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## BOOK REVIEW

CHARITY LAW AND THE LIBERAL STATE Matthew Harding (Cambridge University Press, Cambridge, 2014)

I have long been an admirer of the work of Matthew Harding, and it would not be unreasonable to say that I have quoted from his publications on a fair few occasions! So I was greatly honoured and delighted to be asked to review this 2014 publication.

The book has seven chapters and an introduction. Harding has woven through the later chapters many of the submissions and arguments presented in the early chapters. This provides the reader with a real thread of continuity and continually leads the mind back to the notions of charity law and the liberal state.

The Introduction is an essential element of this book. There may be an expectation on the behalf of the reader that they are required to have knowledge of the concepts of charity law and the liberal state, but the Introduction assures the reader that such requirements are not essential in appreciating this book. Certainly, Harding sets the reader up for the complexities of charity law, which are undeniably many, in the Introduction although it is evident that his approach will be somewhat different from others who “have spilt much ink over the complexities”<sup>1</sup> of this area of law. He deftly leads the reader into the aim of this book, which is to contribute towards rectifying the apparent, and surprising, lack of liberal interest in the law of charity. This may appear to be a grand undertaking, but is qualified appropriately, noting that his aim is not to provide an exhaustive examination of all aspects of charity law; rather he will develop a theoretical framework, which will find its foundations in liberal commitments, and thus will concentrate on questions pertaining to state action and public discourses raised about charity law.

Harding also sets out his overall conclusions that emerge from the various chapters, and those are: firstly that charity law, even for all its complexities, is actually comprehensible and relevant in relation to the state aims that underpin it; secondly that the aims underpinning charity law are generally defensible in relation to liberal commitments. This does not, however, mean that Harding has written “an uncritical apologia for modern charity law”.<sup>2</sup> In fact, quite the opposite might be said to be true. As he notes in the Introduction, Harding does indeed provide critical commentary where the content or consequences of charity law are not defensible in relation to liberal commitments. Thus the Introduction establishes that the author will, overall, provide an objective account of charity law and the liberal state, and this is exactly what I found.

Helpfully, in the Introduction Harding explains the purpose of each chapter, which researchers may find beneficial, because on completing the

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1 Matthew Harding *Charity Law and the Liberal State* (Cambridge University Press, Cambridge, 2014) at 2.

2 Matthew Harding *Charity Law and the Liberal State* (Cambridge University Press, Cambridge, 2014) at 4.

book I realised that each chapter could stand alone on its own merits. While Harding has done an excellent job of linking his themes together throughout the entire book, if one were to read, for instance, one or two chapters without the benefit of others, there is sufficient information to be able to formulate arguments or research theories from each chapter. If theories or elements from previous chapters are discussed, he usefully highlights where that information may be found, thus engaging the reader in a helpful journey.

Chapter 1 might be entitled “Charity law in overview”, yet it is, in reality, a substantial chapter. However, it really is an overview of charity law, which reflects Harding’s earlier comments about charity law being complex. Like the Introduction, this chapter is valuable because it provides many key concepts to which Harding makes reference throughout the book. As is clear from the Introduction, the book addresses questions about state action and public discourse that are raised in relation to charity law, thus this chapter provides the foundations for discussions on charity law.

It would have been easy, I’m sure, for Harding merely to have made reference to a variety of charity law texts for the reader to peruse at their leisure, rather than devote time to setting out the key criteria and principles of the law of charity, but had he done so I feel that the book would have been much the poorer for it. It is true that much has already been written on this topic, but Harding’s contribution to the literature does not feel like a mere regurgitation of a collection of previously published material. It is well researched, critically evaluated and explores the concepts in a way that relate to the essence of his book. Therefore this chapter provides “building blocks of charity law”<sup>3</sup> to which the book will return time and time again.

Just as Chapter 1 provides some of the essential building blocks for the narrative of the book, so too does Chapter 2, but the focus in this chapter is that of setting out the concepts of autonomy-based liberalism, with reference to its leading exponent, Joseph Raz. The chapter further considers questions that arise when addressing the extent to which a state’s promotion of charitable purposes may be justified and desirable, as well as reviewing the considerations of decision-makers when they apply the public benefit test, and in particular, the “benefit” element of that. It is undoubtedly correct that this chapter does not provide a comprehensive liberal theory of charity law, but that is not its purpose, as Harding has made clear. However, this does not detract from the purpose or the content of the book, instead it ensures that the book has clear direction.

Nonetheless, this chapter reflects the complexities of a liberal theory of charity law, as well as illustrating that autonomy-based liberalism is a useful vessel in which to site a liberal theory of charity law. Therefore Chapter 2 lays essential foundations, and such foundations will be echoed throughout the remainder of the book, moving the reader “closer to the goal of developing ... a [liberal] theory of law.”

Chapter 3 concerns choice and the boundaries of charity law and has a number of purposes: (1) to consider why a state may choose to promote charitable purposes utilising facilitative, incentive and expressive strategies of

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3 Matthew Harding *Charity Law and the Liberal State* (Cambridge University Press, Cambridge, 2014) at 42.

charity law, and not utilising tax and spend means; (2) why a state promotes, via charity law, only some autonomy promoting purposes, but not others; and (3) the chapter examines why a state might take an interest in altruism in the charity law setting, and argues that promoting altruism in this setting actually benefits the autonomy of individuals and is therefore justified in the light of autonomy-based liberalism. This chapter therefore builds exponentially on the previous introductory chapters and begins to add context and meaning to many of the concepts and theories espoused earlier relating to charity law and liberal theory. A particularly fascinating discourse, from this reader's point of view, takes place regarding why a state might promote altruism via charity. The starting point, which echoes the concepts from an earlier chapter, is the liberal ideal of autonomy from the viewpoint of self-determination. It is plausibly asserted that the culture that is generated by a state's promotion of altruism via charity law is an autonomy-promoting public good. Therefore, where altruism is part of society individuals can pursue charitable purposes, which contributes significantly to the conditions of autonomy. Consequently one can see how a liberal theory of charity law can be grounded in the concepts of autonomy, which brings a real sense of meaning to Harding's arguments.

Chapter 4 asks some difficult questions in relation to charity law and justice from a liberal perspective, and in particular focusing on distributive justice. The focus of this chapter is on the ways in which distributive justice may constrain charity law, and also the extent to which it constrains charity law. As Harding highlights, any reduction in the ways in which individuals can pursue charitable purposes altruistically, from a liberal perspective, is bound to raise concerns. Harding does not shy away from such concerns and, indeed, this chapter may not provide conclusive statements that will satisfy all concerns. If that is a reader's expectation, then I think that the point of the chapter may have been missed because what Harding does is provide reasoned and compelling discussions that can only lead to further, and welcome, discourse on this subject.

Chapter 5 provides a fascinating discussion regarding religious purposes from a perspective informed by a liberal philosophy, and raises troubling questions regarding the extent to which religious purposes actually contribute to the conditions of autonomy. Harding provides some excellent food for thought and his arguments are balanced and well-constructed. Whether a reader is devoutly religious, or atheist, the discourse is worth reading if you have an interest in liberal theory and charity law.

Chapter 6 is equally as fascinating as the preceding chapter, not least because it focuses on one of the most controversial aspects of charity law: that of political purposes. It should be noted that Harding makes reference to an awaited New Zealand Supreme Court decision,<sup>4</sup> and it is unfortunate that this book was published prior to that decision, because of the case's jurisprudential value<sup>5</sup> but I would add that this chapter is not impacted adversely by its absence. Harding sets out the history of political purposes, and their relation to charity law, in sufficient detail to allow readers lacking the benefit of that

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4 Matthew Harding *Charity Law and the Liberal State* (Cambridge University Press, Cambridge, 2014) at 179.

5 *Re Greenpeace of New Zealand Incorporated* [2014] NZSC 105, [2015] 1 NZLR 169.

knowledge to immerse themselves in the context of the chapter without issue; and he presents logical and objective submissions as to the relationship between political purposes and the public good. This chapter makes a valuable addition to the literature that already exists in the field of charity law because of its novel liberal theory approach.

The final chapter addresses more difficult questions, including ones posed by cases of discrimination in the pursuit of charitable purposes, such as (Harding's example): can a priest lawfully refuse to administer the sacraments to homosexuals? I believe that Harding addresses the issues raised with diplomacy, care and respect, and always in relation to the notions of liberal theory. His thoughtful discussions lead to a well-reasoned conclusion that notes that charity law, and its non-coercive strategies, provides valuable methods by which a liberal state can respond to discrimination.

This balanced and fascinating chapter rounds off an overall well-written and researched book, that will be an excellent addition to the bookshelf of any person with an interest in charity law and liberal and political philosophy. Harding's aim for this book was to contribute towards rectifying the lack of liberal interest in charity law, and I believe that he has achieved that purpose. His contribution answers many questions, presents many reasoned and compelling arguments, and provokes many more questions – all of which will undoubtedly lead to further, and welcome, contributions to this area of law.

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