorist attacks and the anthrax bioterrorism of 2001. The Act clarified that payments made by § 501(c)(3) charities as a result of these events would be considered as made for exempt purposes even without a specific assessment of financial need if the payments were made in good faith under an objective formula consistently applied. The Katrina Emergency Tax Relief Act of 2005, P.L. 109-73, 119 Stat. 2016 (2005), which temporarily expanded charitable contribution deductions by individuals and corporations and gave tax assistance for rebuilding homes affected by the hurricanes of that year.

charitable deduction to certain types of contributions,<sup>3</sup> historically, most philanthropic activity has been based not upon tax advantage but religious principle.<sup>4</sup>

Governmental encouragement of charity in times of crisis is at least four hundred years old and can be traced to the economic and political crisis of sixteenth century England, and the state's effort to encourage a plentitude of private philanthropy to relieve the poor. Over the sixteenth century occurred far-reaching changes in society that had an important impact on the

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<sup>3</sup> I.R.C. § 170. This section is one of the most complicated and longest sections in the whole Internal Revenue Code. The current version takes up more than 23 pages in the Commerce Clearing House Internal Revenue Code, and the regulations exceed 100 pages of small printed double columns!

<sup>4</sup> *Deut.* 15:7 ["If there is among you anyone in need, a member of your community in any of your towns within the land that the lord your God is giving you, do not be hard hearted or tight fisted toward your needy neighbor."]; *Deut.* 15: 10-11 ["Give liberally and be ungrudging when you do so, for on this account the Lord your God will bless you in all your work and in all that you undertake.]; *Matthew* 6:1 "Give to him who asks you do not run away"; *Matthew* 5:41-42 ["Give to everyone who begs from you and do not refuse anyone who wants to borrow from you."] Bruce M. Metzger & Roland Murphy, ed. Bible (New Revised Standard Version (Oxford 1991); Qur'an 57:18 ["Lo! Those who give alms, both men and women, and lend on to Allah a goodly loan, it will be doubled for them, and theirs will be a rich reward."] Qur'an 2:177 ["Piety does not lie in turning your face to East or West:

Piety lies in believing in God,  
The Last Day and the angels  
The Scriptures and the prophets,  
And disbursing your wealth out of love for God  
Among your kin and the orphans,  
The wayfarers and mendicants,  
Freeing the slaves, observing your devotional obligations,  
And in paying the zakat and fulfilling a pledge you have given,  
And being patient in hardship, adversity, and times of peril.  
These are the men who affirm the truth,

And they are those who follow the straight path."] *The Meaning of the Glorious Koran trans. By Marmaduke Pickthal* (Everyman's Library 1992); *See also*, Robert Bremner, *Giving* 11-20 (2000); Kevin C. Robbins, *The Nonprofit Sector in Historical Perspective: Traditions of Philanthropy in the West*, 13, 14-15, 19-29 in *The Nonprofit Sector: A Research Handbook* 267 (Walter W. Powell & Richard Steinberg, eds., 2d ed. 2006).

It is sometimes overlooked that the charitable deduction dates only from 1917, War Revenue Act, ch.63 § 1201(2), 40 Stat. 300,330 (1917), the estate tax from the following year, Revenue Act of 1918, ch. 18, § 403(a)(3), 40 Stat. 1057, 1098 (1919), and the gift tax from 1924. Revenue Act of 1924, ch. 234, §§ 319-24, 43 Stat. 253, 313-316. *See*, David E. Pozen, *Remapping the Charitable Deduction*, 39 Conn. L.Rev. 531, 537-38 (2006). Though philanthropic impulses of the more affluent today are usually driven by tax considerations, the nearly eighty percent of American taxpayers, those who do not itemize their deductions, give without regard to the tax consequences. In 2003, 29.6% of tax returns itemized charitable deductions. AAFRC Trust for Philanthropy, *Giving USA 2005*, at 67 tbl.1 (2005). In dollar terms, itemizers typically account for around 80% of total individual donations. *See*, e.g., Cong. Budget Office, *Effects of Allowing Nonitemizers To Deduct Charitable Contributions* 6 fig. 1 (2002), available at <http://www.cbo.gov/ftpdocs/40xx/doc4008/12-13-CharitableGiving.pdf>. *cited in* Pozen, *supra* note at 553. Those who take the standard deduction as a group are poorer but more generous in relation to percentage of income donated compared to more affluent taxpayers.

nature of philanthropic giving and the law relating to charities.<sup>5</sup> This article examines: 1) the evolution of the poor laws culminating in the Poor Law Act of 1601, a process that developed attitudes toward the poor and concepts of need and relief that remain with us today, and 2) the Statute of Charitable Uses,<sup>6</sup> which was a part of the poor law package of legislation that attempted to ameliorate poverty by encouraging the more affluent to give to the government's approved objects. The primary purpose of the Statute of Charitable Uses was to provide a mechanism to make trustees accountable for the appropriate administration of charitable assets, which in turn would encourage the affluent to increase their giving for poor relief. The subsequently far more famous Preamble created parameters for the definition of "charitable, which resonate in our law today.

Today, private assistance makes an enormous contribution to relief efforts, for it typically responds more quickly than government programs.<sup>7</sup> The amount of private charity in times of

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<sup>5</sup> "The Reformation and the social and economic upheavals of the century...had important consequences not only for the relationship between charitable trusts and public welfare services, but also for the law of charity. Unemployment and vagrancy were prevalent, the Guild system of apprenticeship was breaking down and the welfare and educational services, provided by the Church before the Reformation, were interrupted. Something had to be found to take their place. The refounding of grammar schools under new deeds, the Elizabethan Poor Law and the Statute of Charitable Uses of 1601 'to redress the Misemployment of Lands Goods and Stocks of Money heretofore given to Charitable Uses' was the answer...[T]his Statute was passed at practically the same time as the Statute for Relief of the Poor and formed part of a concerted plan for dealing with the economic and social problems of the day." Report of the Committee on the Law and Practice relating to Charitable Trusts (The Nathan Report), 18 ¶74 (1952) Cmd. 8710.[hereinafter, Nathan Report].

<sup>6</sup> 43 Eliz. c.4 (1601). The statute is also known as the Statute of Elizabeth, perhaps because of its fame. It has remained part of the common law for so long while other legislation of that era has been superseded. As there were hundreds of statutes enacted during the Elizabethan era, the statute of "Charitable Uses" is used herein.

<sup>7</sup> By October 31, 2002 approximately 70% of disaster relief aid raised by 35 large charities had been distributed to survivors or spent on disaster relief. *Id.* at 2. For criticism of the Federal Emergency Management Agency, see, Edward Wyatt, David W. Chen, Charles V. Bagli & Raymond Hernandez, *After 9/11, Parcels of Money, and Dismay*, N.Y. Times, Dec. 30, 2002. Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *A Failure of Initiative*, 109<sup>th</sup> Cong. 2d Sess. Feb. 15, 2006 available at <<http://www.gpoaccess.gov/congress/index.html>>. ("The Select Committee identified failures at all levels of government that significantly undermined and detracted from the heroic efforts of first responders, private individuals and organizations, faith based groups and others.").

crisis is dwarfed, however, by government assistance.<sup>8</sup> In the period under discussion in this article, England in the sixteenth and early seventeenth century, private charity was the primary source of relief. Government aid raised from parish poor rates (taxes) was merely complementary to voluntary charity. A massive private philanthropic response in periods of crisis reinforces a sense of community. Giving becomes a lodestar of civic responsibility, patriotism and social solidarity.

The economic and social crises facing the Tudor regime in the sixteenth century were very different from that of America in the aftermath of September 11<sup>th</sup> and Hurricane Katrina as was the approach to dealing with them. In America, the need for disaster relief assistance was immediate, and the charitable response far exceeded requirements.<sup>9</sup> In Tudor and Stuart England<sup>10</sup> the amounts raised were never sufficient to meet the needs of the poor.

## **I. The Crisis of the Late Tudor Period**

The time is the 1590s. The place is the England of the first Elizabeth. The temper is one of anxiety over the dangers of disorder and the concerns about the ability to consolidate the changes wrought by the Reformation. It is a period of disease, dearth, inflation, malnutrition and social stress over much of the country.<sup>11</sup> Forty percent of the population falls below the margin

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<sup>8</sup> Federal spending for disaster assistance in the aftermath of September 11<sup>th</sup> totaled \$19.63 billion. *September 11: Overview of Federal Disaster Assistance to the New York City Area*, GAO 04-72 (October 31, 2003). Federal allocations to the Gulf Coast in the aftermath of Katrina and other storms in 2005 totaled \$109 billion. Additionally over \$8 billion in tax relief was available. Mat Fellowes & Amy Liu, *Federal Allocations in Response to Katrina, Rita and Wilma: An Update* 1Brookings Institution Cities and Suburbs (August 21, 2006) available at <[http://www.brookings.edu/metro/pubs/200603\\_katrinafactsheet.htm](http://www.brookings.edu/metro/pubs/200603_katrinafactsheet.htm)>.

<sup>9</sup> In both crises major charities stopped solicitations for relief of individuals, though needs continued.

<sup>10</sup> The Tudor period encompasses 1485-1503. The Stuarts reigned from 1603 (Charles I) until 1689 (James II).

<sup>11</sup> Paul Slack, *Poverty and Social Regulation* 221, 226 in *The Reign of Elizabeth I* (Christopher Haigh, ed.1984) [hereinafter Slack, *Poverty*]. “Dearth” means both scarcity and expensiveness in price for both inflationary situations. D. M. Palliser, *The Age of Elizabeth: England Under the Later Tudors* 132 (1983).

of subsistence. Malnutrition has reached the point of starvation in the uplands of Cumbria. Plague and harvest failures in 1586 and 1595 to 1597 have forced food prices up. Average agricultural prices climbed higher in real terms from 1594-98 than at any time between 1260 and 1950.<sup>12</sup> Widespread distress is accompanied by a peak in crimes against property and by food and enclosure riots. Birth rates, life expectancy, and illegitimacy are rising.

Things are getting worse for most of the population. Vagrancy, which is believed to result in crimes against personal property, is increasing. In the towns, taxation for poor relief is vehemently resisted, because it is taxation.<sup>13</sup> Thousands of families are thrown on parish relief.<sup>14</sup> These critical circumstances clearly prompted the comprehensive poor relief legislation of 1597 and 1601.<sup>15</sup> One part of the relief package was the government's provision of incentives to the private sector to fund a solution to the social and economic crisis.

## **II. Philanthropy and the Poor Laws**

To properly place the role of philanthropy during the Tudor Period, one should first examine the government's treatment of the poor. Religious doctrine encouraged and provided justification for private giving. Government policy channeled charitable largess to desired objects. Private philanthropy complemented the overall Tudor policies toward the indigent. The approach taken toward types of poor defined the scope of philanthropy as well as criteria for

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<sup>12</sup> John Guy, *Tudor England* 403 (1988).

<sup>13</sup> Slack, *Poverty*, *supra* note 11 at 229,233.

<sup>14</sup> According to Professor Slack, that whole families sought relief by 1598 indicated the scale of the distress. *Id.* at 239-241.

<sup>15</sup> As in every other area of Tudor studies, this predominant view has been challenged. A minority of historians have become more reluctant to apply the term crisis to the 1590s, emphasizing the underlying sources of resilience in the metropolitan economy and downplaying the severity of the pressures to which it was subjected. *See*, Ian Archer, *The Pursuit of Stability: Social Relations in Elizabethan London* 11 (1991). In this article, the author attempts to steer toward the middle of the highway, recognizing that there are disagreements, often over nuances, but substantial issues as well.

worthiness of relief. The poor laws developed the concepts of need and worthiness for recipients of charity, and requirements that all those who could work must, criteria that still exist.<sup>16</sup> In contrast to this approach, most philanthropy in the Middle Ages, was for the use of religious objects, and enormous amounts of wealth were channeled to the church. Charity to individuals was in the form of alms and was indiscriminate. The poor laws and the Reformation redirected the focus of giving to more secular objects.<sup>17</sup> The Poor Law legislation of 1597 and 1601,<sup>18</sup> which included the Statute of Charitable Uses, was the culmination of a century of experimentation and error.

The Poor Laws of 1601 traditionally have been viewed merely as a response to the crisis of the 1590s. They were much more. Scholarship on the sixteenth to eighteenth centuries stresses the centrality of English poor relief and its administration in English local communities.<sup>19</sup> After the creation of the Anglican Church, the poor law was the most long-lasting of the first Elizabeth achievements. It persisted without fundamental alteration until 1834.<sup>20</sup> The poor laws provided relief, enforced discipline, expanded communal responsibility,

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<sup>16</sup> American public assistance programs are premised on the basis that relief is temporary, eligibility criteria combine the income of the whole household, and that recipients are expected to work. Family assistance is implemented by the states, and approved by the federal government. To obtain federal approval and financial support the states must meet requirements imposed on them, including standards and procedures to guard against fraud and abuse. They receive funds through a block grant program called Temporary Assistance for Needy Families (TANF), which normally limits eligible families to five years of assistance. States can exempt a maximum of twenty percent of families from the five year limit. Individual states set eligibility criteria, maximum size of grants, determine exemptions from work activities and sanctions. *See*, Personal Responsibility and Work Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified in sections of 7,8,20, 21, 25 & 42 U.S.C.). The program was reauthorized and the work requirements tightened by the Deficit Reduction Act of 2005, P.L. 109-171, 120 Stat. 4 (2006).

<sup>17</sup> Wilbur K. Jordan, *Philanthropy in England 1480-1660* 145 (1959) [hereinafter, Jordan]. Increases in secular bequest had been increasing since the thirteenth century.

<sup>18</sup> The 1601 Poor Law statute was identical with that of 1597 save for technical amendments. For a list of differences see, E.M.Leonard, *The Early History of English Poor Relief* 134-135 (1900).

<sup>19</sup> Peter M. Solar, *Poor Relief and English Economic Development Before the Industrial Revolution*, XLVIII *Econ. Hist. Rev.* n.s. 1-2(1995).

<sup>20</sup> Paul Slack, *Poverty*, *supra* note 11 at 221.

promoted societal stability, and yet, signaled and reaffirmed the social distance between groups.<sup>21</sup> Poor relief played an integral part in England's economic development, and philanthropy played a complementary role to the poor laws' success. From an ideological perspective, private philanthropy as encouraged by religious doctrine was to be the first line of relief of the poor. The Poor Law system was envisioned as a complement, to be used only in times of crisis.

### *The Development of the Poor Law*

One can trace the system created under the rubric of the "poor laws" to the social dislocations caused by the Black Death in the fourteenth century, which resulted in the breakdown of the manorial system and the emergence of—in A.L. Beier's felicitous phrase—*masterless men*, individuals who were landless migrants with no firm roots and few prospects. These vagrants or vagabonds, as they were disparagingly called, were viewed as a threat to the social order and classified into a criminal status.<sup>22</sup> Fourteenth century legislation attacked this social problem in two ways: regulating wages and outlawing movement, i.e. wandering by the unemployed, the latter being punished severely.<sup>23</sup>

The Black Death of 1348-1350 created a shortage of labor, eroded the manorial system, which tied worker to place, and encouraged worker mobility and pressure on wages. The

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<sup>21</sup> Solar *supra* note 19 at 2. Keith Wrightson, *English Society 1580-1680* 166-167, 226-228 (1982).

<sup>22</sup> A.L. Beier, *Masterless Men: The Vagrancy problem in England 1560-1640* xxi (1985). "Vagrant" and "vagabond" were emotive, elastic terms.

<sup>23</sup> Paul Slack, *Vagrants and Vagrancy in England, 1598-1664*, 360, 362 xxviii *Econ. Hist. Rev.* n.s. 360(1974), [hereinafter, Slack, Vagrants]

Ordinance of Laborers of 1349<sup>24</sup> and the Statute of Laborers of 1351<sup>25</sup> prohibited giving alms to able beggars, who refused to work, controlled wages so that employees could not be paid more than before the plague, restricted occupational and geographical mobility, set minimum terms of contracts and set maximum wages for certain occupations. According to Professor Miri Rubin, the system of labor control and wages became increasingly integrated into larger issues of poverty, vagrancy and charity and a continuing subject of legislation.<sup>26</sup> In 1361, the penalty for an infraction was increased from a fine to imprisonment and branding violators on the forehead with an “F” for falsity.<sup>27</sup> In 1388 Parliament prohibited movements not only of vagrants but also of laborers, tying workers to their parish.<sup>28</sup>

The erosion of the feudal system also changed attitudes toward charity, poverty and begging. Some reformers’ rejected casual almsgiving. There was also a need to manage the growing problem of poverty through the efforts of public agencies in the course of the sixteenth century.<sup>29</sup> A process of separation between donor and recipient entered English dealings with the poor. There emerged a distinction between types of poor: the worthy poor for whom charity was appropriate, and the undeserving, those able to work, who were to be denied relief. In the

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<sup>24</sup> An ordinance is a proclamation by the King. It was reinforced by Parliament’s enacting the Statute of Laborers. The Ordinance of Laborers required all able-bodied under sixty to work. Employers were prohibited to hire excess workers and wages were set at pre-plague levels. It was ineffective.

<sup>25</sup> 23 Edw. 3 c. 1-4.

<sup>26</sup> Miri Rubin, *The Hollow Crown: A History of Britain in the Late Middle Ages* 69 (2005). The legislation was enforced pragmatically in localities, usually ignored, but when expedient applied. *Id.* The statute was renewed in 1351. 25 Edw.III c. 1, 2.

<sup>27</sup> 34 Edw. III c. 9,10.

<sup>28</sup> 12 Rich. 2 c.3,c.7 (1388). Tying workers to their parish kept wages down and made it more difficult to take advantage of the demand for scarce labor.

<sup>29</sup> Felicity Heal, *Hospitality in Early Modern England* 17 (1990).

United States, a similar distinction arose early in our history and remains today as part of the political rhetoric.<sup>30</sup>

In the later medieval period new religious doctrines reflected changes in attitude toward the poor. They encouraged support of the worthy and punishment of the idle, and more practical policies, such as the need to restore stability and mitigate the effects of the periodic plagues and economic depressions. The goals of Tudor social (poor law) policy have been ably summarized by Professor Penry Williams:

Tudor poor law policy had several interlocking tasks. Most importantly, order and security had to be preserved by controlling the migrant poor, inhibiting them from crime, and preventing them from wandering indiscriminately over the countryside. The indigent and helpless must be relieved. The children of the poor must be fed and trained to support themselves. Economic policy played an important role in dealing with the poor. Rural depopulation had to be halted, so that the number of landless was kept within bounds. Grain must be supplied at reasonable prices in times of shortage. Work must be provided for the unemployed and prices and wages had to be controlled during times of inflation.<sup>31</sup>

Philanthropy played an important, though complementary role in this process. The state laid great store by voluntary action and considered it the major instrument for relieving suffering,

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<sup>30</sup> In his report on the poor of Massachusetts, Josiah Quincy noted that the principle on which laws rested divided the poor into two classes, the impotent poor, wholly incapable of work and the able poor, who could work to a certain extent. Report of the Pauper Laws of this Commonwealth, 1821 *in* David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the Early American Public* 4 (1971). For a discussion of labeling the poor, *see*, Herbert J. Gans, *The War Against the Poor* 11-26, 58-73, 74-102 (1995); Michael B. Katz, *The Undeserving Poor* 11-16 (1989).

<sup>31</sup> Penry Williams, *The Tudor Regime* 176 (1979).

educating the young, and dealing with social malaise and disorder.<sup>32</sup> The private sector, bolstered by Puritan doctrine, was encouraged to donate substantial resources for charitable ends.

<sup>33</sup> In turn, the state sponsored the implementation of a system of poor relief, an important part of which assured the proper administration of charitable assets so that fiduciaries would be held accountable, and donors would be encouraged that their contributions would be put to good use, namely relief of the worthy poor and the assurance of stability. To use a modern concept, the Tudors created a public-private partnership to deal with the age's most pressing problems, vagrancy and poverty.<sup>34</sup>

### *Who Were the Poor*

The poor of sixteenth-century England were often regarded as a more or less homogenous, somewhat threatening and probably shiftless mass. However, some contemporary observers noted they were composed of different groups with distinct problems.<sup>35</sup> Those who

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<sup>32</sup> David Owen, *English Philanthropy 1610-1960* 595 (1964).

<sup>33</sup> It is difficult to define the term "Puritanism" with precision. It was basically a movement, which was in dispute over the nature of the English church, its teaching, ministry, and government. See, J.P. Kenyon, *Stuart England* 28-9 (2d ed. 1985). Puritanism was 'the religion of all those who wished either to purify the usage of the established church from the taint of popery, or to worship separately by forms so purified.' Dickens, *The English Reformation* 313 (1964), *quoting* George Macauley Trevelyan. Puritans felt the Reformation did not go far enough and sought to purge the English church of all of its Catholic symbols and beliefs. Puritan, then represents an orientation rather than a fixed meaning. Some scholars describe the Puritans as evangelicals and do not capitalize the term.

<sup>34</sup> The government differentiated two kinds of poor - those who could work but were unwilling or unable to find it and those too old or sick. G. R. Elton, *England Under The Tudors* 188, 260 (2d ed. 1974) [hereinafter Elton, *England Under The Tudors*].

<sup>35</sup> A sixteenth century chronicler, William Harrison, described the division of the poor:

With us the poor is commonly divided into three sorts, so that some are poor by impotency, as the fatherless child, the aged, blind, and lame, and the diseased person that is judged to be incurable; the second are poor by casualty, as the wounded soldier, the decayed house holder, and the sick person visited with grievous and painful diseases; the third consisteth of thriftless poor, as the rioter has consumed all, the vagabond that will abide nowhere but runneth up and down from place to place (as it were seeking work and finding none, and finally, the rogue and strumpet, which we are not possible to be divided in sunder but run to and fro over all the realm, chiefly keeping the champayn soils in summer to avoid the scorching heat, and the woodland grounds in winter to eschew the blustering winds.

The *Description of England 180-181* (ed. Georges Edelen 1587 (1968)). This work is the only contemporary description of England in Shakespeare's age. It was first published in Holinshed's *Chronicles* in 1577 and republished in revised form in 1587. See, Palliser, *supra* note 11 at 394. An earlier observer Thomas Harman

attracted the most attention at the beginning of the sixteenth century, virtually the only poor people to attract any attention at all were vagabonds, who wandered the countryside usually in ones and twos, seeking employment and relief from their hunger.<sup>36</sup> In fact, they were scapegoats for all social problems. Some were criminals. Others were honest men and women deprived of their livelihoods. Yet others were discharged soldiers and sailors, the destitute victims of war. Most traveled to towns, where they hoped to find charity or work.<sup>37</sup>

A second group of poor consisted of the old, the sick, widows and orphans. Third were families, who could support themselves in good times but were rendered destitute by the sudden calamities of harvest failure, industrial slump, or plague. Finally, there were the families, that were poor but not destitute. The living standard of wage earners declined over the sixteenth century, and this group had little margin to spare for hard times. Society would not help this last group.<sup>38</sup> It took several hundred years for policymakers to realize that many could not find work even if they desired. In the present, some politicians have yet to realize this fact. Relief was intended only for the destitute or impotent, not those on the margin. As G.R. Elton summarized, “from the reign of Richard II in the fourteenth century to 1531, little more was done than to punish vagrants and talk piously about the need for charity to the genuinely poor.”<sup>39</sup>

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divided male vagabonds into fifteen separate designations beginning with “the Rufflar” as “being worthiest of this unruly rabblement.” A Caveat for Common Cursetors, Vulgarly Called Vagabonds 12 (1567)(1814 reprint). Female vagabonds were characterized into nine categories. All men and women are described as thieves by profession and living in a most dissolute and licentious manner.

<sup>36</sup> Williams, *supra* note 31 at 175-176. There was a view that these wanderers posed a threat to private property when they hit the roads. Beier, *supra* note 22 at 43-44.

<sup>37</sup> Slack, Vagrants, *supra* note 23 at 360.

<sup>38</sup> Williams, *supra* note 31 at 175-6.

<sup>39</sup> G.R. Elton, *An Early Tudor Poor Law*, 6 Econ. Hist. Rev. n.s. 55, 56 (1953) [hereinafter Elton, *An Early Tudor Poor Law*].

Over the course of the sixteenth century, the government markedly changed its attitude towards the impotent, the aged, and the deserving unemployed. Until 1552 the elderly, destitute, sick and impotent were expected to help themselves, though under license from the state after 1531.<sup>40</sup> A move towards organized support by the community commenced at a national level with a statute of 1552,<sup>41</sup> and continued in the 1570s with a system of general taxation and the grudging provision of work for the able-bodied. During the sixteenth century, there was a change from non-intervention, to the licensing of begging, and then, through the provision of compulsory alms giving, to an organized form of taxation and the creation of work.<sup>42</sup> There was no such progress in the treatment of the incorrigibly idle. They were to be repressed. The form of repression swung back and forth from mere savagery to bestiality.<sup>43</sup>

The development of the poor law system was a century-long process involving local initiatives as guides to what seemed to work, and a national policy that shifted between widely differing approaches. Statutes of Parliament are important, but they represent but a part of the story, and not necessarily the most important ingredient. Often national legislation did not reflect what was actually going on in the towns and rural areas. Parliamentary initiatives often were ignored or enforced reluctantly, and then only under Privy Council coercion.<sup>44</sup> The success of national policies depended more upon the Privy Council's pressures rather than mere

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<sup>40</sup> The only positive assistance provided by the government in the first half of the century was its attempt to prevent clothiers from dismissing their workman in 1528, during a period of disorder, depression, and shortage of grain and a short-lived provision in 1536. There had been minor uprisings in Norwich and Great Yarmouth, which terrified the government. See, John Pound, *Poverty and Vagrancy in Tudor England* 32-33 (2d ed. 1986).

<sup>41</sup> 5&6 Edw. 6 c.2 (1552).

<sup>42</sup> Williams, *supra* note 31 at 203.

<sup>43</sup> The severities often followed economic crisis, wars, or disorder. Williams, *supra* note 31 at 203-204.

<sup>44</sup> Palliser, *supra* note 11 at 124,316-317, Leonard, *supra* note 18 at 21.

Parliamentary enactment of legislation.<sup>45</sup> One should also recognize that English developments did not occur in isolation. Throughout the first quarter of the sixteenth century English poor law developments were but the “English phase of a general European movement of reform.”<sup>46</sup>

### *Local Efforts*

Poor relief was bottoms up legislation. Local experiments in London, Norwich and elsewhere served as models for the shape of the national scheme that culminated in 1601.<sup>47</sup> Virtually every measure legislated on a national basis was first tried in the towns, which were the incubators and innovators, playing the roles of nonprofit sector today.<sup>48</sup> When a statute was resisted or proved impractical, Parliament quickly shifted gears. This further encouraged the towns to stay with their own approaches.

By the early sixteenth century it had been many decades since parish poor relief had rested solely, or even primarily, in the hands of the local cleric. Alternatives included guilds and fraternities, the benefactions of prosperous laymen, and the mutual self-help of networks of family and neighborhood. Giving of secular clergy tended to focus at times of festivals and moments of celebration or desperate need.<sup>49</sup> Before 1569, the orders of municipal governments

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<sup>45</sup> The Privy Council was originally called the King’s Council. In the 1530s a small Privy Council was established by Thomas Cromwell. Its functions became more formal and it grew in size. It did much of the work of the late Tudor government.

<sup>46</sup> 7 Sidney & Beatrice Webb, *English Local Government: The English Poor Law History, Part 1: The Old Poor Law* 29 (1927).

<sup>47</sup> Williams, *supra* note 31 at 401. See, Marjorie K. McIntosh, *Local Responses to the Poor in Late Medieval and Tudor England*, 3 *Continuity & Change* 209, 210-213 (1988). G.R. Elton, *Reform and Renewal : Thomas Cromwell and The Common Weal* 122-126 (1973).

<sup>48</sup> It was in the eighteenth century that philanthropists created nonprofits to provide social services, Owen, *supra* note 32 at 37.

<sup>49</sup> Heal, *supra* note 29 at 256.

were more important than national mandates. In the first part of the sixteenth century towns began to substitute secular for ecclesiastical control in matters relating to the poor.

The migrant stranger-poor were as unwelcome in the towns and urban areas as they were in the country, because they represented a threat to public order. London drew up orders to repress vagrants and to control charitable giving prior to 1518. The dissolution of the monasteries in the 1530s created a sense of urgency for the development of a secular system of poor relief.<sup>50</sup> Thereafter, municipal systems of relief were established.<sup>51</sup> The dissolutions molded charities to secular ends. Government at all levels encouraged the secular creation of charitable institutions such as hospitals by easing the creation of such corporations<sup>52</sup> and assured that gifts or bequests were recognizable in law.<sup>53</sup>

There was a slow development over the Elizabethan period of a national system of poor relief based on the parish. This rendered the idea that the clergy must display liberality to the

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<sup>50</sup> The monasteries had been in decline for a century. They provided useful services for the transient poor by offering food and lodging. They founded most of England's hospitals, almshouses and other charitable institutions. The dissolution created many additional poor as the houses were inefficient employers of labor. Jordan, *supra* note 17 at 58-60.

<sup>51</sup> Leonard, *supra* note 18 at 21-23. In the aftermath of the expropriations the government prepared a valuation of all ecclesiastical property in England. This report, a veritable Domesday Book of the monasteries on the eve of dissolution, known as the *Valor Ecclesiasticus*, consisting of twenty-two volumes and three portfolios, was a comprehensive survey of the financial and religious state of the religious houses. Donald Knowles, *Bare Ruined Choirs: The Dissolution of the English Monasteries* 121 (1976); Elton, *England Under The Tudors*, *supra* note 24 at 143. In terms of their assets, the monasteries engaged in relatively little charity for the poor as the smaller cloisters were in a parlous financial situation themselves. The monks probably gave less than five percent of their net income to charitable purposes. *Id.* at 142. In the 1920s a Russian scholar, Alexander Savine, conducted a comprehensive analysis of the *Valor Ecclesiasticus* and concluded that at a survey of two hundred monasteries, with an aggregate income amounting to more than half of the total monastic revenue, the average allowable expense on 'charity' was about 3% of the income while at more than a hundred houses no alms free of the taxes contributed to the houses were discoverable. There was additional charity however. Some of the houses maintained children or offered education. Senior monks and officials presented gifts to churches. Others estimate that the true charitable figure might have been as high as 10% of income. The church's failure in the late Middle Ages was not a failure to contribute funds to poor relief, but a failure to provide focus by means of organized bodies so prevalent in modern philanthropy. Knowles, *supra* at 150-151.

<sup>52</sup> See *infra* note 163.

<sup>53</sup> Jordan, *supra* note 17 at 115.

poor for the sake of commonwealth less important. An exception occurred during the famine years of the 1590s when Archbishops John Whitgift, of Canterbury and Matthew Hatton of York were under direct orders of the Privy Council to compel his clergy to preach hospitality (charity) and give generously to the poor.<sup>54</sup> In 1596 after two successive crop failures and a fear of disorder, clergy were urged to recommend the observation of fasting and alms-giving on Wednesdays and Fridays and the food not used for personal consumption on those days should be distributed to all sorts of poor.

What signified a departure from usual practice was that the orders made no distinction between the worthy and undeserving poor.<sup>55</sup> Professor Hindle concludes that the campaign was relatively successful, but that it was counterproductive because of its defacto toleration of begging and the indiscriminate relief of vagrants through giving alms and food. The Poor Law Statute of 1598 restricted begging to the known worthy poor of the particular parish.<sup>56</sup> The hospitality campaign was not repeated.

Local approaches included the purchase of a public store of grain for the poor to be used in times of scarcity to ordering compulsory tax payments for poor relief. In 1547 London imposed mandatory payments for poor relief, twenty-five years before similar national legislation. Other urban areas developed poor law systems, which later were embodied in much

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<sup>54</sup> Heal, *supra* note 29 at 274. Clerical giving did not greatly increase, and though it was not pressed by the end of the sixteenth century, the issue was periodically raised by bishops when issues of non-residence and pluralities emerged. *Id.* at 275. In the post-Reformation period commentators agreed that the bishops had extraordinary responsibility for care of the poor. Public provision for the needy might alleviate their burden, but did not fully meet the complex notion of hospitality to the poor. Parish and other clergy were the inheritors of a generalized responsibility for care of the poor in their communities, but there were little expectations of their personal charitable role. *Id.* at 286.

<sup>55</sup> Steve Hindle, *Dearth, Fasting and Alms: The Campaign for General Hospitality in Late Elizabethan England*, 172 *Past & Present* 44 (2001).

<sup>56</sup> *Id.* at 79-81.

of the national legislation of 1572, 1597 and 1601.<sup>57</sup> Cambridge in 1560 required that fees paid for the commencement of lawsuits, admission of attorneys to plead, or for the signing of a lease were to be applied to poor relief. Attorneys had to pay one pence for poor relief for every fee.<sup>58</sup> In towns, alderman administered such programs. Private support, given mostly by the mercantile class, provided substantial relief.

### *National Policy: Early Tudor Efforts*

The initial Tudor solution to the poverty problem was to punish vagrants severely and force them to their home parishes.<sup>59</sup> Tudor England's fear of vagrancy was based on the perceived threat that the unemployed posed to private property when they took to the roads.<sup>60</sup> A 1531 statute allowed impotent beggars to obtain licenses from justices of the peace to solicit alms within certain areas.<sup>61</sup> Those who could not obtain such licenses but still begged were to be whipped, placed in stocks for three days and nights, and then returned to their place of birth or where they dwelt for the previous three years.<sup>62</sup>

For the first time there was a distinction between those able to work and those who could not. The state did not assume responsibility for the impotent, and continued to believe that all

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<sup>57</sup> Pound, *supra* note 40 at 56; Leonard *supra* note 18 at 29. Compulsory taxes for the poor were introduced in 1557 in Norwich, York Colchester and Ipswich. Bridewells, work schemes and censuses of the poor were common by the 1550s. Paul Slack, *English Poor Law 11 (1995)*[hereinafter, Slack, *Poor Law*].

<sup>58</sup> II Charles Henry Cooper, *Annals of Cambridge* 163 (1842).

<sup>59</sup> 11 Hen. 7 c.2 (1495); 22 Hen. VIII c.12 (1531).

<sup>60</sup> Beier, *supra* note 22 at 43-44. Guy, *supra* note 12 at 317.

<sup>61</sup> 22 Hen. 8 c.12 (1531).

<sup>62</sup> 22 Hen. 8 c.12. Mayors, bailiffs and justices of the peace were to search for the impotent poor. Those who gave alms to the unlicensed were fined. This statute was similar to regulations in effect at the time in London. Leonard, *supra* note 18 at 53-54. The statute also inflicted punishment on scholars of Oxford and Cambridge, who went begging without being duly licensed. 22 Hen.8 c.12 ¶ 4. At the time priests and inferior clergy begged, and if licensed, such begging was tolerated and not considered disgraceful. I George Nicholls, *A History of the English Poor Law* 117 (rev. ed. By H.G. Willink 1898).

those who wanted to work could find employment.<sup>63</sup> Charity remained a private matter, and in contrast to the responses of September 11<sup>th</sup> and hurricane Katrina, was inadequate to meet the need. All begging came to be disapproved. Statutes regulating the activities of the poor did not end the vagrant problem. The number of poor continued to increase, and the state would have to respond, if for no other reason than to preserve order.<sup>64</sup>

An important change occurred with the Poor Law Act of 1536,<sup>65</sup> which shaped the contour of future Tudor poor laws. In the previous year, probably William Marshall, a pamphleteer with an interest in social reform who moved in the circle around Thomas Cromwell, principal advisor to Henry VIII,<sup>66</sup> drafted a comprehensive scheme, which ultimately became the principles underlying the poor laws of 1597 and 1601.<sup>67</sup> At the time, Marshall's proposal was too extreme for Parliament, and the resulting statute was much adulterated.<sup>68</sup> Still, the Poor Law Act of 1536 is important, for it was the first to specify that poor be provided for in their own neighborhoods, and the state, through its local officials, was responsible for relief and the raising of funds. Significantly, the statute suggested a process for the integration of poor relief under the

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<sup>63</sup> Pound, *supra* note 40 at 37.

<sup>64</sup> Elton, *England Under The Tudors*, *supra* note 34 at 189; Slack, *Poor Law*, *supra* note 57 at 9.

<sup>65</sup> 27 Hen. 8 c.25 (1536).

<sup>66</sup> Thomas Cromwell, c. 1485-1540 was secretary to Cardinal Wolsey. Cromwell was responsible for the Henrician reformation and led the suppression of the small religious houses. He served as Chancellor of the Exchequer, Secretary of State, and Master of the Rolls. Cromwell played a leading role in making Henry head of the English church. He fell out of favor with the king for pushing a marriage to Anne of Cleves, whom Henry did not like. Cromwell was sent to the Tower and executed in 1540.

<sup>67</sup> See, Elton, *An Early Tudor Poor Law*, *supra* note 29 at 65-66 (1953). The plan made begging a wrong. Instead, the impotent poor were a charge on the community and should be helped, and the unit of government responsible for such assistance should be the parish. Marshall, ahead of his time, recognized that there were insufficient jobs to employ all those who desired to work. His plan provided for public works for those who could work, financed by an income tax. Poor children were to be sent out into service or apprenticeship. Local officials were to collect alms every Sunday in the parish churches.

<sup>68</sup> 27 Hen. 8 c. 25 (1536). Towns were to receive beggars who dwelt there. Indiscriminate almsgiving was banned under penalty of a fine. The aged, poor and impotent were to be assisted through voluntary almsgiving, so they would not go begging. Children under fourteen and over five who were idle and begged could be put into service or apprenticeship. Able bodied beggars were to be kept at continual labor. Sturdy beggars—those who would not work but could—were treated savagely. For a first offense, they were whipped and sent to their place of birth or dwelling. If they persisted, the upper part of the gristle of Their right ear was cut off, and after that—an early version of the three strikes and you're out legislation—they were executed. Local officials were to collect alms every Sunday.

control of public authority including funding by an income tax.<sup>69</sup> Alms giving still was voluntary.<sup>70</sup>

Professor Paul Slack notes that the 1536 Act defined the strategy for the future: work and punishment for the idle poor, cash to the impotent poor, a ban on casual almsgiving, responsibility in the hands of parish officers, and collections by the parish.<sup>71</sup> The 1536 Act also marked a shift away from hundreds, manors, and courts leet<sup>72</sup> as the focus of social regulation to the civil parish.<sup>73</sup> However, towns and localities distant from London ignored the 1536 act, and it soon lapsed.<sup>74</sup> From 1536 to 1563 the state was guided by the principles of 1531. Repression was the approach against able-bodied beggars. Others fended for themselves under license.<sup>75</sup>

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<sup>69</sup> Heal, *supra* note 29 at 97-98. Such integration was to include “broken meats and fragments” that had been previously been given by individuals at their doors but were now to be distributed by some local figure.

<sup>70</sup> Parliament realized the change in giving. In the course of passage, three clauses were added to the bill, which undercut the central impulse for the organization of charity in the form of food. In the Commons an extra clause secured the right of parishioners to give either money or fragments of food to the local poor while the Lords stipulated that the alms of noblemen should be protected and they should be permitted to give ‘as well to poor and independent people of other parishes. A third additional clause protected the traditional rights of monasteries and secular clergy in the giving of alms. Heal, *supra* note 29 at 97-98; G.R. Elton, *Reform and Revolution* 122-125 (1973). The legislation was similar to a 1533 plan in London whereby aldermen oversaw collections for the poor. Leonard, *supra* note 18 at 55-56; Williams, *supra* note 31 at 197-198.

<sup>71</sup> Slack, *English Poor Law*, *supra* note 57 at 9-10. The parish was the basic unit of civil government with the power to set levels of compulsory taxation.

<sup>72</sup> The hundred was a small administrative area dating from Saxon times. Every county in England was divided into “hundreds”. The Hundred Court consisted of representatives from all its manors and had jurisdiction over petty offenses and civil affairs. Lords could apply to the Crown to have the right of the Hundred Court applied to them for use on their manors. Such an additional court on a manor was called the Court Leet. The Court Leet's jurisdiction was “to enquire regularly and periodically into the proper condition of watercourses, roads, paths, and ditches; to guard against all manner of encroachments upon the public rights, whether by unlawful enclosure or otherwise; to preserve landmarks, to keep watch in the town, and overlook the common lands, adjust the rights over them, and restraining in any case their excessive exercise, as in the pasturage of cattle; to guard against the adulteration of food, to inspect weights and measures, to look in general to the morals of the people, and to find a remedy for each social ill and inconvenience, and to take cognizance of grosser crimes of assault, arson, burglary, larceny, manslaughter, murder, treason, and every felony at common law” Any citizen, or the Jury itself, could indict another by a presentment to the Leet jury, and action would be taken accordingly, usually a fine.

<sup>73</sup> Slack, *English Poor Law*, *supra* note 57 at 9-10.

<sup>74</sup> P.A. Fideler, *Poverty, Policy and Providence: The Tudors and The Poor*, 202 in P.A. Fideler & T.F. Mayer, eds. *Political Thought and The Tudor, Commonwealth* (1992).

<sup>75</sup> In 1545, a royal proclamation announced that the King would conscript “all such ruffians, vagabonds, masterless men, common players and evil-disposed persons” to serve in his armies or galleys. Williams, *supra* note 31 at 198.

A strange detour on the developmental path of the poor law was an act of 1547 during the protectorate of Somerset, which enabled vagabonds to be enslaved for two years, and branded with a “V” on the breast!<sup>76</sup> If the slave ran away during the two years, he would be branded with an “S” on the forehead.<sup>77</sup> The only positive aspects of the legislation were that impotent beggars were to be sent to their places of settlement, and funds for their use were to be provided by organized charity, obtained by weekly collections in the churches. The 1547 statute was too much even for those brutish times. It went un-enforced, and was repealed in 1550.<sup>78</sup>

The law then reverted to the principles, or lack thereof, of the statute of 1531. Over the course of the century came increasingly blunt demands for voluntary contributions, which were unsuccessful in alleviating the poverty problem. In 1552 Parliament ordered that collectors be appointed in town and country parishes, who would 'gently ask' parishioners for alms and distribute them among the poor. Those who refused to contribute were to be admonished first by the parson and then, if necessary, by the bishop. More importantly, the statute prohibited free-lance begging, heretofore the normal means of relief.<sup>79</sup> This statute reintroduced the principle of the act of 1536 that discouraged almsgiving and encouraged collections to be taken.

### *The Elizabethan Period (1558-1603)*

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<sup>76</sup> 1 Edw. 6 c.3 (1547). The preamble identified “ idleness and vagabondry is the mother and root of all thefts, robberies, and all evil acts, and other mischiefs” and criticized the “foolish pity and mercy of them which should have seen the said godly laws executed.”

<sup>77</sup> Vagrant male children could be seized by anyone, who could apprentice them until aged 24, girls until 20. If the enslaved children’s parents attempted to reclaim them, they themselves could be enslaved.

<sup>78</sup> 3 & 4 Edw. 6 c.10 (1550) It has been suggested that the statute was almost bound to fail, because it attempted to deal with a problem by threatening ferocious punishment without producing the administrative machinery to carry through the scheme, particularly at the local level. C.S.L. Davies, *Slavery and Protector Somerset: The Vagrancy Act of 1547*, 19 Econ. Hist. Rev. n.s. 533, 548-549 (1966).

<sup>79</sup> 5 & 6 Edw. 6 c. 2 (1552); Williams, *supra* note 31 at 199. A register was to be kept of the impotent poor on relief.

During the reign of Elizabeth the state became more active in dealing with solutions to the poverty problem. Denunciation of beggars and vagrancy, a major aspect of Elizabethan legislation, combined with an attempt to separate the worthy from the unworthy poor. Contributions to the poor-box were made compulsory in 1563. Refusal could lead to imprisonment, but the donation was still regarded as a gift. Its size was at the discretion of the donor.<sup>80</sup>

By the early 1570s the theological language of Protestantism could be used with powerful effect against vagrancy.<sup>81</sup> It was clear that voluntary efforts to provide sufficient relief failed. Society had become too complicated, the economic situation too difficult, and the mobility and increasing numbers of poor too many for individuals' philanthropic action to provide sufficient poor relief.<sup>82</sup> That responsibility had to be assumed by the state.

The major foundations of the Tudor system of poor relief were established in 1572 and 1576 and were based on successful local initiatives.<sup>83</sup> In 1572 Parliament swung back to harsher treatment of vagrants but also inaugurated a national system of taxation for poor relief.<sup>84</sup> The

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<sup>80</sup> 5 Eliz. c.3 (1563). The statute provided for appointment of a collector of alms and for licensing the poor to beg in parishes, where the parish was overburdened by the poor. Licensed beggars had to wear badges. If anyone refused reasonably to give to the relief of the poor he was to be gently exhorted to contribute according to his means and persuaded, at first, by clergy and churchwardens, then by the bishop. If the individual still refused to give, the bishops had the authority to bind over under penalty of £10 to the next sessions when justices of the peace would try to exhort the individual to give charity to the poor. If the recalcitrant still refused to contribute, the Justice of the Peace could assess and tax the individual and send him to prison until he paid. Nicholls, *supra* note 62 at 151-153. Those who refused to be collectors for the poor, an unenviable task, could be fined. Pound, *supra* note 40 at 45; Williams, *supra* note 31 at 200. Another statute of that year, 5 Eliz. c.4 (1562-1563), forced the unemployed to work in their trade as servants. Justices of the Peace set their salary, hours, work and time for meals.

<sup>81</sup> Heal, *supra* note 29 at 130-131.

<sup>82</sup> *Id.*

<sup>83</sup> There were also efforts to keep wages at levels earlier in the century and to control the labor market. Pound, *supra* note 40 at 43.

<sup>84</sup> There already existed compulsory rate systems for poor relief in London, Norwich and York by 1550, and subsequently in Colchester, Ipswich and Cambridge. Fiedler, *supra* note 74 at 208.

direction of poor relief legislation moved away from encouragement of casual household alms and towards a more disciplined and public approach to the problem of poverty. This approach was most closely aligned with the Calvinists who had become the driving force behind schemes for the poor in many English towns and some villages in 1580s and 1590s.<sup>85</sup> The 1572 statute required justices of the peace to list the poor in each parish, assess the money needed to maintain them, and appoint overseers for administering the welfare system, deploying surplus funds to provide houses of correction for vagrants.<sup>86</sup>

A 1576 a statute mandated the provisioning of raw materials-wool, flax, hemp, or iron—so that the able-bodied unemployed could be set to work.<sup>87</sup> The statute's preamble indirectly admitted that some men were unemployed as a result of misfortune rather than idleness, a major concession. The stated purpose of the act was to ensure that rogues 'may not have any just excuse in saying that they cannot get any service or work.'<sup>88</sup> By 1576 the main provisions of Tudor poor relief were in place: compulsory taxation and the provision of work for the able-bodied. At the end of the century the government finally enacted a comprehensive policy for treating the poor.

### *The Poor Law Schemes of 1597 and 1601*

The Poor Laws of 1597 and 1601 were essential components and the logical consequence of the Tudor State's industrial and social policy, which endeavored to preserve order as well as

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<sup>85</sup> Heal, *supra* note 29 at 133.

<sup>86</sup> 14 Eliz. c.5 (1572). Repealing legislation dating from 1531, the act required that adult vagrants were to be whipped and bored through the ear for the first offense, condemned as felons for the second offense, and hanged without benefit of clergy for a third. Vagabonds returned to their domiciles were to be put to work. If there were too many beggars to be relieved, justices of the peace could issue begging licenses. Guy, *supra* note 12 at 326; Pound, *supra* note 40 at 47-48.

<sup>87</sup> Williams, *supra* note 31 at 200.

<sup>88</sup> 18 Eliz. c.3 (1576); Williams, *supra* note 31 at 200.

maintain the prosperity of all classes by keeping the price of food low, employment constant, regulating employer-employee relations, and settling the conditions of carrying on trade. If the above-mentioned measures did not prevent distress for some, as they did not, the poor law mechanism was brought into play.<sup>89</sup> The theory of seventeenth century poor relief was that work must be found for the able-bodied unemployed, begging was wrong, almsgiving had to be restrained by law, and the helpless should be a charge on the community.<sup>90</sup>

The Poor Laws of 1597<sup>91</sup> and 1601<sup>92</sup> provided a safety net of relief for the indigent, who could not work, and employment for those who could. The poor relief system supplanted sole reliance upon private charity. It relieved the impotent, fed the starving, provided work for the unemployed, coerced the vagrant, and provided the basis for centuries of treatment of the poor.

Various interests influenced the creation of the poor laws. In 1597 the leading proponents for reform were a group of Puritan members of Parliament.<sup>93</sup> At least seventeen bills were introduced and referred to a committee of prominent M.P.s.<sup>94</sup> The bills that emerged from committee offered a comprehensive approach to the problems of vagrancy and poverty. The statutes consisted of a package that reflected the realities of towns, cities and rural areas and

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<sup>89</sup> IV William Holdsworth, *A History of English Law 157-158, 399-400* (3rd ed. 1945).

<sup>90</sup> Elton, *England Under The Tudors*, *supra* note 34 at 189. Poor laws finally completed in the Acts of 1597 and 1601 not only enshrined the general hostility to vagrancy but acknowledged in some measure the idea that shame was attached to any form of request for casual alms. After 1597 casual alms-giving was prohibited without a license, normally available from a justice of the peace, though local begging could be sanctioned by the overseers. Heal, *supra* 29 note at 131.

<sup>91</sup> 39 Eliz. c. 3, and 45 Eliz. c. 2.

<sup>92</sup> 43 Eliz. c. 2.

<sup>93</sup> Slack, *English Poor Law*, *supra* note 57 at 11. By the end of the sixteenth century, Puritans commanded a majority in the House of Commons, Dickens, *supra* note 33 at 370.

<sup>94</sup> Leonard, *supra* note 18 at 74. The Committee considering the legislation included Sir Frances Bacon, Sir Thomas Cecil, and Sir Edward Coke.

could be applied nationally and uniformly.<sup>95</sup> “The result was a compromise, but the lowest common denominator was not negligible.”<sup>96</sup>

The governmental unit responsible for poor relief was the parish. The resources for this program had to be raised by compulsory taxation at the parish level.<sup>97</sup> The basic statute, the Poor Law Act,<sup>98</sup> placed relief of the poor in the hands of church wardens<sup>99</sup> and two to four “overseers of the poor”, who were appointed annually by the justices of the peace, and drawn from the substantial householders of the parish. This was a major change with the past. Previously, the responsibility of initiating measures for relief rested on the head officials of the towns or the justices of the peace in the parishes. Instead, the justices of the peace assumed a supervisory role. For most of the sixteenth century voluntary assistance was the source of funds, and their locus was in the church. Poor relief became part of the civil power.<sup>100</sup> The primary focus turned to relief, even in ordinary times, rather than repression. The latter remained, however, for the recalcitrant beggar.

The overseers in conjunction with the church wardens had the responsibility of providing for all the various classes of the destitute, who were without the means to maintain themselves. They could take measures to set the poor to work by creating a stock of materials which they could labor on, apprentice children, and relieve the impotent, the old and the blind. Overseers could build hospitals. Parents having the means to do so were made legally liable to maintain

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<sup>95</sup> Paul Slack, *Poverty and Policy in Tudor and Stuart England* 122-126, (1988).

<sup>96</sup> Slack, *English Poor Law*, *supra* note 57 at 12.

<sup>97</sup> See *supra* for the discussion of the failure of voluntary charity raising sufficient funds.

<sup>98</sup> 39 Eliz. c.3 (1597).

<sup>99</sup> Churchwardens were lay officials, who looked after the secular affairs of the parish church.

<sup>100</sup> Leonard, *supra* note 18 at 78.

their own children and grandchildren. Children were to maintain their parents, if they could. The justices were empowered to commit to a house of correction (or as provided in the 1601 re-enactment, to the common jail) anyone refusing to work; and also to issue a warrant of distress against and commit to any person anyone failing to pay the poor rate, the tax.

Overseers were directed to raise whatever funds they required by a direct levy, "weekly or otherwise" upon every inhabitant and occupier of land,<sup>101</sup> and raise the tax rates within the parish, if necessary. The justices also were authorized to issue a warrant, if any parish was unable to raise enough for the support of its own poor, to levy on other parishes for such sums as the justices saw fit. Parish officers and the overseers were accountable annually.<sup>102</sup>

The Poor Law legislation consisted of six statutes of which the Statute of Charitable Uses<sup>103</sup> was one. The other statutes dealt with: the maintenance of tillage (improving the cultivation of land for agricultural purposes);<sup>104</sup> means of obviating the decay of townships;<sup>105</sup> the punishment of "rogues, vagabonds and sturdy beggars";<sup>106</sup> the erection of hospitals, or

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<sup>101</sup> Those who objected to their rates could appeal the assessment to two justices of the peace. Rich parishes might be rated in aid of poor ones. Failure to pay parish rates could result in ones goods being detrained or the individual even being committed to prison.

<sup>102</sup> If the overseers refused to account, they could join the tax evaders in prison.

<sup>103</sup> 39 Eliz. c.6 & 43 Eliz. c.4.

<sup>104</sup> 39 Eliz. c.2.

<sup>105</sup> 39 Eliz. c.1.

<sup>106</sup> 39 Eliz. c.4. Though relief was the primary purpose of the poor laws; punishment lurked against those who would not work. This statute empowered justices of the peace to erect houses of correction. Vagabonds were to be punished by whipping and then sent to a house of correction or jail belonging to their place of settlement, and from there to be placed in service if able-bodied or in an almshouse if impotent. If the "rogue" was dangerous he was to be banished, and if he returned, he would be put to death. The minister of the parish and another were to assist by their advice as to the punishment of able-bodied rogues.

"abiding and working houses" for the poor;<sup>107</sup> and a comprehensive measure for relief of the indigent.<sup>108</sup> Two statutes dealt with the problem of discharged servicemen.<sup>109</sup>

The poor laws created an effective machinery for a system of poor relief, but it assumed that sufficient funds would be raised. Taxation for poor relief however, was vehemently resisted. Men objected to the rates, because they were not convinced of the State's duty to relieve the poor.<sup>110</sup> Privy Council pressure forced taxes to be raised, but the amount received was always insufficient for the real needs.<sup>111</sup> According to Professor Slack, prior to 1660 the impact of government raised payments to the poor was not that great, for the poor rates were too low and the number of poor too large to have a substantial impact.<sup>112</sup> As with modern efforts at relief of the poor, the state of the general economy was the primary factor in easing their plight.<sup>113</sup>

The poor law was to provide four types of assistance: relief of the impotent; assistance to families, where the chief wage earner couldn't support the family by their own labor; apprenticeship of children into households; and provision of work for the able-bodied

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<sup>107</sup> 39 Eliz. c.5. This allowed for the expeditious founding of hospitals or houses of correction by simply enrolling in the Court of Chancery without the need of obtaining Letters Patent or an Act of Parliament. Donors were authorized to bequeath land or other resources. Foundations had to be endowed with property sufficient to produce £10 of revenue annually. This statute and the Statute of Charitable Uses were efforts to encourage private philanthropy.

<sup>108</sup> 39 Eliz. c.3.

<sup>109</sup> One statute, 39 Eliz. c.21, increased the rate that justices might impose for the relief of soldiers. Another, 39 Eliz. c.17, provided severe punishments to soldiers, mariners, or idle persons who wandered about. They were a threat to order. However, if a soldier or sailor could not obtain employment in his parish and applied to two justices of the peace, they were obliged to find him work and if necessary, tax the whole hundred for the purpose.

<sup>110</sup> Slack, Poverty, *supra* note 11 at 233; Leonard, *supra* note 18 at 94.

<sup>111</sup> Jordan, *supra* note 17 at 140 estimates the annual amount raised by the government at only seven percent of private charity. As with other of Jordan's data, see *infra*, this figure has been questioned as too low. Pound, *supra* note 40 at 68. The estimated cash yield of endowed charities £11,776 was but .25% of national income. J.F. Hadwin, Deflating Philanthropy, 31 Econ. Hist. Rev. n.s. 112 (table 2), 117(1978); John Guy, *supra* note 12 at 404.

<sup>112</sup> Slack, English Poor Law, *supra* note 57 at 45.

<sup>113</sup> In the seventeenth century, a period of great economic change which raised living standards overall, the crucial question is whether poor relief accelerated or retarded economic growth. Slack concludes the welfare machine was to some degree independent of the economic environment. *Id.* at 45-47.

unemployed by obtaining stocks of materials which they could turn into products for sale. The funds available for relief disproportionately were spent for assistance to families and to apprentice children. The workfare programs and aid for the impotent received much less.<sup>114</sup>

The failure of private generosity to meet adequately the needs of the worthy poor was apparent. Yet, primary relief of poverty was still left to private initiative, principally merchants and the Puritan sector of the gentry.<sup>115</sup> The Poor Law statutes were designed as an ultimate solution to be triggered only if the social and economic situation should exceed the capacities of private philanthropies.<sup>116</sup>

### **III. The Statute of Charitable Uses**

#### *Introduction*

There was little distinction between the kind of relief afforded by private charity and that provided by poor rates. The compulsory taxation system evolved from voluntary giving, which was largely church-based. Municipal officers or overseers, who served on public or semi-public authorities controlled many ostensibly private charities.<sup>117</sup> Despite the package of the poor laws

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<sup>114</sup> Richard Smith, *Charity, Self-Interest and Welfare: Reflections from Demographic and Family History* in Martin Daunton ed. *Self-interest and Welfare in the English Past* at 23, 32-33 (1996).

<sup>115</sup> Christopher Hill, *The Century of Revolution 1603-1714* 20 (1982). Puritanism itself encouraged the attack on poverty by combining the discipline of Presbyterian doctrine, relief for the impotent poor, work for the sturdy, punishment for the idle and support philanthropic organizations for individuals to benefit and improve themselves. *Id.* at 70-71 Many of the workhouse schemes were designed by Puritan merchants who treated the poor as a business problem requiring investment. Their experiments ran into opposition and sabotage from other merchants who feared economic competition. Richard Grassby, *The Business Community of seventeenth-century England* 228 (1995).

<sup>116</sup> Owen *supra* note 32 at 1-2. "...the State had laid great store by voluntary action and, indeed, had thought of it as the major instrument for relieving suffering, educating the young, and dealing with social malaise. The Statute itself was an attempt to guide the generous impulses of Englishmen which in the past had been applied to more directly religious purposes. Clearly it was the intention of the Government that charitable individuals should take over and that the State should act only where there was no alternative...The function of the State was to fill gaps in the network of private charity." *Id.* at 595. While private giving continued, it was superceded in the late seventeenth century by mechanisms of institutional structures. Heal, *supra* note 29 at 394.

<sup>117</sup> Leonard, *supra* note 18 at 204-205.

and other orders that the paternal Tudor State demanded of its citizens,<sup>118</sup> voluntary giving still was encouraged.

In this environment, the legal stability of and accountability for charitable gifts became of great concern to the government, which hoped to use charitable contributions to relieve poverty and thereby make unnecessary the unpopular imposition of taxes at the parish level. Private largesse would be the first line of defense against disorder and want.

### *Breaches by Fiduciaries of Charitable Assets*

A common theme of the Tudor period, which exists today in the United States,<sup>119</sup> is the widespread belief that there are widespread breaches of fiduciary duty by trustees and officials of charitable organizations. When Henry VIII dissolved the monasteries in the 1530s, his justification was based on opportunistic fiduciary behavior: the misuse and appropriation of

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<sup>118</sup> The Poor Laws were but a part of Tudor paternalistic and centralized government. Gentlemen were ordered home to their estates; farmers were forced to bring their corn to market; cloth manufacturers had to carry on their trade under well-defined regulations, and merchants were obliged to trade in a manner, which was thought to be conducive to most to the good order and power of the nation, in modern jargon fair dealing and good practices in the trade. Workers were ordered to work whether they liked it or not, and if the law was enforced, had to accept the wages fixed by the justices of the peace. Those who would not work went to houses of correction or jails. *Id.* at 140.

<sup>119</sup> Media discoveries of conflicts of interest, excessive compensation, diversion of charitable assets, inflated deductions for gifts of appreciated property, and outright fraud attracted the attention of Congress, which held a series of hearings that resulted in the most significant legislation affecting nonprofits since 1969. *See*, Senate Finance Comm. Staff Discussion Draft, June 22, 2004, available at [finance.senate.gov/hearings/testimony/2004test/062204stfdis.pdf](http://finance.senate.gov/hearings/testimony/2004test/062204stfdis.pdf). A background document prepared by the Joint Committee on Taxation in conjunction with the June 2004 hearings summarizes the law and includes extensive statistical data on tax-exempt organizations. *See* Joint Committee on Taxation, Description of Present Law Relating to Charitable and Other Exempt Organizations and Statistical Information Regarding Growth and Oversight of the Tax-Exempt Sector (JCX-44-04), June 22, 2004, available at [www.house.gov/jct/x-44-04.pdf](http://www.house.gov/jct/x-44-04.pdf). The House Hearings were informed by a comprehensive document describing the history and present law of tax exemption. *See*, Joint Committee on Taxation, Historical Development and Present Law of the Federal Tax Exemption for Charities and Other Tax-Exempt Organizations (JCX-29-05), April 29, 2005, available at [www.house.gov/jct/x-29-05.pdf](http://www.house.gov/jct/x-29-05.pdf). The legislation, the Pension Protection Act of 2006, § 1224 Pub.L. No. 109-280, 120 Stat. 780 (2006) (codified as amended in scattered sections of 26 U.S.C.), dealt with some of the most pressing problems in the sector—donor advised funds, supporting organizations, conservation easements, tax-exempt credit counseling agencies, donations of used clothing and household items, and some other abuses. The legislation increased existing penalties for violations of the Internal Revenue Code.

charitable endowments.<sup>120</sup> In the aftermath of the dissolutions, many looted. Patrons and donors reacted to the attack on the church by exercising their self-proclaimed rights of reversion, and in some instances there was outright embezzlement or forcible seizure.

These takings ranged in scale from a widow at Nettlebed in Oxfordshire, Ann Eaton, who had given a cow with ten shillings to maintain a lamp before the altar, and withdrew the beast when reformers abolished such lamps,<sup>121</sup> to substantial expropriations by cities, such as York, which used the assets for municipal needs. Misuse of charitable assets also preceded the dissolutions, and was considered to be a general problem.<sup>122</sup>

The creation of an independent English Church and the development of Protestant doctrines did not change the nature of man. After the Reformation, petitioners still complained to the Chancellor about the misuse of charitable assets. It was easier to protest about a wrong, than to achieve justice in remedying it.<sup>123</sup> The answers to such charges fell into standard responses: jurisdictional objections—the petitioner was in the wrong court; the fiduciary had insufficient assets to put the charitable use to proper purpose; the fiduciary had no personal interest in the endowment; valid reasons existed why a legacy had not been distributed; for example, there was no assurance that the money would be applied to its proper use.<sup>124</sup>

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<sup>120</sup> According to Jordan the erosion of monasterial giving was not due to corruption but mismanagement, wastage of estates and added costs of administration. Jordan, *supra* note 17 at 59.

<sup>121</sup> Ms. Eaton died soon after. The commissioners debited the parishioners of Nettlebed the sum of ten shillings. Dickens, *supra* note 33 at 209.

<sup>122</sup> Gareth Jones, *The History of the Law of Charity 1500-1827* 16-18 (1969).

<sup>123</sup> *Id.* 16.

<sup>124</sup> *Id.*

The crown also faced substantial procedural problems in protecting charitable gifts in Chancery. Unlike the ecclesiastical courts, where the ordinary<sup>125</sup> was the guardian of charity, prior to 1597 Chancery had no adequate or established procedure to enable the crown to protect the charitable corpus.<sup>126</sup> Because of the inchoate nature of some beneficiary classes, there was no single person whose interests would be affected by the fiduciary breach. Defendants could delay proceedings objecting that the petitioners had no standing. In fact delay was the most effective defense.<sup>127</sup>

Under English practice, the petitioners would be responsible for costs if the petition failed, a certain disincentive. Often the amount of the charitable corpus was small, making a petition cost-inefficient. In such a situation the petitioner would need to be affluent and one for whom the suit was based on principle, a scarce commodity in any era. For all of these reasons, there was a need for a dependable and effective procedure to right cases of charitable wrongdoing.<sup>128</sup> The existing procedure gave little confidence to a would-be donor that his funds would be spent appropriately. If accountability was so difficult to achieve, why give?

### *The Purposes of the Statute of Charitable Uses*

Encouraging privately philanthropy to meet the needs of society's poor was a more painless approach than the use of local rates, which burdened everyone. The more raised privately, the lower the poor rates. To create an effective system of philanthropy, donors needed

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<sup>125</sup> An ordinary is a clergyman, such as a bishop or bishop's deputy, who has of his or her own right and not by the appointment of another, has immediate jurisdiction in ecclesiastical cases. Oxford English Dictionary, available at [http://dictionary.oed.com/cgi/findword?query\\_type=word&queryword=ordinary&find.x=77&find.y=15](http://dictionary.oed.com/cgi/findword?query_type=word&queryword=ordinary&find.x=77&find.y=15).

<sup>126</sup> Jones, *supra* note 122 at 4, 21.

<sup>127</sup> *Id.* at 20-21.

<sup>128</sup> *Id.* at 22.

to be exhorted in a theological sense, encouraged by government policies, and assured of protection that their sums would be appropriately spent. If a legal regime could be created to efficiently protect the use of charitable assets, and the ethos of society cultivated such giving, then the middle and upper middle classes, particularly the merchant gentry, might increase their support towards ends that the State approved. This was the rationale of the Statute of Charitable Uses.<sup>129</sup> There developed a public-private partnership “in which the state filled in gaps left by charity rather than charity filling in gaps left by the state.”<sup>130</sup>

Parliament passed an earlier version of the 1601 legislation in 1597.<sup>131</sup> The poor laws determined that relief would be borne partially at the parish and county levels, financed by a compulsory rate levied on householders.<sup>132</sup> It was assumed, that private philanthropy could assume much of the burden of poor relief, but charitable funds had been diverted into uncharitable pockets.<sup>133</sup> The Preamble to the 1597 statute spoke to the problems caused by opportunistic fiduciaries:

“Charitable funds have been and are still likely to be most unlawfully and uncharitably converted to the lucre and gain of some few greedy and covetous persons, contrary to the true intent and meaning of the givers and disposers thereof.”<sup>134</sup>

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<sup>129</sup> *Id.* at 204-205.

<sup>130</sup> Nathan Report, *supra* note 5 at 8 ¶38.

<sup>131</sup> 39 Eliz. c.6.

<sup>132</sup> The towns mixed voluntary and compulsory charity. The act codified practices developed in villages and towns for more than a century as well as incorporating earlier Tudor legislation. McIntosh, *supra* note 37 at 210. The amount contributed voluntarily roughly equalled that raised by taxation up to 1650. In London the livery companies contributed alone provided at £14,000 per annum. Private charity was often administered for legal reasons by semi-public bodies and the poor-rate was indispensable and levied consistently, even during the Interregnum. The problem of poverty was not solved or fully understood, but it was contained. The system of poor relief worked by both helping the temporary and the charitable poor and by freeing children from taking care of their elders. Grassby, *supra* note 115 at 228.

<sup>133</sup> Jones, *supra* note 122 at 22.

<sup>134</sup> An Act to Reform Deceits and Breaches of Trust, Touching Lands Given to Charitable Uses, 39 Eliz. c.6 (1597), Preamble. The spelling has been modernized.

The 1597 act was similar to the 1601 statute, except for minor details.<sup>135</sup> The purpose of both was to create an effective inquisitional procedure that enabled detection of breaches of charitable trust. The Statute supplemented Chancery, which because of delay and expense, was inadequate to ensure fiduciary accountability. It manifested the crown's concern that charities be protected, and ensured that the interest of donors would not be subverted by opportunistic fiduciaries. The Statutes of Charitable Uses of 1597 and 1601 satisfied these needs and complemented the contemporaneously enacted poor law legislation.

In order to encourage giving, some effective system of oversight had to be created. This was the statute's primary purpose.<sup>136</sup> The Statute of Charitable Uses created a procedure for investigation of the misuse of charitable assets, codified and extended the legal underpinning of the charitable trust, solidified the role of the Chancellor in overseeing charitable assets, and solely unintentionally in the statute's Preamble, undertook the recital of the proper objects of charitable interest.<sup>137</sup> This later became the source for the scope of meaning of the word "charitable." The statute remained on the books until 1888.<sup>138</sup> Its successor statute preserved the Preamble as has the case law.<sup>139</sup>

### *The Preamble*

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<sup>135</sup> Jones, *supra* note 122 at 25. The 1597 statute did not allow for challenge to jurors selected. The latter statute also contained some procedural changes and better drafting than its 1597 predecessor. Major differences included the 1601 version omitted the section that all beggars would be declared rogues if they asked for anything more than food and parents' liability to support their children was extended to grandparents. Leonard, *supra* note 18 at 134-135.

<sup>136</sup> Jones, *supra* note 122 at 12-13.

<sup>137</sup> Jordan, *supra* note 17 at 112.

<sup>138</sup> Mortmain & Charitable Uses Act, 51 & 52 Victoria, c. 42 (1888).

<sup>139</sup> Commissioner of Income Tax. v. Pemsel, 22 Q.B.D. 296 (1891). The charitable purposes mentioned in the Statute of Charitable Uses and Pemsel were expanded by the Charities Act 2006 c. 50 (Eng.). Section 2 now gives a list of charitable purposes ranging from the relief of poverty to the advancement of amateur sport. The statute also requires that the charity serve a public benefit. § 2(1)(b). The Charities Commission has issued a public benefit guidance, Charities and Public Benefit (2007) available at <[www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)>.

The Preamble to the Statute of Charitable Uses is famous for providing a legal definition of charitable purpose and is the starting point for the modern law of charity.<sup>140</sup> However, it was never intended to encompass all charitable activities. According to the leading contemporary source, *Francis Moore's Reading on the Statute of Charitable Uses*,<sup>141</sup> the Preamble was an elaborate listing of uses, which would relieve poverty and reduce the local parish's responsibilities under the concurrently passed poor law. It was not exclusive, but merely a listing of charities the state wished to encourage. Public benefit was the key to the statute, and the relief of poverty its principal manifestation.<sup>142</sup> By using a broad definition of purposes, which would benefit the poor, the charitable use

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<sup>140</sup> John P. Persons, John J. Osborne & Charles F. Feldman, *Criteria for Exemption Under Section 501 (c)(3)*, IV Research Papers Sponsored by The [Filer] Commission on Private Philanthropy and Public Needs 1912 (1977) [hereinafter, Persons]. The wording of the preamble with modernized spelling is as follows:

Whereas lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money and stocks of money have been heretofore given, limited, appointed, and assigned as well by the Queen's most excellent Majesty, and her most noble progenitors, as by sundry other well-disposed persons; some for relief of aged, impotent and poor people, some for maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars in universities, some for repair of bridges, ports, havens, causeways, churches, sea-banks, and highways, some for education and preferment of orphans, some for or towards relief, stock or maintenance for houses of correction, some for marriages of poor maids, some for supportation, aid and help of young tradesmen, handicraftsmen, and persons decayed; and others for relief or redemption of prisoners or captives, and for aid or ease of any poor inhabitants concerning payments of fifteens, setting out of soldiers and other taxes; \* \* \*

<sup>141</sup> The *Reading* is reprinted in George Duke, *The Law of Charitable Uses*, c. VII (London, W. Clarke & Sons, 1805).

<sup>142</sup> Jones, *supra* note 122 at 27. Francis Moore (1558-1621) was a barrister and reader in Middle Temple, one of the Inns of Court. The reader, a learned member of the bar, was an integral part of the education of the medieval and seventeenth century law student until the Civil War (1642). Readers would discuss the common law, the meaning of the statute, and authorities interpreting the statute. Moore delivered a reading on the Statute of Charitable Uses in August, 1607. In 1589 Moore was elected to Parliament and served until 1614. His works were published posthumously in 1676. Professor Jones has relied on Moore's analysis.

could assume the primary burden of poor relief. The Preamble expressed the state's agenda for charitable giving.<sup>143</sup> The objects enumerated reflect Elizabethan political, economic and social programs. The government hoped that philanthropists would be encouraged to implement and fund programs promoted by the package of poor laws.

The catalog of uses would not only relieve poverty, but also reduce the parish's financial responsibilities in other areas, allowing it to assist the poor.<sup>144</sup> As long as the use benefited the poor, it would be within the purview of the statute's procedures, even if it incidentally benefited the rich. Not all donors gave to the poor. Professor Jordan noted that private benefactors typically didn't donate for houses of correction.<sup>145</sup> Many preferred endowing hospitals for the respectable or Trollopean worthies down on their luck. Over time some hospitals gentrified. William Wigston had founded a hospital in his name in Leister for 'blind, lame, decrepit or numbed in their limbs or idiots wanting their natural senses,' but the hospital's Elizabethan patron, the Earl of Huntington was much more exclusive in his 1576 statutes<sup>146</sup> banning more than twenty different kinds of offenders including brawlers and common beggars.<sup>147</sup>

Despite its later significance, the Preamble was not part of the statute itself, but merely a covering memorandum justifying the legislation. The subsequent importance of the Preamble is ironic. Of the Preamble to the Statute of Uses of 1535,<sup>148</sup> Holdsworth wrote:

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<sup>143</sup> Blake Bromley, *1601 Preamble: The State's Agenda for Charity*, 7 *Charity L. & Practice Rev.* 177 (2002)

<sup>144</sup> Jones, *supra* note 122 at 26.

<sup>145</sup> Jordan, *supra* note 17 at 258.

<sup>146</sup> The statutes of a charitable foundation or corporation are similar to the bylaws.

<sup>147</sup> Paul Slack, *From Reformation to Improvement: Public Welfare in Early Modern England* 25 (1999) *citing* G Cowie, *The History of Wyggeston's Hospital* 2 (1893). [hereinafter, Slack, *From Reformation to Improvement*].

<sup>148</sup> 27 Henry 8 c.10. This Preamble enumerated the disadvantages and abuses from the employment of uses; lands were divided and heirs disinherited, fraudulent conveyances were made to allude creditors; feudal lords and the king were deprived of various rights all of which subverted the common law of the land.

Like the preambles to other statutes of this period, it is far from being a sober statement of historical fact. Rather it is an official statement of the numerous good reasons which had induced the government to pass so wise a statute - the sixteenth century equivalent of a leading article in a government newspaper upon a government measure<sup>149</sup>

The Preamble to the Statute of Charitable Uses can be seen in the same light, a mere political broadside.<sup>150</sup> It also channeled private giving to public policy ends.

#### *Objects of Charity within the Preamble*

Blake Bromley finds the true sources of the Preamble are to be found among the titles and provisions of the public statutes of the Tudor Parliaments. He has matched statutes dealing with all of the many subjects in the Preamble, some of which normally would not be considered charitable.<sup>151</sup> Those objects of charity absent from Parliamentary statutes are in the bills and answers heard in the Chancery courts prior to 1601. Bromley is undoubtedly correct that the particular charitable objects mentioned reflected purposes that advanced the Tudor political

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<sup>149</sup> IV Holdsworth, *supra* note 89 at 460. Holdsworth considered the Statute of Uses as “perhaps the most important addition that the legislature has ever made to our private law.” The Statute of Uses declared that the legal and equitable title passed to the *cestui que use*, or trustee of what became called a trust. The use was no longer a mere equitable interest, protected by the Chancellor, but became a legal interest subject to the jurisdiction of the law courts. The Statute of Uses ended the possibility of conveying land other than through primogeniture. The statute cleared away the obscurities of titles that had arisen during the previous centuries. It forced the enactment of the Statute of Wills, 32 Hen. 8 c. 2 (1540), which authorized devises of certain types of land, and hastened the end of feudalism. Marion R. Fremont-Smith, *Governing Nonprofit Organizations* 25-26 (2004). From a legal perspective, the Statute of Uses was interpreted by the courts as rendering valid equity devises in trust or otherwise to charitable corporations, a practice that had been prohibited by the Statute of Wills. IV Austin W. Scott & William F. Fratcher, *Scott on Trusts* § 362.2. (1987) & 2006 Supp.).

<sup>150</sup> Owen says there was something of a propaganda content in the statute, a bid to other donors to follow the example set by sovereigns and “sundry other well disposed persons.” For those well disposed, Parliament not only enumerated in the preamble, almost as an aide-memoire, a wide variety of uses considered charitable, but also offered specially favored treatment to benefactors left for such purposes. Owen, *supra* note 32 at 70-71.

<sup>151</sup> Bromley, *supra* note 143 at 182.

agenda. There are several charitable purposes mentioned in the Preamble that may seem strange to modern readers but were objects of charity through state support or legislation and in Chancery bills in the pre-1601 period. They include:

- *“Relief, Stock or Maintenance of Houses of Correction”*

The establishment of jails to punish those who would not work was an important part of the poor law scheme. Charitable support of such construction would relieve the county rate payers of this additional burden. One should not forget that combined with support of the worthy poor, the legislation still criminalized and punished the able-bodied who refused to work. Jails were for the unworthy poor. Their complement, hospitals or almshouses, were for the worthy impotent poor.

- *“Repair of Bridges, Havens, Causeways, Churches, Sea Banks and Highways”*

Public works had long been a charitable object.<sup>152</sup> In 1563 Philip and Mary enacted a statute, which required parishioners to provide for or put in four days of labor for the maintenance of highways.<sup>153</sup> Elizabeth increased the number of labor days to six.<sup>154</sup> Havens, causeways, churches, seabacks and highways appear in the titles of several Elizabethan statutes, and private acts deal with public works.<sup>155</sup> Professor Jones lists such bequests for repairs of highways, bridges and similar objects.<sup>156</sup>

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<sup>152</sup> See, 22 Henry 8 c.5 (1531).

<sup>153</sup> 2 & 3 Philip & Mary, c.8. Jordan’s study of wills noted the many gifts to public works. Jordan, *supra* note 24 at 202-204.

<sup>154</sup> 5 Eliz. c.13 (1563).

<sup>155</sup> Bromley, *supra* note 143 lists them at nn. 36-38.

<sup>156</sup> Jones, *supra* note 122 at 174,176,186-88,191-193,199-200.

- *“Marriages of Poor Maids”*

Marriage of poor maids was a charitable object found in Professor Jones’s list of Chancery bills prior to 1601,<sup>157</sup> though it does not appear in titles of any statutes of Elizabeth’s reign.<sup>158</sup> The reason for this object of charity was that unmarried poor women were treated more harshly than married poor women. In 1563 a statute authorized the appointed authorities to compel any unmarried woman between twelve and forty to work as a servant “for such wages and in such reasonable sort and manner as the appointed official shall think meet.” Unmarried women who refused to comply were committed to custody “until she be bounden to serve as aforesaid.”<sup>159</sup>

These provisions did not apply to married women, who would be supported by their husbands. The Poor Law of 1601 authorized officials to bind any poor “women child” to be an apprentice until she reached the age of twenty-one or until the time of her marriage.<sup>160</sup> A charitable gift provided a dowry, which would relieve this condition.

- *“aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes.”*

Fifteens were taxes imposed on personal property. There were funds for assisting people to pay their taxes. There also were charitable bequests prior to 1601 for this purpose.<sup>161</sup> Tudor citizens paid numerous taxes, and the parish was financially responsible for raising funds for all sorts of governmental activities. One was to support an army. “Setting out of soldiers”

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<sup>157</sup>*Id.* at 177,188.

<sup>158</sup> Bromley, *supra* note 143 at 189. Most such gifts occurred in the years prior to the Reformation. Jordan’s data found that eighty percent of gifts for this purpose were by women or unmarried men. Jordan, *supra* note 17 at 184.

<sup>159</sup> 5 Eliz. c.4; Bromley, *supra* note 143 at 189.

<sup>160</sup> 43 Eliz. c. 2 ¶.V.

<sup>161</sup> Bromley, *supra* note 143 at 189.

encouraged contributions to support their cost. In a society so consumed by fear of disorder, this might be a use donors would support, which in turn would reduce the financial burden on the parish. Encouraging contributions to relieve the cost of public responsibilities would also lower the overall tax rate, making it easier theoretically for the parish to raise money through the poor rate. Lowering the overall tax burden might increase charitable giving.<sup>162</sup>

### *Charitable Objects Missing from the Preamble*

- *Hospitals*

It seems surprising that hospitals were not referred to in the Preamble as their foundation and support long was seen as a charitable activity. There were many Elizabethan statutes relating to hospitals, and one part of the 1597 poor law package encouraged the expeditious construction of such hospitals.<sup>163</sup> There are explanations for the omission.

Hospitals often were treated by separate statutes.<sup>164</sup> Professor Slack suggests that when benefactors of hospitals or houses of correction were hesitant, Elizabethan statutes tried to encourage their generosity by making incorporation easier than for other types of institutions.<sup>165</sup> Newer hospitals would have been exempt from the administrative procedures created by the Statute of Charitable Uses, presumably because founders would want to be visitors or to appoint

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<sup>162</sup> Martin Daunton has found that lowering the tax rate has an inverse relationship with charitable giving. In the eighteenth and nineteenth centuries, when tax rates were low, compared to the twentieth century, charitable give was greater in percentage. Martin Daunton, *Introduction*, in Dawnton *supra* note 114 ar 14.

<sup>163</sup> 39 Eliz. c.5 (1597). A hospital or house of correction would be found by simply enrolling in the Court of Chancery without having first to obtain letters from Parliament. Leonard, *supra* note 14 at 77.

<sup>164</sup> 14 Eliz.c.14 (1572); 18 Eliz. c.3 §ix (1576); 35 Eliz. c.7 §xxvii (1593); 39 Eliz. c.3 (1597)

<sup>165</sup> Slack, *From Reformation to Improvement*, *supra* note 147 at 26-27.

them.<sup>166</sup> In 1572 Parliament passed a charitable uses statute that dealt specifically with hospitals near and about London.<sup>167</sup> One statute that same year provided that for hospitals, located outside of London, if the founder had appointed no visitor, the bishop of the diocese was to assume that responsibility.<sup>168</sup> Hospitals that provided relief to the poor were privileged in that they were exempt from the payment of first fruits to the crown unlike religious institutions.<sup>169</sup> In contrast to private individuals, hospitals were exempt from the prohibition against assisting the unworthy poor.<sup>170</sup>

A final reason why hospitals might be excluded from the Preamble was that the enumerated provisions in the statute were not intended to be an exclusive listing of all things

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<sup>166</sup> With antecedents in Roman and Canon Law perhaps the oldest device for monitoring charitable activity is the right of visitation, the authority of a founder of a charity to examine the conduct of the organization or the affairs of a church or a religious foundation or society in order to prevent or correct abuses. Roscoe Pound, *Visitatorial Jurisdiction Over Corporations in Equity*, 49 Harv. L. Rev. 369 (1935-36). Under canon law, visitations of parishes and dioceses took place to correct abuses. Suttons Hospital 10 Coke Rep. 23a, 31a (1613); Pound, *supra* at 371.

After the Reformation ecclesiastical corporations were subject to visitation by the bishop, and lay or private charitable corporations by the founder and his heirs unless otherwise provided. *Id.* at 369. Corporations in the Middle Ages were religious or municipal. Under common law, religious houses were subject to visitation by the bishop. Later, the monasteries were excepted from visitation but religious and charitable foundations were not.

For other corporations the visitatorial power was in the king, exercisable though a writ of mandamus and by information in the nature of *quo warranto* in The Kings Bench. Philips v. Bury, 4 Mod. 106,123-124 (1692). The theory of the king's visitation right is as *parens patriae*, as power of the state exercisable by judicial scrutiny and application of judicially administered remedies, by legislation providing for investigation of the activities and correction of the abuses committed or suffered by the corporate authorities, and by their administration. Pound, *supra* at 372. The visitation power derives from the recognition that the founder of a charity and his heirs retains some control of the administration of his gift. George G. Bogart & George T. Bogart, *The Law of Trusts and Trustees* 416 (2d ed. Rev. 1991). The founder or visitor could inquire into, correct all irregularities and abuses, which might arise.

<sup>167</sup> 14 Eliz. c.14 (1572).

<sup>168</sup> 14 Eliz. c.5 ¶ XXX (1572).

<sup>169</sup> Bromley, *supra* note 143 at 193, *citing* 1 Eliz.1 c.4 (1558). First fruits was a tax, usually of the first year's income for a benefice or living paid to feudal or ecclesiastical superior. Before the Reformation, first fruits for all clerical benefices went to the pope together with an annual payment of one tenth of the income. The Act of Annates, 23 Hen. 8 c. 20 (1532), part of the artillery fire in Henry's dispute with the pope, passed in the spring of 1532, declared this unlawful. These payments were then directed to the crown. John Cannon, ed. *Oxford Companion to British History* 373 (1997).

<sup>170</sup> Bromley, *supra* note 143 at 193 *citing* 14 Eliz. c.5 ¶VIII and 39 Eliz. c.4 ¶ IX.

charitable. That interpretation only appeared in the eighteenth century.<sup>171</sup> The Preamble's listing encompassed items that were covered in the jurisdiction of the administrative structure established to assure that charitable uses were being applied to their proper purposes.

- *The Absence of Religious Purposes*

Because the statute was enacted in the aftermath of the Reformation, religious uses are almost wholly absent from the enumerated purposes, except for the repair of churches, which was really a public works or historic preservation function. This should not be surprising. In the pre-Reformation period the church had monopolized charitable activity. The most significant act of the Reformation was the expropriation of church assets by the crown. The church no longer had the asset base to finance its philanthropic activities, and donors were discouraged from giving to traditional religious purposes such as the establishment of chantries.

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<sup>171</sup> In the eighteenth century a backlash over the scope of philanthropic largesse and the favoritism of charities by the law arose. In the first decades, a minority view remained suspicious of charity and concerned over death-bed gifts which disinherited next-of-kin. Owen, *supra* note 32 at 106. This attitude was exemplified by Lord Harcourt's remark in 1721 that he liked 'charity well' but he would 'not steal leather to make poor mens shoes'. *Att-Gen. v. Sutton*, 1 P. Wms. 754, 765 (1721), and Lord Hardwicke's discussion of the judge's role in charity cases in *Attorney General v. Lord Gower*, that he should 'do justice to all, and not to oppress any man for the sake of a charity'. 2 Eq. Cas. Abr. 195 (1736). The eighteenth century was also a time of a deep-rooted anti-clericalism. Eventually these attitudes led to a more restrictive interpretation of the meaning of charity than the 1601 Preamble and a more restrained interpretation of the legal doctrines that favored charitable largess. This fear resulted in the Mortmain Act of 1736, 9 Geo. 2 c. 36 (1736). The Mortmain Act was unlike previous statutes restricting gifts to churches which dated back to the Magna Carta in that it did not prohibit gifts of land to churches or religious uses but mandated a procedure which would make the death-bed donation of land more difficult and protect the heir-at-law. The Mortmain Act also played a role in the restriction of the meaning of the word "charitable", because if a donation was found to be charitable and came under the statute, the specific procedure outlined in the act would have to be followed if it was to be valid. Thus, plaintiffs seeking to avoid bequests called upon the courts to define the contribution as "charitable." The conflicting decisions created an uncertainty and confusion where none had existed. Persons, *supra* note 140 at 1914. Additional rigidity in the interpretation of "charitable" was generated by *Morice v. Bishop of Durham*, 9 Ves. 399 (1804), 10 Ves. 522 (1805), which for the first time, concluded that the enumerations in the 1601 Preamble were restrictive. Thereafter, English courts attempted to create classifications into which the categories of the 1601 Preamble fell. See, *Commissioners of Income Tax v. Pemsel*, 11 Q.B.D. 296 (1891), A.C. 531 (1891). Though the statute of 1601 and its Preamble have been repealed, as with Maitland's descriptions of the forms of action, the Preamble still rules us from its grave.

Religion was more a political issue than a spiritual one for Elizabeth, and extraordinarily controversial. Adherence to Protestantism reflected loyalty to the crown. With Elizabeth's ascension to the throne, England became a Protestant nation.<sup>172</sup> The law mandated an outward submission to the legally established religion. The content of that religion was another matter. What Protestantism meant theologically was uncertain at that time, to be played out in the coming decades.<sup>173</sup> Thus, Elizabethan England was a Protestant nation containing deep tensions and political confusion within an outward shell of consensus.<sup>174</sup> The religious landscape was complex: Puritans on one side, Catholics on the other and all sorts in between. Many people were "statutory Protestants", who would become Catholic if the political winds shifted. "Theology was a simmering cauldron, best kept below the surface."<sup>175</sup>

The crown had dissolved the monasteries, taken over the religious foundations, and confiscated the assets of numerous trusts, which had been formed for religious purposes but in the post-Reformation, they were held to be superstitious uses and therefore void. The distinction between a proper religious purpose and a superstitious use was unclear. If religious objects were included in the statute, donors might fear that other charitable uses might become superstitious and face appropriation by the crown.<sup>176</sup>

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<sup>172</sup> This was through the Act of Uniformity of 1559, 2 Eliz. c.2. England had to be Protestant else Elizabeth's claim to the throne would be invalid, for she was the offspring of Anne Boleyn, Henry VIII's second wife.

<sup>173</sup> Christopher Haigh, *The Church of England, the Catholics and the People*, in Christopher Haigh, *The Reign of Elizabeth I* 195 (1984) [hereinafter, Haigh]. Though a legislative Reformation had taken place, there had as yet been only a very limited popular Reformation. For much of the reign though the Church of England was a prescribed national church with a more or less Protestant liturgy and theology, it had a non Protestant laity. *Id.* at 196.

<sup>174</sup> Patrick Collinson, *The Elizabethan Church and the New Religion*, 169, 176 in Haigh, *supra* note 173

<sup>175</sup> *Id.*

<sup>176</sup> Jones, *supra* note 122 at 57. After the dissolution of the monasteries funds administered by religious bodies were critically evaluated within a new classification scheme: were they devoted to superstitious uses or charitable ones. If superstitious, they were subject to appropriation. If charitable, they might be transferred to trustees for administration. The Statute of Charitable Uses, though formally independent of ecclesiastical government, was closely associated with the Church of England. Joanna Innes, *The Mixed Economy in Early Modern England: Assessments of the Options from Hale to Malthus*, in Daunton, *supra* note 114 at 139, 143-145.

The statute's purpose was to encourage charitable giving. The uncertainty surrounding proper religious objects would have negated that goal. The Reformation fundamentally changed the character of religious gifts from the 1480s, when substantial sums were still given to monastic foundations, to the mid seventeenth century, when gifts were given for the establishment of Puritan lectureships, and building and repair of churches.<sup>177</sup> Donors could and did give to religious objects, but they had to use Chancery to gain redress for misappropriation of fiduciary breaches. The Statute of Elizabeth only created a new jurisdiction for certain objects of charity. It created no new law.<sup>178</sup>

#### *Exemptions from the Statute's Coverage*

Not all charitable uses that could benefit the poor or the public were covered under the statute. Certain charitable endowments were excluded from the jurisdiction of the charity commissions. These included ones belonging to or assigned to any of the colleges of Oxford or Cambridge or the public schools of Westminster, Eton and Winchester. The Statute also exempted cathedrals and collegiate churches and cities and towns, where there were governors to oversee such endowments. Another category of exemption was any college, hospital or free school, which had special visitors, governors or overseers appointed by their founders. Presumably, the founders would assure the appropriate use of their donated assets. These exemptions were strictly construed.<sup>179</sup>

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<sup>177</sup> L.A. Sheridan & George W. Keeton, *The Modern Law of Charities* 6 (3<sup>rd</sup> ed. 1983).

<sup>178</sup> As Lord Redesdale said in *Att-Gen v. Dublin*, 1 Bli. N.S. 312, 4 Eng. Rep. 888 (1827): “[The statute of Elizabeth] only created a new jurisdiction; it created no new law. It created a new and ancillary jurisdiction, a jurisdiction created by commission, etc.; but the proceedings of that commission were made subject to appeal to the Lord Chancellor...”

<sup>179</sup> Jones, *supra* note 122 at 37.

### *The Preamble's Literary Source*

It has been long noticed that the language of the Preamble closely resembles William Langland's *The Vision of William Concerning Piers the Plowman (Piers Plowman)*.<sup>180</sup> This epic poem, the second most famous work of medieval literature after Chaucer's *Canterbury Tales*, appeared in its earliest version around 1362.<sup>181</sup> A terse summary of the poem by Langland scholar, John Alford, is: "'How may I save my soul?'—this is the central question. 'Truth is best'—this is the answer, and virtually all of *Piers Plowman* is an inquiry into its ramification."<sup>182</sup> The hero Piers, a poor plowman of virtue, becomes a mythical figure of Christian integrity and the leader of the true church.<sup>183</sup>

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<sup>180</sup> See Joseph Willard, *Illustrations of the Origin of Cy Pres*, 8 Harv. L. Rev. 10, 70 (1894); Persons, *supra* note 140 at 1912. In one of the episodes of the poem, "Truth" sends a letter to wealthy merchants advising them that in order to save their souls they should take their fortunes, "and therewith repair hospitals, help sick people, mend bad roads, build up bridges that had been broken down, help maidens to marry or make them nuns, find food for prisoners and poor people, put scholars to school or to some other crafts, help religious orders, and ameliorate rents or taxes." Modern English version of the "B" text, published in *The Vision of William concerning Piers the Plowman in three parallel texts by William Langland*. Edited from numerous manuscripts by Rev. Walter W. Skeat, 1:228, Oxford, 1886.

<sup>181</sup> Helen C. White, *Social Criticism in Popular Literature of the Sixteenth Century* 3 (1944). The poem has been preserved from over 50 manuscripts into three versions of different texts and lengths. The longest, the B version, is approximately 7700 lines.

<sup>182</sup> John A. Alford, *The Design of the Poem, in A Companion to Piers Plowman* 35 (John A. Alford, ed. 1988).

<sup>183</sup> A summary of the poem is as follows: the narrator, the poet, falls asleep in the Malvern Hills and dreams that in a wilderness he comes upon the tower of Truth (God) set on a hill, with the dungeon of Wrong (the Devil) in the deep valley below, and a field full of people (the world of living men) between them. He describes satirically all the different classes of people he see there. Then a lady named Holy Church rebukes him for sleeping and explains the meaning of all he sees. Further characters (Conscience, Liar, Reason and so on) enter the action; Conscience finally persuades many of the people to turn away from the seven deadly sins and go in search of St. Truth, but they need a guide. Piers, a simple Plowman, appears and says that because of his common sense and clean conscience he knows the way and will show them if they help him plow his half acre. Some members of the group help, but others shirk; and Piers becomes identified with Christ, trying to get men to work toward their own material relief from the current abuses of worldly power. In the last section, the dreamer goes on a rambling but unsuccessful summer-long quest, aided by Thought, Wit, and Study, in search of the men who are Do-Well, Do-Better and Do-Best. Margaret Drabble, ed. *The Oxford Companion to English Literature* 765 (5<sup>th</sup> ed. 1998 ).

*Piers Plowman* is a protest against clerical and state abuses of the fourteenth century and an exhortation by the author for the creation of an ideal society.<sup>184</sup> A central issue is the problem of poverty and the greed and covetousness that drained society.

The lines that were imitated in the Preamble are from one of the episodes of the poem, where "Truth" sends a letter to wealthy merchants advising them that in order to save their souls they should take their fortunes:

and therewith repair hospitals, help sick people, mend bad roads, build up bridges that had been broken down, help maidens to marry or make them nuns, find food for prisoners and poor people, put scholars to school or to some other crafts, help religious orders, and ameliorate rents or taxes.”<sup>185</sup>

Why would Langland's words written in the fourteenth century be appropriated two hundred years later for the Preamble? Blake Bromley ascribes to romantic appeal the belief that *Piers Plowman* was the inspiration for the Preamble's language. The absence of any mention of hospitals is conclusive evidence to him on this point.<sup>186</sup> Bromley is undoubtedly correct that the charitable objects mentioned in the Preamble reflected purposes that advanced the Tudor political agenda. However, the use of phrasing so similar to *Piers Plowman* served important

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<sup>184</sup> It is uncertain whether Langland was a follower of John Wyclif or Wycliffe (1324-1384), who protested against the wealth, luxury and worldliness of the clergy and supported reform and disestablishment of the church. Wycliffe anticipated many of the doctrines of Protestantism that emerged in Reformation two centuries later. Dickens, *supra* note 33 at 22. See K.B. McFarlane, *John Wycliff & the Beginnings of English Nonconformity* (1953). Within twenty years of its appearance, *Piers Plowman* became a rallying cry for reform during the Peasant's Revolt of 1381 and was invoked in subsequent centuries by reformers of the English Church.

<sup>185</sup> *Passus VII:18-32, Modern English version of the "B" text*, in 1 Walter W. Skeat, William Langland, *The Vision of William concerning Piers the Plowman together with Richard the Redeless* in three parallel texts *B Text* 228 (Edited from numerous manuscripts Oxford, 1886.)

<sup>186</sup> Bromley, *supra* note 143 at 182. He states hospitals were not included, because they were religious institutions. However, from an early period many hospitals were secular, under the control of towns.

ideological and political purposes. The poem was an important part of radical Reformation literature.

The answer to the Langland conundrum is this. Though *Piers Plowman* had circulated in manuscript form from the fourteenth century, it was first published as a book in 1550 by Robert Crowley (1518-1588), a mid-Tudor religious radical, poet and printer. He became a Puritan clergyman, an energetic pamphleteer and arbiter of public morality. In 1550 Crowley published three editions of *Piers Plowman*.<sup>187</sup> The printer saw the text as prophetic of the concerns of his own age and of the English Reformation. Crowley kidnapped the orthodox medieval demand for reform of monasticism and society as found in *Piers Plowman*, and converted it through a preface and marginal notes into a powerful, radical Protestant screed against monasticism and the Roman Catholic hierarchy. Crowley considered *Piers* a “crye...agaynste the workes of darckenes” by one of those elected by God to “se hys truth” and foretell to Langland’s age the coming English Reformation.<sup>188</sup>

Publication made the poem available to a wide audience, and it became a part of the anti-papal dialogue of the sixteenth century.<sup>189</sup> Crowley’s application of the fourteenth century apocalypse, as described in the poem, transformed the work from a call for reform within the

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<sup>187</sup> Publication occurred after the government lifted its censorship of the work, which was seen as part of the thirteenth century Wycliffe or Lollard movement to reform the church. The poem had been censored as anticlerical for nearly two hundred years. James Simpson, 2 *Oxford English Literary history 1350-1547: Reform and Cultural Revolution* 333 (2002). The statute repealing earlier censorship acts was “An Act for the Repeal of Certain Statutes Concerning Treasons”, 1 Edw. 6 c.12 (1547). *Piers Plowman* was reprinted in 1561 by Owen Rogers, and not again until the nineteenth century. John N. King, *English Reformation Literature: The Tudor Origins of the Protestant Tradition* 326 (1982) [hereinafter, *English Reformation Literature*].

<sup>188</sup> Anne Middleton, *Introduction: The Critical heritage*, in Alford, *supra* note 169 at 5.

<sup>189</sup> As the relief of the poor became a major theme of discussion in the sixteenth century, the shortcomings of the old religious order in providing public relief were criticized. White, *supra* note 147 at 255. Anne Hudson, *Epilogue: The Legacy of Piers Plowman*, in Alford, *supra* note at 182 at 260. The character of *Piers* appears in other reformist literature in the sixteenth century. *Id.* at 261-262. Simpson, *supra* note 187 at 333.

church into a prophecy of the advent of the Protestant millennium of the sixteenth century.<sup>190</sup>

Reformers used medieval texts as part of their arsenal of propaganda. In this context the language of *Piers* in the Preamble to the Statute of Charitable Uses becomes more understandable. Crowley proposed a radical Christian solution to the problem of poverty.<sup>191</sup>

Though with roots in the past, the objects of charitable giving, reflected the new Protestant nature of charity, which was connected to the objectives of state policy rather than linked to the church. Like other Puritan propagandists of the early Reformation, Crowley believed there should be a new social and economic order and that social reformation would be connected to religious reformation.<sup>192</sup>

*Piers Plowman* also sent an important symbolic message of responsibility to the affluent. Assuming that avarice was the fundamental cause of religious and social ills, Crowley formulated a stewardship theory of property ownership, whereby one should use no more than a sufficient and moderate amount of wealth. Any surplus should be distributed as charity. Crowley believed that although all citizens are responsible for the welfare of the commonwealth, gentlemen and clergy have a special responsibility to ensure that the poor receive their fair share of the wealth.<sup>193</sup>

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<sup>190</sup> John N. King, *Robert Crowley's Editions of Piers Plowman: A Tudor Apocalypse*, 73 *Modern Philology* 342 (1976) [hereinafter King]. *English Reformation Literature*, *supra* note 187 at 322.

<sup>191</sup> Crowley's secondary goal was to popularize *Piers Plowman* by providing a text that could be read easily by contemporary sixteenth century readers. To accomplish this he modernized the spelling, which assisted his political efforts. King, *supra* note 190 at 347. He also deleted parts to downplay the Catholic aspects of the poem, so as to emphasize what for Crowley was the central prophecy, the vision of a reforming monarch who will punish the religious orders. *Id.* at 348.

<sup>192</sup> Jordan, *supra* note 17 at 162.

<sup>193</sup> *English Reformation Literature*, *supra* note 187 at 321-322.

In the Reformation period *Piers Plowman* was valued for its social, moral and ecclesiastical commentary, rather than for its place as a literary masterpiece.<sup>194</sup> It became part of Protestant rhetoric calling for social reform. The use of the structure of *Piers Plowman* in the Preamble would be recognizable to the literate of the day. It reflected a call to the gentry to fulfill their responsibilities with assurances that their charity would be used as directed. If fiduciaries breached the trust of their donors, the procedure outlined in the body of the Statute of Charitable Uses would be brought into play. The acceptable charitable uses mentioned in the Preamble reflected support of many kinds of charity outside of the established church, an approach, which Langland favored, and those familiar with *Piers Plowman* would recognize.

This supports the hypothesis that the Preamble was basically a political statement, that enumerated some, but not all favored charitable purposes under the law.<sup>195</sup> It defined a broad spectrum of responsibility and proclaimed “a noble conception of what a society ought to be.”<sup>196</sup> The primary purpose of the Statute of Charitable Uses was to reform the administration of charity.<sup>197</sup> The Preamble was intended to encourage secular charitable gifts for the relief of poverty. It assured potential donors that certain charitable uses would be carried out according to their instructions and protected through the system of administration created.<sup>198</sup>

Until the eighteenth century, the Preamble’s definition of *charitable* merely differentiated valid secular uses from superstitious or void religious ones. Charities within the

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<sup>194</sup> Hudson, *supra* note 189 at 263.

<sup>195</sup> As mentioned, hospitals were not included, but taken care of in separate legislation. Gifts could be made for purposes of the Anglican Church.

<sup>196</sup> B. Kirkman Gray, *A History of English Philanthropy from the Dissolution of the Monasteries to the Taking of the First Census 35* (1905).

<sup>197</sup> Other charitable uses could be enforced but by a different process: through a bill brought in Chancery, a more difficult procedure. Persons, *supra* note 127 at 1913.

<sup>198</sup> Jones, *supra* note 122 at 33. See *infra*.

preamble were treated differently procedurally, if there was a fiduciary breach. What was *charitable* was not a problem,<sup>199</sup> and the types of charitable gifts did not change in the 250 years after the Reformation.<sup>200</sup> The courts did not treat the list as exhaustive, but it was “so varied and comprehensive tht it became the practice of the Court[s] to refer to it as a sort of index or chart.”<sup>201</sup> Courts began to hold a purpose to be charitable if it conferred a benefit on the public or some section of it, and was within the spirit and intendment of the Statute. Judicial views of what was within the spirit of the Act varied over time.<sup>202</sup> The charitable purpose did not necessarily have to be in the statute.<sup>203</sup>

#### *Charity Commission Procedures under the Statute of Charitable Uses*

The Statute was a landmark in the attempt to assure charitable accountability. It provided for an administrative procedure that enabled the crown “to initiate and sustain a thorough investigation of charitable uses [to ensure] that their endowments might be ‘duly and faithfully employed’ in accordance with the intent of the donors”.<sup>204</sup> It created inquisitorial procedures whereby five commissioners “were appointed to inquire into ‘any breach of trust, falsity, non-employment, concealment, or conversion’ of charitable funds” in the county specified within their commission.<sup>205</sup> Thus, the investigation occurred at the local level,<sup>206</sup> and it required a

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<sup>199</sup> *Id.* at 58.

<sup>200</sup> Owen, *supra* note 32 at 71.

<sup>201</sup> Commissioners for Special Purposes of the Income Tax v. Pemsel, [1891 A.C. 531,581 [Lord Macnaghten].

<sup>202</sup> Sheridan & Keeton, *supra* note 177 at 11.

<sup>203</sup> In Att.-Gen. v. Heelis, 2 Sim & St. 67, 76-77, 57 Eng. Rep. 270 (1824) Vice Chancellor Leach said “It is not material that the particular public or general purpose is not expressed in the statute of Elizabeth, all other legal, public, or general purposes being within the equity of that statute. Thus, a gift to maintain a preaching minister; a gift to build a sessions house for a county; a gift by Parliament of a duty on coal imported into London for the purpose of rebuilding St. Paul’s Church after the fire in London; have all been held to be charitable uses within the equity of the statute of Elizabeth.” More modern courts have said this approach leaves the law without any guiding principle. See the cases cited in Sheridan & Keeton, *supra* note 177 at 23-29.

<sup>204</sup> Jones, *supra* note 122 at 22-23.

<sup>205</sup> *Id.* One of the five commissioners had to be a bishop. *Id.* at 40. The other commissioners had to be “persons of sound or good behavior’ who, if not Justices of the Peace, were invariably gentlemen of the country.” *Id.* (footnotes

strong and effective parish government. Parishioners were invited to furnish evidence of breaches known to them, and the commissioners, on the inquisition of a jury, Once a decree was issued, the local parishes of the county were given notice of the commission and encouraged to bring with them any evidence necessary to address their allegations that charitable property had been misused. According to Professor Gareth Jones, the notice served as an encouragement for parishioners to report “to the commissioners breaches of trust of which they were aware” and bring the documents necessary to “substantiat[e] their allegations.”<sup>207</sup> Thereafter, the commission would issue a decree correcting any breach.<sup>208</sup> An appeal subsequently could be lodged with the Chancellor.<sup>209</sup> The procedure under the statute encouraged local monitoring, investigation, and ultimately punishment or a remedy that would be locally applied.<sup>210</sup>

If there was evidence of mis- or non-feasance, a warrant was then issued to the sheriff of the county requiring the assemblage of a jury.<sup>211</sup> According to Professor Jones, “[A]t the hearing,

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omitted). One could not be a commissioner, however, if there was any interest or claim in the property that was the subject of the investigation. *Id.* at 40, 42.

<sup>206</sup> *Id.* at 41-42. The leading exposition of the statute was by Francis Moore, a member of the House of Commons and drafter of the legislation. His "Reading" or lectures to the students of Gray's Inn is the leading contemporary analysis of the procedure. *Id.* at 27-31.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.* at 41.

<sup>209</sup> *Id.* at 45. If the charitable use was not within the statute's preamble, an alleged abuse would be prosecuted at common law in the name of the attorney general or by an original bill brought by an individual with standing. Charitable uses not within the statute included lands, rents, etc., given to certain colleges, towns, and schools as well as most religious uses. *Id.* at 27-31.

<sup>210</sup> *Id.* at 47. The chancellor, for example, had authority to impose fees against those who had complained "without just and sufficient cause" and award costs to their opponents. 43 Eliz. c. 4 (Eng.).

<sup>211</sup> Jones, *supra* note 122 at 44. The sheriff would summon the churchwardens and officers of the parishes, and all interested parties. *Id.* According to Moore, an interested party was described as:

[one] who... would be affected either directly or indirectly by the commissioners' decree... includ[ing] a donor; the donor's heirs, feoffees or executors; a grantee of the land charged with a charitable use, or his heirs; a person who had power to nominate charitable uses under the trust, and the Ordinary [--a bishop or other ecclesiastic in his capacity as an ex officio ecclesiastical authority,] if he... [who had given rise] to a charitable use, die[d] intestate.

*Id.* at 42-43 (footnotes omitted). Interested parties could also challenge the commissioners and the jurors. This distinguished the act of 1601 from its predecessor, the Charitable Uses Act of 1597, 39 Eliz.1 c.6 (Eng.), which did not explicitly allow for any challenge to jurors. *Id.* The absence of the right to challenge was the principal reason it was not renewed. For allowable challenges, see Duke, *supra* note 128, at 144-51.

. . . the commission would be read, the sheriff would return his writ summoning the jury, [and] the jury [then] would be [charged].”<sup>212</sup> Interested parties would make their challenges to the jury. Thereafter, the jury would be sworn to inquire what property had been devolved to charitable uses enumerated in the preamble to the statute and what breaches of trust had been committed.<sup>213</sup> It would hear evidence, find in the inquisition “the gift,” and any negligence or misemployment of that gift.<sup>214</sup> Based on the inquisition by the commissioners, a decree was returned “into the Court of Chancery within the time specified in the original commission.”

The commissioners’ extensive powers “were directed to ensuring that property devoted to . . . charitable uses. . . was employed in accordance with the intention of the donors.”<sup>215</sup> Their powers were limited only by good faith. Parties aggrieved by the commissioners’ findings could appeal by bill to the Chancellor.<sup>216</sup> The commissioners seemed a combination of grand jury and special master, rather than a substitute for the attorney general, as they were more inquisitorial.<sup>217</sup> They always were subject to the supervision of the Chancellor, who with the advice of common law judges, determined the powers of the commissioners.<sup>218</sup> The commissioners assured that charitable assets were applied to their proper use.

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<sup>212</sup> Jones, *supra* note 122 at 44 (footnote omitted).

<sup>213</sup> *Id.* at 43-45.

<sup>214</sup> *Id.* at 44.

<sup>215</sup> *Id.* at 47. see also Duke, *supra* note 128 at 152-66.

<sup>216</sup> Jones, *supra* note 122 at 45. The appeal had to be in writing “excepting... to the commissioners' order and decree. To these exceptions, the [opposing]... party... could furnish written answers.” After hearing the exceptions, the Chancellor could use his equity powers in fashioning a decree--ordering specific performance, restitution, or charging interest. *Id.* at 46. There was no appeal from an action of the Chancellor because the decree was by order of Parliament. *Id.* The commissioners could require the “feoffees,” the beneficiaries of the trust, “to pay costs to... person[s] who successfully prosecuted the reform of the charitable trust” and to successful exceptants. *Id.* at 46-47. While they could limit the charitable use to comply with the donor's intent, the commissioners could not change it or exercise powers of cy pres or exercise the variance power. *Id.* at 49-50.

<sup>217</sup> *Id.* at 46-51.

<sup>218</sup> *Id.* at 51.

From 1597 to 1625, over one thousand decrees involving charitable trusts were issued as compared to one or two made by the Chancellor annually from 1400-1601.<sup>219</sup> Professor Jones suggests that the commissioners' success was due to the Chancellor's encouragement of the procedure, the support of the parish community, and the fact that the hearings were local.<sup>220</sup> One should remember that the procedure created by the statute applied only to those charitable uses mentioned in the Preamble. Others were administered by the process called an information, where the attorney general on behalf of a private complainant sought to correct an abuse of charitable assets. Until the Civil War in 1640, the Statute of Charitable Uses proved to be an effective means of ensuring charitable accountability. The secret of its success was that it was locally based in the parish<sup>221</sup>.

### *The Commissions' Demise*

During the Civil War and Commonwealth from 1642-1660,<sup>222</sup> there were far more important issues in the country to be resolved than the proper use of charitable assets. Utilization

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<sup>219</sup> *Id.* at 52.

<sup>220</sup> *Id.* at 52-53.

<sup>221</sup> Towns retained and remodeled institutions and endowments that supported charitable and public works. J.J. Scarisbrook 67-8 *The Reformation and the English People* (1984), but the parish often provided trustees for the plethora of endowed charities that ran almshouses or handed out various doles, which were at one time affiliated with a church or monastery or recently founded as secular charities. Daunton, *supra* note 114 at 5. It became the locus of a permanent social services political apparatus that lasted until the nineteenth century.

<sup>222</sup> The English Civil War involved fighting between Parliamentarians and the Royalist supporters of monarchy and King Charles I. The immediate cause was the attempt of the King to arrest five members of Parliament in 1642. After several years of inconclusive engagements the tide shifted in 1645 after the formation of Parliament's new model army. After the Royalist stronghold of Oxford fell in 1646, Charles took refuge with the Scots who turned him over to Parliament in 1647. He later escaped and attempted to gain the Scots as allies. Charles was recaptured, tied and executed in 1649. Fighting then broke out in Ireland, and Oliver Cromwell suppressed the insurgents and defeated the Royalists. Charles II escaped abroad, and the fighting ended in 1651. The British Isles were declared a republic and named the Commonwealth. Cromwell served as the first Chairman of the Council of State. In 1653, he dissolved Parliament and became Lord Protector. Before he died in 1658, he designated his son Richard as successor. Richard Cromwell was forced to abdicate the following year. Charles II was restored to the throne in 1660. See Christopher Hibbert, *Cavaliers & Roundheads: The English at War, 1642-1649* (1993); Christopher Hall, *God's Englishmen* (1970); R.H. Parry, Ed., *The English Civil War and After, 1642-1658* (1970).

of the charity commissioners declined.<sup>223</sup> Though a short revival in interest in the use of the commission procedure occurred after 1670 until 1688, another procedure came into private use.<sup>224</sup> Instead of the charity commissions, which depended upon the energy and good will of neighbors, petitioners on behalf of charities used another procedure, the information, which was an appeal to the Attorney General.<sup>225</sup> The attorney general as *relator* sought to enforce charitable trusts on behalf of an aggrieved individual or charity through an action in Chancery. By this time, many of the Commission proceedings wound up in Chancery on appeal, so one of the initial advantages of the commissions, an expeditious hearing, was lost.<sup>226</sup> The information was felt to be a more efficient procedure, and the commission procedure fell into disuse.<sup>227</sup> Thus, the Commission procedure was undermined by the legalization of the process, the use of traditional channels of litigation to prolong and to change the internal result.

#### **IV. Conclusions**

##### *Consequences of the Poor Laws*

The Poor Law System was not a minor accomplishment. It achieved its primary objectives of maintaining order and offering sufficient relief to the impoverished to constitute a safety net, though a flimsy one. The Poor Laws reflected Tudor governance, its centralization and paternalism. The approaches introduced to deliver poor relief have been remarkably

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<sup>223</sup> Owen, *supra* note 32 at 85.

<sup>224</sup> Because the docket books were destroyed, it is difficult to accurately estimate the use of the commission procedure up to 1643, but for the next century the figures are precise and show a steady decline: 1643-1660: 295; 1660-1678: 344; 1678-1700: 197; 1700-1746: 125; 1746-1760: 3; 1760-1818: 6; and after 1787: 0. Owen, *supra* note 32 at 85, *citing* Lord Brougham in Parliament, 38 Parl. Deb. (1st ser.) (1818) 606-07).

<sup>225</sup> Jones, *supra* note 122 at 36.

<sup>226</sup> The last commission, issued in 1787, was not executed until 1803! The next year, "Chancery was petitioned to confirm the commissioner's decree. But exceptions were taken," and it took four years before the case was submitted to the court for decision. Then, the Lord Chancellor (Eldon) sat on the case for a decade. Owen, *supra* note 32 at 85.

<sup>227</sup> Jones, *supra* note 122 at 54-57.

durable. For example, contemporary programs, such as, food kitchens the John Doe Fund, which offer street cleaning jobs to former criminals or drug addicts, work-study undertakings, and municipal shelters, all had antecedents in sixteenth and seventeenth century England.

One observation from the past that is relevant today is that national governments are better at coordination and persuasion than organizing and delivering relief. In the sixteenth century Parliamentary action was but one step. Frequently, the towns ignored this legislation. In particularly difficult years in the sixteenth century and generally in the seventeenth, the Privy Council, the crown's leading advisors, applied pressure on towns and parishes to enforce the law and raise the taxes.<sup>228</sup>

In attempting to deal with the poverty problem, one is struck by the willingness of the central power to adopt and borrow from successful local efforts. Legislation, which did not work, was cast aside for other initiatives. Good administration and delivery of services always is more important than legislation. Eventually, what worked evolved into long-standing practice. The Poor Laws lasted for over two hundred years, and some of their principles, such as relief based on need, remains with us today.

One can easily over-estimate the Poor Law's positive achievements. It took decades for the Poor Law System to be put into effect throughout England, and it worked well for only a few

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<sup>228</sup> Leonard, *supra* note 18 at 294.

years. The amounts donated by private resources and raised through taxation were always inadequate. The fundamental principle of giving based upon need took hold in this era. However, the support provided to the poor purposely always was set less than the lowest-paid laborer could earn. There was great fear that if more than the minimum was given, a culture of dependency would result, and the poor would be attracted to the towns and cities. This, in fact, happened.

Less admirably, the Poor Laws encouraged enduring hostile attitudes to the poor, who were perceived as individuals with moral failings, treated separately from the more worthy members of society. One can view this legislation as a method of control and a reaffirmation in both a moral, political and economic sense of society's existing structure.

To quote Professor Slack again, it was much more:

[I]t arguably makes sense to look at the poor law, not in terms of a 'deference' model, but in terms of a participatory one...It was a focus of attention at every point where people participated in public affairs...Because it conferred powers of patronage and financial resources, it created vested interests in parishes and trusts.<sup>229</sup>

From the end of the fifteenth century the institutions of local government in the towns and parishes increasingly involved social control of the poor: regulating alehouses, vagrants, illicit sexual behavior and unruly pastimes. The Poor Law can be looked at as a culmination of a system of harassing and controlling the lower classes.<sup>230</sup>

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<sup>229</sup> Slack, English Poor Law, *supra* note 57 at 48-49.

<sup>230</sup> Slack, From Reformation to Improvement, *supra* note 147 at 5, 15-16.

The Poor Law system did little to solve the poverty problem. As the population continued to rise, the number of poor increased. They moved to industrial areas to seek work, more often than not unsuccessfully. Then, they sought poor relief. There followed several amendments to the 1601 law, based on local approaches to new problems. In 1834 a new, harsher Poor Law placed the poor in workhouses, and centralized administration away from the parish.

*The Impact of the Statute of Charitable Uses on Giving in Reducing Parish Rates*

Did the elaborate structure designed to protect charitable trusts, the exhortations of the state, and Puritan teaching and practice actually lead to an explosion in charitable giving? Private philanthropy, as encouraged by religious doctrine and state exhortation, was supposed to remain the first line of relief of the poor. Did private charity step in to relieve the poor and the tax-paying classes? Was the charity commission procedure effective? The answers are far from clear.

There has been a substantial debate over the role that private charity played in complementing the monies raised by parish rates imposed under the Poor Law. In 1959 Professor Wilbur K. Jordan published *Philanthropy in England 1480-1660*, a study of wills in ten English counties. He concluded that there was an explosion of charitable giving for secular purposes by the merchant class, particularly in the seventeenth century.<sup>231</sup> Jordan also claimed that private charity bore the brunt of poor relief prior to 1660, and that funds

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<sup>231</sup> Jordan, *supra* note 17 at 116-117.

raised by parish rates never exceeded seven percent of the total expended on the poor prior to 1660.<sup>232</sup>

Jordan's data and conclusions have been widely challenged. It seems clear that the true value of bequests for the poor was less significant than Jordan suggested. Concentration on bequests ignored the impact of giving by living donors, through casual charity, giving at church and the establishment of *inter vivos* foundations and trusts.<sup>233</sup> By the seventeenth century and particularly in the eighteenth, charitable giving changed from individuals making contributions to more organized “associational philanthropy”, funding of an organization or charitable activity by subscription.<sup>234</sup>

A basic criticism of Jordan's data is that it did not reflect the impact of inflation in the fifteenth and sixteenth centuries. By applying the Phelps Brown-Hopkins Cost of Living index<sup>235</sup> to each decade, Jordan's data shows that charitable giving, instead of falling from 1510 to 1550 and rising slowly from 1510 to 1600 as he maintained, fell precipitously and all but continuously from 1510 to 1600. Jordan claimed there was a dramatic increase in charitable bequests in the first decades of the seventeenth century. The Phelps Brown-Hopkins Index shows an increase in private charity, but it never approaches the level of giving of the first decade of the fifteenth century.<sup>236</sup> W.O. Bittle and Todd Lane argued that charitable contributions had a negligible impact. J.F. Hadwin suggested in terms of available income, bequests kept ahead of the rising

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<sup>232</sup> *Id.* at 140-141.

<sup>233</sup> Slack, English Poor Law, *supra* note 57 at 42.

<sup>234</sup> Owen, *supra* note 32 at 71-72; Slack, English Poor Law, *supra* note 57 at 42-44.

<sup>235</sup> The Phelps Brown-Hopkins index is based on a basket of consumable items, eighty percent of which are food stuffs. See E.H. Phelps Brown & S. V. Hopkins, *Seven Centuries of the Prices of Consumables, Compared with Builders' Wage-Rates*, *xxm Economica*, n.s. 296-314 (1956).

<sup>236</sup> Lawrence Stone, *Review*, *XLIV\_History* 257-260 (1959).

population but did little more.<sup>237</sup> It has also been suggested that the near complete destruction of many welfare-providing institutions as part of the English Reformation was so great that even the renewed volume of gifts and bequests would be insufficient to fill the shortfall that had arisen.<sup>238</sup>

Other scholars have defended Jordan's conclusions about the increase in secular charitable giving by using other sources. Charles Wilson, who examined the Abstract of Returns made by masters and church wardens throughout the parishes of England and Wales prepared under the authority of Gilbert's Act in 1782<sup>239</sup> agreed with Jordan's conclusions that there was a shift from purely religious to secular socially purposeful ends.<sup>240</sup> Professor Susan Brigden concludes that Londoners in the sixteenth century were not neglecting their Christian duty of charity. She finds that there was an increase in giving which can be calculated by counting the number of donors, rather than the amount they gave, on the principle that the volition may be more significant than the size of the gift.<sup>241</sup> Calculating the number of donors, in contrast to the amount raised, better reflects the role of charity in society as the outpouring in the wake of September 11th and Hurricane Katrina demonstrated America's sense of community.

Connected to the controversy over the scope of giving is the relationship between

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<sup>237</sup> See, W.O. Bittle & R. Todd Lane, *Inflation and Philanthropy in England: A Re-assessment of W.K. Jordan's Data*, XXIX Econ. His. Rev. n.s. 203 (1976); W.O. Bittle & Todd Lane, *A Reassessment Reiterated*, XXXI Econ. His. Rev. n.s. 1 (1978); Hadwin, *supra* note 111 at 105 (1978).

<sup>238</sup> Smith, *supra* note 102 at 32.

<sup>239</sup> 22 Geo. III c.83. Gilbert's Act was the first attempt on a national basis to require some form of accountability for all charitable trusts by introducing a financial filing requirement.

<sup>240</sup> Charles Wilson, *Poverty and philanthropy in early modern England*, in T. Riis, ed. *Aspects of Poverty in Early Modern Europe* 253 (1981). Wilson concluded that a substantial percentage of charitable assets were in land, whose value kept pace with inflation. *Id.* at 265. The abstract conveys the continuation of the philanthropic impulse. The age-long traditions of private charity continued. The aggregate income produced by philanthropic donations over the centuries grew. It was the rate of growth that remains uncertain. *Id.* at 268.

<sup>241</sup> Susan Brigden, *Religion and Social Obligation in Early Sixteenth-Century London*, 103 *Past & Present* 67, 104 (1984) citing the approach used by J.A.F. Thomson. *Piety and Charity in Late Medieval London*, XII *J. Eccles. His.* 185 (1965).

private charity and the poor rates. The evidence is that the parish rates raised much more than Jordan thought, but they still were inadequate. The role of private charity as an agent of poor relief was important, but not so much as Jordan suggested. Without private support Professor Pound concludes Tudor governments would have found the problem of poor relief far more onerous than in fact it was, and the burden might have become unupportable.<sup>242</sup> No matter what the level of giving, the destruction of aid-providing institutions during the Reformation assured that the need for private assistance would have increased.

The merchant class was most concerned about disorder and responded to oratory from the pulpit. They subscribed to the poor rate and left bequests for the poor. They also created charitable trusts to relieve poverty and founded institutions to provide such assistance. The poor rates themselves raised too little for the numbers and needs of the poor. The estimated amount raised was only .25% of national income.<sup>243</sup>

The Poor Laws have been called rhetoric and a placebo, and the impact of gifts from endowed charities on relief of poverty slight.<sup>244</sup> Ultimately, states Paul Slack, a leading scholar of the Poor Laws, “it was economic growth not social policy that improved the lot of the poor.”<sup>245</sup> Four hundred years later this observation remains valid for modern programs of poor relief.

### *The Past as Prologue?*

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<sup>242</sup> Pound, *supra* note 111 at 75.

<sup>243</sup> Hadwin, *supra* note 237 at 117.

<sup>244</sup> Guy, *supra* note 12 at 404.

<sup>245</sup> Slack, English Poor Law, *supra* note 57 at 45.

Both the Tudor era and our own have faced extraordinarily difficult situations. These periods and the causes of societies' traumas are so different that any linkages are bound to be slim. A major difference between the periods was that the Tudor crisis was ongoing, and threatened the very existence of the regime, whereas the perils caused by September 11<sup>th</sup> and Hurricane Katrina were unique events. The American people's response has been to give a large amount of charity beyond immediate requirements. Because distribution of the contributed funds was not based on need, the American approach was sometimes ineffective, indiscriminate in delivery, and inefficient.<sup>246</sup> The sixteenth century and thereafter in England represented the more common situation where voluntary contributions raise insufficient amounts

There are some continuities with the past. One is the idea of a public-private partnership to combat social problems. Today, the linkage of government and the private and nonprofit sectors through a public-private partnership remains a cornerstone of modern poor relief and the delivery of private social services. Delivery of public assistance remains at a local level, though funding is from state and federal resources.

Other concerns, the misuse of charitable assets and structures and the demand for charitable accountability, which the Tudors perceptively realized was necessary to encourage philanthropy, remain an enormous contemporary problem for regulators<sup>247</sup> and the nonprofit

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<sup>246</sup> For academic commentary, see generally, Robert A. Katz, *A Pig in a Python: How the Charitable Response to September 11 Overwhelmed the Law of Disaster Relief*, 36 Ind. L. Rev. 251, 252, 286 n.231 (2003). Johnny Rex Buckles, *When Charitable Gifts Soar Above Twin Towers: A Federal Income Solution to the Problem of Publicly Solicited Surplus Donations Raised for a Designated Charitable Purpose*, 71 Fordham L. Rev. 1827 (2003). See also, Rochelle Korman, *Charitable Class and Need: When Should Charities Benefit?* Paper presented to the Nonprofit Forum, Oct. 19, 2002; Catherine E. Livingston, *Disaster Relief Activities of Charitable Organizations*, 35 Exempt Org. Tax Rev. 153 (2002).

<sup>247</sup> See, Written Statement of Mark W. Everson, Commissioner of Internal Revenue, before Senate Finance Committee, Hearing on Charitable Giving Problems and Best Practices, June 22, 2004, 2004 TNT 121-39 (June

sector. The Statute of Charitable Uses was a response to this problem. It created for a time an effective method of assuring charitable accountability, a holy grail for charity regulators today. The statute also reaffirmed the legal validity of charitable trusts as it was interpreted by the courts as rendering valid in Equity devises in trust or to charitable corporations, which had been prohibited by the Statute of Wills.<sup>248</sup> Today, the solution devised by the Elizabethans, local monitoring of charitable assets remains an attractive alternative to under-funded, inefficient and distant regulation by overburdened state attorneys general or the Internal Revenue Service.

An observation from the past that is relevant today is that national governments are better at coordination and persuasion than organizing and delivering relief. In the sixteenth century Parliamentary action was but one step. The Tudor belief that the central government's primary roles (through the Privy Council) should be persuasion, oversight, monitoring, and only ultimately sanctioning rather than operative, resonates today.

In the past and at present private charity has been a symbol of civil society and democracy. Though the motives may differ, the perceived obligation and desire of citizens to donate their personal wealth for social good remain. There is a continuity of concern for the unfortunate. Philanthropy relates to a concern for our fellow men. Today, as before, it is the hallmark of citizenship and social bonding.

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23,2004); *Staff Discussion Draft*, U.S. Senate Finance Committee June 2004, available at <http://finance.senate.gov/hearings/testimony/2004test/062204stfdis.pdf>.

<sup>248</sup> 32 Hen. 8 c.1 (1540); Scott & Fratcher, *supra* note 149 at § 362.2