

## THE STATUTE OF CHARITABLE USES AND THE ENGLISH ORIGINS OF AMERICAN PHILANTHROPY

Philanthropy has many dimensions. In scripture, it is an intensely personal commitment to following the example of Christ by healing the sick, feeding the poor, and helping the helpless. With the institutionalization of the church, however, philanthropy and charity became a property relation as well. And, over time, medieval law began to treat property set aside for eleemosynary purposes in a variety of special ways.

Medieval England, combining Christian ideals, Roman precedents, and Common Law, permitted charitable donors to entrust property -- usually to the church or other public authorities -- for charitable purposes. These endowments were part of a complex of activities involving the Crown, noble families, the church, municipal bodies, guilds, and other essentially public entities through which poverty, dependency, and other needs were attended to.

The political, economic, social, and religious turbulence of the sixteenth century -- England's break with the church of Rome, confiscation of the enormous land holdings of the monasteries, struggles over the Tudor succession, the rise of the urban middle classes and the landed gentry and the dispossession of the peasantry -- contributed to a disintegration of the traditional institutions of charity and social welfare. As a nineteenth century commentator noted,

the ideal of charity had been degraded. A self-regarding system of relief had superseded charity, and it was productive of nothing but alms, large or small, isolated and unmethodic, given with a wrong bias, and thus almost inevitably with evil results. . . . The larger issues were overlooked. Then the property of the hospitals and the guilds was wantonly confiscated, though the poor had already lost that share in the revenues of the church to which at one time they were admitted to have a just claim. A new beginning had to be made. The obligations of charity had to be revived. A new organization of charitable relief had to be created, and that with an empty exchequer and after a vast waste of charitable resources. There were signs of new congregational and parochial energy, yet the task could not be entrusted to the religious bodies, divided and disunited as they were. In their stead it could be imposed only on some authority which represented the general community, such as municipalities; and in spite of the centralization of the government there seemed some hope of creating a system of relief in connexion with them (Loch, 1911, p. 879).

The reordering of the law of charity represented by Elizabeth's 1601 Statute of Charitable Uses was part of a broader reorganization of the system of public and private responsibilities for the poor and dependent. With the Poor Relief Act of 1601, parliament placed the administration of poor relief in the hands of municipal authorities. At the same time, the Statute of Charitable Uses sought to rationalize the administration of private charities -- to specify the purposes for which funds could be devoted to charity, to ensure such funds were applied to the uses specified by donors, and to place the private charity under the supervision of the State. In practice, this supervisory power was delegated, as the Statute notes, to the bishops. But the Lord Chancellor retained ultimate authority.

Few laws are more important -- or more misunderstood -- than Elizabeth's 1601 Statute of Charitable Uses. The preamble to the Statute sets forth the purposes for which property might be set aside for charitable purposes and, at the same time, provides a rich overview of the range of philanthropy in Elizabethan England. In their ignorance of law and history, Americans, whether they favored or opposed the concept of institutionalized charity, pointed to it as the legal foundation for the special treatment of property set aside for philanthropic purposes. Accordingly, many states (including New York, Pennsylvania, and Virginia) erroneously believed repudiating the Statute would enable them to halt or limit the creation of charities. While the high profile 1844 litigation involving the estate of multimillionaire Steven Girard definitively established that charities under the common law rested on other bases than the 1601 Statute -- and in doing so placed charities on a firm foundation under federal law --, states hostile to private charity passed their own charities statutes that superceded English statutes and precedents.

The issues with which that Statute is concerned -- the purposes for which charities can be established and the regulatory and supervisory powers of government -- are still contested issues today. Indeed, the evolution of charities law has been -- and continues to be -- profoundly affected by whether or not, in the distant past, state legislatures embraced or rejected the Statute.

#### **The Statute of Charitable Uses Act (1601), 43 Elizabeth I c. 4**

An Acte to redresse the Misemployment of Landes Goodes and Stockes of Money heretofore given to Charitable Uses

Whereas Landes Tenementes Rentes Annuities Profittes Hereditamentes, Goodes Chattels Money and Stockes of Money, have bene heretofore given limitedt appointed and assigned, as well by the Queenes most excellent Majestie and her moste noble Progenitors, as by sondrie other well disposed persons, some for Releife of aged impotent and poore people, some for Maintenance of sicke and maymed Souldiers and Marriners, Schooles of Learninge, Free Schooles and Schollers in Universities, some for Repaire of Bridges Portes Havens Causwaies Churches Seabankes and Highwaies, some for Educacion and prefermente of Orphans, some for or towards Reliefe Stocke or Maintenance of Howses of Correccion, some for Mariages of poore Maides, some for Supportacion Ayde and Helpe of younge tradesmen Handicraftesmen and persons decayed, and others for reliefe or redemption of Prisoners or Captives, and for aide or ease of any poore Inhabitantes concerninge paymente of Fifteenes, setting out of Souldiers and other Taxes; Whiche Landes Tenementes Rents Annuities Profitts Hereditaments Goodes Chattells Money and Stockes of Money nevertheles have not byn employed accordinge to the charitable intente of the givers and founders thereof, by reason of Fraudes breaches of Truste and Negligence in those that shoulde pay delyver and imploy the same: For Redresse and Remedie whereof, Be it enacted by Authoritie of this presente Parliament, That it shall and may be lawfull to and for the Lorde Chauncellor or Keeper of the Greate Seale of Englande for the tyme beinge, and for the Chauncellor of the Dutchie of Lancaster for the tyme beinge for Landes within the Countie Palatine of Lancaster, from tyme to tyme to award Commissions under the Greate Seale of Englande, or the Seale of the Countie Palatine as the case shall require, into all or any parte or partes of this Realme respectivelie, according to their severall Jurisdictions as aforesaide, to the Bishoppe of everie severall Diocesse and his Chancellor, in case there shalbe any Bishoppe of that Diocesse at the tyme of awardinge of the same Commissions, and to other persons of good and sounde behaviour, authorisinge them therebie, or any fower or more of them, to inquire, as well by the Oathes of Twelve lawfull Men or more of the Countie, whereunto the saide parties interessed shall as by all other good and lawfull waies and menes, of all and singuler such Giftes Limitacions Assignements and Appoyntments aforesaide, and of the Abuses Breaches of Trustes Negligences Mysimplymentes, not imployinge concealinge defraudinge misconvertinge or misgovernmente, of any Landes Tenementes Rentes Annuities Profitts Hereditaments Goods Chattels Money and Stockes of Money heretofore given limitedt appointed or assigned, or whiche hereafter shalbe given limitedt appointed or assigned, to or for any the charitable and godlie uses before rehearsed: And after the saide Commissioners or any fower or more of them, upon callinge the parties interessed in any suche Landes Tenementes Rentes Annuities Profitts Hereditaments Goodes Chattels Money and Stockes of Money, shall make inquire by the Oathes of twelve men or more of the saide Countie, whereunto the saide parties interessed shall and maye have and take their lawfull challenge and challenges; and upon suche inquiry hearinge and examinyng thereof set downe suche Orders Judgments and Decrees, as the saide Landes Tenementes Rents Annuities Profitts Goods Chattels Money and Stockes of Money may be duellie and faithfullie employed, to and for suche of the charitable uses and intents before rehearsed respectivelie, for whiche they were given limitedt assigned or appointed by the Donors and Founders thereof: whiche Orders Judgements and Decrees, not beinge contrarie or repugnante to the Orders Statutes or Decrees of the Donors or Founders, shall by the Authoritie of this presente Parliamente stand firme and good accordinge to the tenor and purpote thereof, and shalbe executed accordinglie, untill the same shalbe undon or altered by

the Lorde Chauncellor of Englande or Lorde Keeper or the Greate Seale of Englande, or the Chauncellor of the Countie Palatine of Lancaster, respectivelie within their severall Jurisdiccions, upon complainte by any partie grieved, to be made to them. Provided alwaies, That neither this Acte, nor any thinge therein contened, shall in any wise extende to any Landes Tenements Rents Annuities Profits Goods Chattels Money or Stockes of Money, given limitedt appointed or assigned, or whiche shalbe given limitedt appointed or assigned, to any Colledge Hall or Howse of Learninge within the Universities of Oxforde or Cambridge, or to the Colledges of Westminster Eaton or Winchester, or any of them, or to any Cathedrall or Collegiate Church within this Realme. And provided alsoe, That neither this Acte nor any thinge therein shall extende to any Citie or Towne Corporate, or to any the Landes Tenements given the uses aforesaide within any such Citie or Towne Corporate, where there is a speciall Governor or Governors, appointed to governe or directe suche Landes Tenements or Things disposed to any the uses aforesaide; neither to any Colledge Hospitall or Free Schoole whiche have speciall Visitors or Governours or Overseers appointed them by their founders. Provided also and be it enacted by the Authoritie aforesaide, That neither this Acte nor any thinge therein contained shalbe any way prejudiciall or hurtfull to the Jurisdiction or Power of the Ordinarie; but that he may lawfullie in everie cause execute and performe the same as though this Acte had never bene had or made. Provided also and be it enacted, That noe person or persons that hathe or shall have any of the saide Landes Tenements Rents Annuities Profits Hereditaments Goods Chattels Money or Stockes of Money in his Hands or Possession, or dothe or shall pretende Title thereunto, shall bee named Commyssioner or a Juror for any the causes aforesaide, or beinge named shall execute or serve in the same. And provided alsoe, That no person or persons which hathe purchased or obteyned, or shall purchase or obteyne, upon valuable Consideracion of Money or Lande, any Estate or Intereste, of in to or out of any Landes Tenements Rents Annuities Hereditaments Goods or Chattels that have bene or shalbe given limitedt or appointed to any the charitable uses above mencioned, withoute Fraude or Covyn, havynge no Notice of the same Charitable Use, shall not be impeached by any Decrees or Orders of Commissioners above mencioned for or concernynge the same his Estate or Interests. And yet nevertheless Be it enacted, That the saide Commissioners, or any Fower of more of them, shall an may make Decrees and Orders for recompense to be made by any person or persons whoe, beinge put in Truste or havynge notice of the charitable Uses above mencioned, hathe or shall breake the same Truste, or defraude the same Uses, by any Conveiance Gifte Graunte Lease Demise Release or Conversion whatsoever, and againste the Heires Executors and Admyministrators of hym them or any of them, havynge Assettes in Law or Equitie, soe farre as the same Assettes will extende. Provided alwaies, That this Acte shall not extende to give Power or Authority to any Commissioners before mencioned: to make any Orders Judgements or Decrees for or concernynge any Mannors Lands Tenements or other Hereditaments assured conveyed graunted or come unto the Queenes Majestie, to the Late Kinge Henrie the Eighte, Kinge Edwarde the Sixte, or Queene Marie, by Acte of Parliament Surrender Exchange Relinquishement Escheate Attainder Conveiance or otherwise. And yet nevertheless Be it enacted, That if any suche Mannors Landes Tenements or Hereditaments, or any of them, or any Estate Rente or Profitte thereof or oute of the same or any parte thereof, have or hathe byn given granted limitedt appointed or assigned to or for any the charitable uses before expressed, at anye tyme sithence the begynnyng of her Majesties Reigne, that then the saide Commissioners or any fower or more of them shall and maye, as concerninge the

same Landes Tenements Hereditaments Estate Rente or Profit soe given limited appointed or assigned, procede to enquire and to make Orders Judgements and Decrees accordinge to the purporte and meaninge of this Acte as before is mentioned: The saide last Proviso notwithstandinge. And be it further enacted, That all Orders Judgments and Decrees of the saide Commissioners, or of any fower or more of them, shalbe certified under the Seales of the saide Commissioners or any fower or more of them, either into the Courte of the Chauncerie of Englande, or into the Courte of the Chauncerie within the Countie Palatine of Lancaster, as the case shall require respectivelie accordinge to their severall Jurisdiccions, within suche conveniente tyme as shalbe limited in the saide Commissions; And that the saide Lorde Chancellor or Lorde Keeper, and the saide Chauncellor of the Duchie, shall and maye, within their saide severall Jurisdiccions, take suche Order for the due Execucion of all or any of the saide Judgments Decrees and Orders as to either of them shall seeme fit and convenient: And that if after any such certificattes made any person or persons shall fynde themselves grieved withe any of the saide Orders Judgments or Decrees that then it shall and maybe lawful to and for them or anie of them to complaine in that behalfe unto the saide Lorde Chancellor or Lorde Keeper, or to the Chancellor of the saide Duchie of Lancaster, accordinge to their severall Jurisdiccions, for Redresse therein; And that upon suche Complaine the saide Lorde Chancellor or Lorde Keeper, or the saide Chancellor of the Duchie may, accordinge to their saide severall Jurisdiccions, by suche course as to their wisdomes shall seeme meeteste, the circumstances of the case considered, procede to the examinacion hearinge and determynynge thereof; and upon hearinge thereof shall and may adnull dymynishe alter or enlarge the saide Orders Judgements and Decrees of the saide Commyssioners, or any fower or more of them, as to either of them, in their saide severall Jurisdiccions, shalbe thoughte to stande withe Equitie and good Conscience, accordinge to the true intente and meaninge of the Donors and Fownders thereof; and shall and maye taxe and awarde good Costes of Suite by their discrecions againste such persons as they shall fynde to complaine unto them, without juste and sufficient cause, of the Orders Judgments and Decrees before mencioned.

Source: Austin Wakeman Scott, Select Cases and Other Authorities on the Law of Trusts (Cambridge, 1940).

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