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# Nathan Report and the Supervision and Enforcement of Chairtable Trusts

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GEORGE G. BOGERT

IN 1948 Lord Beveridge published *Voluntary Action, A Report on Methods of Social Advance,* in which he gave an historical and critical account of the ways in which *individuals and groups* in England and Scotland had made contributions of time and money for the improvement of living conditions and the promotion of health, happiness and security. This was a companion volume to a report on *Social Insurance and Allied Services* and to a book entitled *Full Employment in a Free Society* which had been prepared by Lord Beveridge in 1942 and had been concerned with *governmental aid* to the welfare of its citizens with respect to unemployment, old age, sickness and similar disasters.

In his 1948 work Lord Beveridge discussed such forms of mutual aid as the friendly societies which in substance provide sickness and burial insurance, and in some cases a means of saving for emergencies; trade unions; building and housing societies; social clubs; consumer co-operation; savings banks; and hospital contributory schemes. He also included a large section on charitable trusts in which he discussed the *cy pres* doctrine and criticized its administration, and described the large charitable trusts recently created, which would be called "foundations" in this country.

Toward the end of this book Lord Beveridge made suggestions as to the ways in which the State could encourage and aid voluntary movements for charitable purposes and among other things he proposed that a Royal Commission should be appointed "to make a survey of the existing charitable trusts, and of the law and the administrative machinery concerned with such trusts"; and "to make recommendations for making charitable trusts at all times most beneficial to the community and adjusting their application to changing circumstances."

In Appendix B of his 1948 book Lord Beveridge outlined some proposals to be made to the Royal Commission which he hoped would be set up. Charitable trusts should be required to register with the Charity Commissioners and their exemption from income taxation should be conditioned on such registration. Each registering charity should be required to furnish described information as to its character and status at the time of registration and at such later times as the Charity Commissioners should fix. The application of the *cy pres*

George G. Bogert is Professor of Law, University of California, Hastings College of Law.

power by the Charity Commissioners should be made easier, particularly with regard to charities more than fifty years old, with emphasis on keeping capital intact and preserving the connection of the name of the donor with any substituted charity. The power should extend to declaring that the purposes or methods of the donor have become "mischievous or foolish." Annual statistics as to charities should be compiled and examinations of trusts by inspectors should be provided, and for these purposes the staff of the Charity Commissioners should be enlarged. Special provisions should be made for educational charities and their government through the Minister of Education.

The 1948 Beveridge book was brought up for debate in the House of Lords on June 22, 1949, and various views were expressed, including important comments by Lords Samuel, Nathan, Beveridge and Pakenham.

In January 1950, a Parliamentary Committee on the Law and Practice Relating to Charitable Trusts was appointed by the then Prime Minister, Mr. Atlee. It consisted of twelve members. Its chairman was Lord Nathan.

Following thirty-one meetings of the Committee and the taking of much evidence, a report was presented to Parliament and published in December 1952.[1] Eleven of the twelve members united in a majority report consisting of five parts; namely, (1) an introduction showing the origin of the Committee and the background of its appointment; (2) a discussion of the value of charities in the modern social structure; (3) a history of the law and practice of charitable trusts in England and Wales with recommendations for changes; (4) a statement of the objectives which the Committee believes could be achieved if the recommended changes were made; and (5) appendices giving facts, statistics and statutes which were considered by the Committee in making its report. A minority report of thirty-two pages was submitted by Henry Salt, Esq.

*Continued Need for Charitable Trusts.*—The Committee stated emphatically that the greatly increased part being taken by the State in providing social services did not render privately created charitable trusts unnecessary, but rather that such gifts could supplement the work of public agencies, fill in gaps where the state was idle or ineffective, and provide room for experimentation in new fields.

*History of English Experience.*—In the section on the history of law and practice the *Report* makes a division into three periods, namely:

[1] Report of the Committee on the Law and Practice Relating to Charitable Trusts. The Right Honorable Lord Nathan, Chairman. London: Her Majesty's Stationery Office (Cmd. No. 8710). 1952. Pp. iv, 252. 6s 6d.

(1) that before 1601 and the Statute of Charitable Uses;

(2) the years between 1601 and 1812 when the Statute of Charitable Uses was in effect and commissions under it were the principle means of preventing abuse; and

(3) the relatively modern time from 1812 to date during which there has been much greater activity in attempting to secure the enforcement of charities through (a) The Charities Procedure Act of 1812 providing a summary remedy for breaches; (b) The Charitable Donations Registration Act of 1812 which sought to secure registration of charitable trusts but has been ignored; (c) Lord Brougham's Commission of 1818-1835 which sought to discover and record charitable trusts and violations of them; and (d) a Select Committee of Parliament appointed in 1835 which recommended the setting up of an authority independent of the courts for the purpose of securing enforcement and whose report resulted in the adoption in 1853 of the Charitable Trusts Act under which the still-existing Charity Commissioners were appointed and through which and later amendments they seek to secure enforcement and may exercise the *cy pres* power.

*Legal Definition of Charity.*—The *Nathan Report* discusses[2] proposals for changing the legal definition of "charity," based in part on the argument that changes in social, economic and governmental conditions have made the early definitions obsolete, and in part on an attack on particular decisions, as for example, *Gilmour v. Coats*[3] (trust for private religious exercises not charitable) and *Oppenheim v. Tobacco Securities Trust Co.*[4] (trust to provide social benefits to employees of a named corporation not charitable, although the number involved was large). It refers to the list of charities set out in the preamble to the Statute of Charitable Uses which had been adopted apparently as a complete list of all charities by the Charitable Trusts Act of 1853; it also lays emphasis on Lord Macnaghten's statement in *Commissioners v. Pemsel*[5] that "charity" comprises education, relief of poverty, religion and "other purposes beneficial to the community"; and it also recognizes that a large amount of case law has grown up in which it has been decided that a given purpose was or was not technically charitable. The conclusion of the Committee is "that a rewording of the 'definition' of charity is needed and we favor a definition which would allow of flexibility in interpretation. We recommend that the existing 'definition' of charity by reference to the Preamble to the Statute of Charitable Uses should be repealed and that in its stead

2 Cmd. No. 8710 at 31-36 (1953).
3 [1949] A.C. 426.
4 [1951] A.C. 297.
5 [1891] A.C. 531.

there should be put on the Statute book a 'definition' based on Lord Macnaghten's classification, but preserving the case law as it stands."

*Records and Registration.*—The *Report* discusses[6] the fact "that accessible, classified records of charitable trusts—of the tens of thousands of trusts, in this country with assets perhaps of the order of £200,000,000, besides holdings of land on which no information is available save that they are vast . . . do not exist." The recording provisions of the Charitable Donations Act of 1812 whereby trustees of charities were required to record details of their trusts with local authorities, which were to send copies to the Court of Chancery, have not been obeyed. The Brougham Commission of 1837 recorded the existence of 29,000 charitable trusts and the Charity Commissioners and the Ministry of Education (in charge of educational trusts) have made lists totaling 110,000, but these records are incomplete, classified only as to area served and not as to types of charity, and not easily available to the public. The Committee feels the need of complete, classified data for the purpose of enabling the Commissioners and the educational authorities to secure enforcement and to exercise the new *cy pres* power recommended, and it maintains that these records should be within the reach of local authorities and persons seeking charitable aid. It therefore recommends that the burden should be placed on charity trustees to file with the Commissioners or Ministry of Education (in the case of educational trusts) the essential data regarding their several trusts and any amendments of them; that the penalty for failure to file should be a small fine; and that the Commissioners and Ministry should have the duty of compiling lists of charitable trusts by areas and types and distributing local records to the proper local authorities, and that inspection of the records at the central or local offices should be permitted free of charge.

*Present Governmental Control.*—The *Nathan Report* next deals[7] with the powers of the Commissioners and the Ministry of Education to secure information regarding the operation of charities and to aid in their enforcement. The present statutes require annual accounts to be sent by trustees for charity to the Commissioners or the Ministry but only about one-third of the trustees subject to the jurisdiction of the Commissioners submit accounts promptly, and in the case of general educational trusts about one in thirty trusts sends in a timely account to the Ministry. The Commissioners send reminders to trustees who do not submit accounts and in the course of time receive accounts on all their trusts, but this is not true with educational trusts. The accounts received are examined for errors, neglects and breaches of

[6] Cmd. No. 8710 at 37-44 (1953).
[7] Id. at 45-52.

trust. The Committee finds that breaches of trust are exceedingly rare, but that the accounts give opportunity for advice on administrative problems and for the application of *cy pres*. It recommends that trustees be required to submit annual accounts in a standardized form and in duplicate or triplicate, with a fine for breach of the duty; that they should be audited and submitted to periodic spot-checks; and that copies should be sent to the local authorities who have records of the existence of the charities.

*Statutory Custodian Trusteeship for Charities.*[8]—Under statutes dating back approximately one hundred years there have existed the Official Trustee of Charity Lands and the Official Trustees of Charity Funds, both of which are corporations sole and are available to receive title to charitable trust land in the one case, and to personal property held for charity in the other case, and to act as a custodian of it and remit its income to the trustees. All other powers of administration are in the trustees. This scheme has been found advantageous from the point of view of saving time and expense in the case of succession to trusteeships and for tax purposes, and a large portion of the property of charitable trusts in England is now vested in these Official Trustees. The Nathan Committee recommends that all property of existing and future charities be vested in these titleholders, but that the names of the agencies be made more descriptive by being changed to "Official Custodians."

*Lands Held for Charity: Mortmain and Charitable Uses.*—The *Report* discusses[9] certain statutory rules (not believed to have any counterpart in the United States) enabling trustees for charity to perform certain acts regarding land held by them and placing restrictions on them with regard to other dealings in land, and it recommends that these provisions remain unchanged.

It urges[10] that the statutory restrictions on the power of corporations to hold land, which were imposed to prevent feudal landlords from losing feudal dues and to insure that land ownership was not concentrated in the hands of corporations, be abolished as far as all charitable corporations are concerned.

The Nathan Committee recommends[11] that the provisions of the Mortmain and Charitable Uses Act which limit the power of a donor of land to charity by deed, and require land given for charity by will to be sold within one year, be repealed as anachronistic and not suited to the conditions of this time.

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[8] Id. at 53-57.
[9] Id. at 58-61.
[10] Id. at 61-63.
[11] Id. at 63-65.

*Liberalization of Investment Rules.*—The Committee considers[12] the present investment rules for all trustees and regards them as too restrictive. It proposes to extend the list of permitted investments to include with certain safeguards "debentures and the stocks and shares (including equity (ordinary) stocks and shares) of financial, industrial and commercial companies quoted on the Stock Exchange, London." A 50 per cent limit would be placed on such new types of investments, with a 4 per cent dividend record required for each of the past ten years and the issue to be at least £1,000,000. Charitable trustees should be allowed to buy freeholds and long leaseholds for investment and functional purposes.

*The* Cy Pres *Doctrine and the Alteration of Trusts.*—A large section of the *Nathan Report*[13] is given over to the need for the enlargement of the *cy pres* power in order to make charitable trusts more useful to society. The English courts have held that the power to alter the purposes of the charitable trust can be exercised only when the original object has become *impossible* or *impracticable* and the settlor's intention was to benefit charity in general. This power has been vested in the Charity Commissioners concurrently with the Court of Chancery, subject to a right of appeal, except that in the case of educational charities *cy pres* is exercised by the ministry of Education with the same qualifications.

The view of the Committee is that the power should be exercisable when, although it is still possible and practicable to carry out the trust as the settlor provided, it is inexpedient, unwise, or wasteful to take such action, and society would benefit by applying the fund to another charity of the same type or of another type, or by consolidating it with another charity. There should be authority in some representative of the state to remake the charity to suit the present-day social and governmental conditions and in substance to overrule the settlor where his plan has become obsolete. In exercising such enlarged power there should be consideration, as Scottish legislation states, of the public interest, existing conditions, the spirit of the intention of the founder, the interest of the locality where the charity was to function, and the possibility of effecting economies by the consolidation of two or more endowments. There have been statutory inroads on some uses of the *cy pres* power in England and they should be extended to all charities.

Charities should not be altered under a scheme within thirty-five years of their founding without the consent of the trustees and of the founder of the trust, if the latter is living. While a scheme should

[12] Id. at 66-69.
[13] Id. at 70-92.

normally be advanced by the trustees, the agency entitled to use the power and certain local governmental bodies in localities affected should also be entitled to suggest a plan. There should be concurrent jurisdiction to use the power on the part of the Chancery Division and the Commissioners, and with regard to education the Minister of Education. The trustees should have a right of appeal as to a court-framed scheme, except in very small trusts. The existing *cy pres* machinery as to notice to trustees of intent to use the power, public notice of a proposed order, receipt of objections or suggestions, and opportunity for public inspection of the order when given, should be continued.

*Organization of Supervisory Agency.*—Chapter 10 of the *Report*[14] is concerned with the organization of state machinery for the government of charities. A continued division of authority between the Board of Charity Commissioners and the Ministry of Education is recommended. There should be a Minister of limited powers to represent the Commissioners in Parliament. The size of the Board should be increased and the staff better compensated, but fees should not be charged charitable trusts to pay for the costs of services given them.

*Exceptions from Coverage by the Proposed Act.*—The Committee considers[15] the exception of trusts created by Parliament and certain university, religious and educational bodies from the operation of the proposed Act, in the light of previous statutory special treatment. It also discusses a "plain charity" (all of whose property is available for distribution for charity) and a "mixed charity" where part is an unexpendable endowment and part consists of contributions and other property immediately expendable. In the case of a plain charity it should be subject to the powers of inquiry of the state authority, but otherwise outside the Act, except that a member of the public might draw attention to need for investigation and the facilities of the Official Custodians of charitable property should be available to such a charity. Mixed charities should be subject to the Act in general, except as to their nonendowed assets which they could spend or have schemed as they saw fit.

*Validation of Trusts for both Charitable and Noncharitable Purposes.*—The *Nathan Report* next considers[16] whether the proposed new statute should validate to any extent trusts which have one or more admittedly charitable purposes and also permit the trustee to spend the trust fund for objects which are not charitable. This discussion is based on the so-called *Oxford Group* case,[17] which involved a regis-

[14] Id. at 93-100.
[15] Id. at 101-19.
[16] Id. at 120-34.
[17] Oxford Group v. Inland Revenue Comm'rs, [1949] 2 All E.R. 537 (C.A.)

tered company, the *Ellis* case,[18] which provided for admittedly religious purposes and also the noncharitable object of the promotion of the work of a certain church in the district, and the *Diplock* case,[19] where the trust was for charitable *or benevolent* objects. In the corporation case a tax difficulty was avoided by a statute which permitted the corporation to amend its memorandum of association with retroactive effect, but in the other cases trusts were involved and it was held that the mixed trust failed and the successors of the settlor took all the property, since there was no basis fixed by the settlor for dividing the fund between charity and noncharity and the noncharitable part was uncertain as to beneficiaries.

The Committee's argument for validation of these mixed trusts is that the decisions were very recent (1949 in two cases), that draftsmen had not realized up to that time that trusts with these or similar objectives would be regarded by the courts as mixed and so vulnerable, that in many cases long periods of time had passed without any attack on the trusts by the next of kin, that the trustees of many trusts had paid out large sums on the theory that such trusts were valid charities, and that to permit them to be attacked at this date would result in a large amount of litigation and upset many worthy charitable enterprises which had received benefits from these mixed trusts. The Committee was anxious to save for charity as much of this trust property as could fairly be salvaged.

The Committee recommends partial validation. It first selects December 31, 1950, as the time when rights are to be fixed, since that was a date at which all parties interested in these mixed trusts should have been aware of the *Oxford* and *Ellis* decisions. It then recommends that all mixed trusts which had been in effect for six or more years prior to that date should be declared to have always been exclusively charitable. In the case of mixed trusts which had on the relevant date been in effect less than six years the Committee urged that there should be validation only if the primary object was charity and the trustees had expended the funds primarily or exclusively for charity. If either of these two requirements could not be met, the next of kin should be entitled to claim within one year from an advertisement of the situation and after that the funds, if not claimed, should go to a "common good" or other similar trust.

The Committee does not recommend validating mixed trusts which have come into being after December 31, 1950, because the parties and their counsel should have known the law of the *Oxford* and *Ellis* cases by that time and have drawn their trusts accordingly.[19a]

[18] 31 Tax Cas. 178 (1949).

[19] Chichester Diocesan Fund and Board of Finance v. Simpson, [1944] A.C. 341.

[19a] A Charitable Trusts (Validation) Bill has been introduced, validating to a limited extent trusts which took effect prior to Dec. 16, 1952. 97 Sol. J. 888 (1953).

*How the Proposed New* Cy Pres *Powers Should Be Used.*—This section of the *Report*[20] first states that it estimates that about 25 per cent of all charitable trusts in England and Wales are more than one hundred years old; that about half have an annual income of £25 or less; that many are purely local; that of the estimated total of 110,000 now extant about 30,000 are educational, 40,000 eleemosynary, and 40,000 for other charitable purposes; that new charities are being created at the rate of about ten a week.

The Committee feels that small trusts should be merged in many cases, but this process should not involve merging on a wholesale basis into regional or common good trusts.

In the case of many small trusts the investment and custodian part of the management should be given over to county trustees, and the other powers retained by the separate trusts.

In the use of *cy pres* the area which the settlor intended to benefit should be more important than the method or type of charity he selected. Boards of trustees for charity should not exceed nine, of whom not more than three should be appointed by local authorities. Model trust instruments should be made available to donors and clauses should be inserted which will avoid the need of *cy pres* applications or will help in framing schemes if that power is required to be used.

*Parochial Charities.*[21]—Nonecclesiastical parochial charities are now by statute subject to some control by the parish councils as to accounts and publication of the names of dole beneficiaries.

These should be continued with some change. The names of the dole beneficiaries should be open to inspection but not published; county authorities should be required to undertake a review of these parochial trusts in their jurisdictions and submit proposals with regard to them to the Charity Commissioners.

There should be a marked tendency toward uniting all non-ecclesiastical charities in the same parish, but the parish council should not be made a trustee of them.

*Common Good Trusts.*[22]—The Committee is impressed with the desirability of common good trusts as developed in the United States under the name of "community trusts." They might stimulate pioneer efforts and new experiments in charitable work, and provide a destination for small gifts which could not economically be administered as separate charities.

They should be capable of being established by voluntary action of donors, without any act of Parliament to authorize such action.

[20] Cmd. No. 8710 at 135-43 (1953).
[21] Id. at 144-49.
[22] Id. at 150-56.

They should be vested in trustees and the American method of dividing the functions of investment and distribution between banks and a committee is not recommended. In order to use the name "common good trust" there should be the necessity for recognition by the Charity Commissioners.

Donors should be allowed to specify particular fields for their donations but the trustees should have power by virtue of the terms of the deed of gift without *cy pres* to change from a particular to a general charitable purpose.

National Common Good Trusts for England and Wales should be authorized by statute. The trustees should be appointed by the Queen in Council. The Government should furnish initial capital and add *bona vacantia* estimated at £100,000 a year.

*The Relation of Charitable Trusts to Governmental Services.*[23]—Charitable trusts and governmental agencies should co-operate in bringing social benefits to the public. They are not engaged in working in mutually exclusive fields. While at one time and to a limited extent taxes were held not applicable to some purposes which were charitable, and charitable trusts were not permitted to be used to relieve the taxpayers by providing services which were being furnished by the Government, this doctrine has largely disappeared.

Charitable trusts should be available in the discretion of the trustees to assist public agencies by means of contracts, or by filling in gaps where the governmental effort is deficient, or by pioneering in new social services.

The wider scheme-making powers proposed will permit further aid by charitable trusts to social services by making use of the income of obsolete or outmoded charities.

*Relations of Charity Commissioners and Trustees.*[24]—For the purpose of securing the operation of a better law of charitable trusts as outlined in the suggested changes the numerous statutes and amendments of them should be revised and consolidated so that the applicable law will be all in one act and sections which have been repealed or changed will be omitted or revised; and the co-operation of trustees with the Commissioners should be obtained by the issuance of a leaflet, handbook and model schemes which are readily understandable by lay trustees.

Similar action should be taken as to the Education Acts and the powers of the Minister of Education.

*The Appendices of the Report.*[25]—The appendices to the *Report*

[23] Id. at 157-67.
[24] Id. at 168-71.
[25] Id. at 180-209.

contain a list of individuals and bodies who gave oral testimony or submitted written evidence; a list of references to legislation bearing on the topics covered in the *Report*; a statement of the statutory powers and duties of the Charity Commissioners and the Minister of Education with regard to charitable trusts; tables showing the number of charitable trusts which have rendered accounts to the Commissioners since 1924, from which it appears that the number of such accounts rendered has declined in recent years by about 50 per cent over the maximum which occurred in 1934; a table showing the personnel of the Charity Commissioners and their staff, indicating that in 1950 there were two commissioners, a secretary, and eighteen assistant commissioners, legal assistants and clerks; a statement of charitable trusts excepted at present from Charity Commissioners or Ministry of Education control; a list of representative charities founded in England in 1951; a chart showing the scope of the powers and duties of governmental authorities in the field of social services; a glossary of technical terms used; and an index to cases cited in the majority report.

*Minority Report.*[26]—In his minority report Mr. Salt recommends the reconstitution of the Charity Commission with an enlarged personnel which should have the jurisdictions of the present Commission and the Ministry of Education; and urges that the new Commission be deprived of power to make schemes under *cy pres* but permitted to consider proposals from trustees or to initiate schemes itself and to recommend to the Court of Chancery the approval or disapproval of schemes; and he makes extensive comments on the majority report.

*Parliamentary Reaction to* Nathan Report.—A debate occurred on July 22, 1953, in the House of Lords on the subject of the *Nathan Report*. Labor members brought the matter up for the purpose of learning the attitude of the Conservative party toward the recommendations of the Committee. The Conservatives took the position that the Government was glad to get the views of the members of the house on the various suggestions of the *Report* but would not at that time commit itself as to its position or promise to introduce a bill. Viscount Samuel and Lord Nathan stated that a bill to cover the question of mixed charitable and noncharitable purposes would soon be introduced and that the other recommendations of the Committee might be implemented by a bill to be presented early in 1954.

Naturally many differences of opinion as to the *Report* were expressed by members of the two parties and by lay and legal members, as well as by persons in official position, such as the Archibishop of Canterbury and the Lord Chancellor. There was a frequently expressed desire not to change the law in any way that would discourage donors

[26] Id. at 210-29.

to charity. The advantages of more information regarding the existence, objects and status of charities was stressed. Such publicity would enable donors to make future gifts to charity more intelligently so that duplication might be avoided and pressing needs met. Persons in need of charitable benefits might look to such records for information as to opportunities for aid. And the Charity Commissioners and the courts could get from that source the facts which would enable them to perform their duties in the cases of dormant or obsolete trusts, vacant trusteeships, and various other obstacles or difficulties encountered in administration.

There was a feeling that in the case of many charities the required vesting of the trust property in an Official Custodian would be unfortunate, since adequate care of the property was already being provided by a corporate custodian. The Archbishop and others interested in religious charities sought to exempt them from the provisions of any new law. There was some objection to detailed, audited reports as to current operations, especially in the case of small trusts, on the ground of expense.

Opinion seemed to be favorable to the encouragement of common good trusts, with some difference of opinion as to needed legislation and limitations and exceptions.

There was much sentiment in favor of an enlarged *cy pres* power, with some disagreement as to the placement of the power in one or another authority and as to the features which should be controlling in the use of the power. The Scotch experience with similar statutory authority was discussed. Some thought that the intent of the donor should be the major factor in any revision of the charity, while others asserted that the present welfare of the community should be more important.

Toward the end of the debate the Lord Chancellor expressed himself as opposed to a statutory definition of charity, but in favor of some relaxation of the stringent *cy pres* rule. He stated that he did not believe that the charity register would be of great advantage to future donors or to persons seeking charitable help. Donors now have the power to establish common good funds, but local governments would need statutory authority. He doubted the wisdom of putting into a national common good fund unclaimed monies and property without an owner when such assets are now being employed to pay the expenses of government. Ten schemes for *cy pres* application are now framed by the Charity Commissioners for every one devised by the courts.

*Applicability of the* Nathan Report *to American Conditions.*— Opinions will naturally differ greatly as to whether the *Nathan Report*

contains any suggestions which could be profitably employed in amending the American law of charities. The writer ventures the views indicated below:

(1) *New Definition of "Charitable."*—This should not be attempted. Only the most vague and general wording would cover the desired meaning, and there would be great difficulty in getting agreement on any language to be used. The large body of case law gives a fairly satisfactory guide. A certain amount of elasticity to provide adjustment to new conditions should be preserved.

(2) *Registration and Accounts.*—The suggestions here made and the English experience should be of great value to the Attorneys General and others in the United States who are at present engaged in drafting statutes intended to give greater information to the supervising and enforcing officers.[27] In this field are to be found the items of most use in the current development of American law. The writer has discussed these questions in a recently published article.[27a]

(3) *Statutory Custodian for Charities.*—There is little likelihood of adopting in the United States the suggestion of compulsory vesting of possession and property in a statutory caretaker, although economies could thereby be accomplished in some cases.

(4) *The Mortmain Acts and Charity.*—The Mortmain Acts recommended to be abolished do not have counterparts in the United States.

(5) *Liberalization of Investment Rules.*—The American law, with its prudent investor rule and permission to buy limited amounts of common stock, has already anticipated to a large extent the changes suggested by the *Nathan Report.*

(6) *Liberalization of* Cy Pres *Applications.*—It is believed that the English courts have been more severe in their requirements for *cy pres* application than have the American courts. Strict impossibility or impracticability is in the main required by the former, while inexpediency sometimes satisfies the latter.[28] It is believed, however, that there is much in this section of the *Nathan Report* which could profitably be employed in our country in order to make it easier to apply an obsolete or useless charity to present-day social needs.

(7) *Exceptions for Religion and Education.*—The *Report* favors the continuation of the exception of certain religious and educational

[27] At the request of the National Association of Attorneys General, the National Conference of Commissioners on Uniform Laws has been engaged in the preparation of a proposed Uniform Law on this subject since 1951.

[27a] Proposed Legislation Regarding State Supervision of Charities, 52 Mich. L. Rev. 633 (1954).

[28] Society of California Pioneers v. McElroy, 63 Cal. App.2d 332, 146 P.2d 962 (1944); Village of Hinsdale v. Chicago City Missionary Society, 375 Ill. 220, 30 N.E.2d 657 (1940); School District No. 70 v. Wood, 144 Neb. 241, 12 N.W.2d 153 (1944).

bodies from the strict supervision applied to charities in general. Probably this is based on historical considerations and motives of expediency, arguments which must needs be considered by the draftsmen of any American act.

(8) *Validation of Trust for both Charitable and Noncharitable Objects.*—Two comments may be made, First, there is much American authority that "benevolence" is a synonym for "charity,"[29] so that one class of mixed trust cases which have troubled the English courts is apt to be less bothersome here; and, secondly, the constitutionality of declaring by statute that a trust which was originally noncharitable in part is to be treated as having been charitable in its entirety is at least doubtful. The heirs and next of kin may claim under our Constitution that such legislation would be depriving them of their property without due process of law, an argument which would not trouble the English courts. To a large extent the claims of the heirs are barred by the statute of limitations.

(9) *Common Good or Community Trusts.*—The attempt by the Nathan Committee to increase the use of "common good" trusts is commendable. In the United States such trusts are well established as "community trusts." The English *Report* may be useful to the managers of our trusts by way of suggestion for expansion and development.

[29] In re Snell's Will, 154 Kan. 654, 121 P.2d 200 (1942); Goodale v. Mooney, 60 N.H. 528 (1881); In re Dulles' Estate, 218 Pa. 162, 67 Atl. 49 (1907); Moore v. Sellers, 201 S.W.2d 248 (Tex. Civ. App. 1947).