

BOOK REVIEW

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Charity Law and Social Policy

by Kerry O'Halloran, Myles McGregor-Lowndes and Karla Simon

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The subtitle to this new book “*National and International Perspectives on the Functions of the Law relating to Charities*” gives a clue to the scope of this ambitious project. Building on themes explored in his earlier work “*Charity Law and Social Inclusion*”², Dr Kerry O'Halloran³ joins forces with two leading charity sector academic authors, Professor Myles McGregor-Lowndes⁴ and Professor Karla Simon⁵, to bring their perspectives as authorities on, respectively, Irish, Australian and American charity law to bear on this comparative study of contemporary law, policy and practice in a range of modern common law nations. The starting point for this study is an examination of how the law has evolved in the UK; as the authors note in their introduction, “no meaningful analysis of charity law can be attempted in any common law nation without first grasping how it has developed and now operates in the originating jurisdiction”.

The book comprises four parts. The first part sets the scene by detailing the key concepts involved in charity law and outlining their historical development and emerging social policy issues in England and Wales. Part II, entitled “A functional approach to the law as it relates to charity in the UK”, seeks to provide a clear basis for assessing changes over time and for differentiating between countries in relation

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² Reviewed in CL&PR [2007] Vol. 10 No. 2 at 59-64.

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to particular configurations of social policy and charity law. It does this by examining the legal functions relating to charitable activities, starting with the jurisprudence underpinning the law and its role in society, and moving on to identify four key functions of charity law: protection, policing, mediation and adjustment, and support.

Separate chapters are devoted to tracing the origin of these functions and assessing their effectiveness and significance for social policy. Part III is concerned with international perspectives. In this part the authors look at how the various legal functions are applied to meeting local needs and thereby give effect to government policy in five common law states: Australia, New Zealand, Singapore, Canada and the United States. The final part of the book is entitled "Re-configuring the social policy context for charity and the law". Here the authors reflect on their findings in Part III and consider the implications for the future relationship between legal functions and social policy as they relate to charity. They identify three key problem areas: the need for a flexible and open definition of charitable purposes; interpretational problems posed by the increasingly complex relationship between private law charitable bodies and government-defined public interests; and the need for a modern legal and administrative framework that supports both charities and their regulators. The book concludes that the state of a nation's charity law provides a strong indicator of the health of its social policy and may have an important bearing on the future development of democracy and its institutions.

The book is logically constructed, with each chapter starting with an overview of its underlying theme before moving on to more detailed analysis and discussion. The use of a common template of legal functions set out in an appendix aids comparison between the different jurisdictions selected for review. However, the reader has to grapple with multiple headings and sub-headings within each chapter, prompting repeated reference to the detailed list of contents to locate particular passages, a process which might have been facilitated by a more rigid enumeration of individual paragraphs. This does not detract from the wealth of reference material cited, which those interested in comparative charity law will be delighted to have to hand. The book is a timely response to the recent surge of interest in charity law reform in the common law world, and it is to be hoped that it will find a place on the reading lists of legislators and regulators dealing with charities both in the countries reviewed and in all the other Commonwealth nations that share this vital part of the common law heritage.