

CTN Lecture 2008

“Don’t let the b***s get you down”**

by Andrew Phillips, OBE

(Lord Phillips of Sudbury)

Thanks to CTN for asking me to give this talk, because we old buffers love getting things off our chests, and for the introduction by Michael Quicke, which was over kind. Last autumn saw the 50th anniversary of my starting full time in the law, so whatever the other shortcomings in what I have to say, no one will I hope accuse me of naivety. I have lived deep in the world of politics and law and especially in the wonderful world of charity, on both sides of the fence, so to speak.

When discussing with Rodney Buse and Claire Farmer the subject of my effusion this afternoon, they were properly anxious at the Anglo Saxon severity of my suggested title, hence the censored version you have before you. As my preparation advanced the title has become at best a loose peg on which to hang my thoughts. What I intend to say is necessarily generalised, so I rely upon you to ask me questions afterwards.

I am particularly happy to have been invited to speak by CTN, because I hold charity trusteeship in the highest possible esteem. The million or so Britons who voluntarily give of their time to govern and guide charities, small and large, are the pretorian guard of charity or, to use a more peaceful image, the good stewards of its virtues.

Allow me to single out for special approbation the little local charities with no paid help, and the tiny trailblazers – the exemplar public interest entrepreneurs – who are the unsung champions of the vibrant cottage garden which is the charity alliance (I hate the word sector!). And let me, too, praise CTN for succouring this diverse flowering of philanthropy. Our 200,000 or so active charities are still being added to by several thousand every year, even though the giving of money may be faltering.

I hope you agree with me that we are the folk of a can-do/will-do spirit. What is so often unrealised – and we should not be secretive about it – is that working for charity works for us – replenishes our optimism, provides us with priceless insights, energises us even whilst it tires us and binds community in an age of increasingly lonely individualism.

So my broad proposition is that the charity world is not only absolutely indispensable to the psychic health and moral wealth of our society, but is becoming ever more so as materialism, managerialism and centralism, pervert or at least undermine the motives and values of charities, without which, I believe, life is not much worth living.

Let me quickly shoot one fox. I am not remotely anti-Government or anti-business per se, though I admit to having little good to say about centralisation.

Incidentally, early on in his Chancellorship Gordon Brown acknowledged the limits of “big Government”, no less than those of big business, and noted that “you do not rebuild communities from the top down”, quoting with approval Neil Kinnock’s insight that the State must “not be above our heads, but below our feet”. How true. It is not clear he remembers it.

Yet the frenzied plethora of legislation (to which I shall return), of Government reports, task forces, compacts, units, hubs, committees and quangos and the pantomimic change of departments, their names and their ministers is way beyond the ken of the public and indeed most of the voluntary sector to keep track of. The extent of citizen bemusement can never have been so profound.

In contrast to those tendencies of our globalising, depersonalising world, charity is surely rooted in people more than things; in co-operation more than competition; in freedom more than regulation; voluntarism rather than coercion; in trust rather than suspicion; hope rather than cynicism; in equality of esteem not celebrity; relationships rather than transactions; in individuals in community; in organic compromise before imposed order; bottom up more than top down; in experience and effectiveness more than systems and efficiency; and in liberty and equality reconciled in fraternity; in altruism before self-interest.

These confessions, some may say clichés, all need qualifying, of course. But my last proposition about altruism is, miraculously, as the law itself requires. Charity must be built on altruism or, to use the Latin word from which it originates, *caritas*, love. Not love of self, either. I sometimes even wonder whether, if the good Lord was around in 2008, he might not reverse the parable of the Good Samaritan so that it becomes an injunction to know and love one’s geographical neighbours, seeing how mobile and generally deracinated we are becoming.

Let me give three recent concrete examples of what I mean by this age’s enveloping managerialist, centralised mindset. None are examples from charities as such, but we have no cause for complacency especially as we become ever more locked into the public sector and dependant on business funding.

First, last month a friend who is a JP in Birkenhead noticed that the court clock was an hour slow. As a retailer, inter alia, of clocks he offered to correct the hands. The court staff barred that on health and safety grounds and summoned a firm from 45 miles away to undertake the demanding task. How on earth? Yet look at comparables in education such as teachers forbidden to give physical consolation to upset toddlers, or allow a press photo.

Second, recently I arrived to give evidence to a ministerial review panel looking at closure of the two hospitals in my home town of Sudbury. Profuse apologies were given

for my being kept waiting. I was told that two panellists were en route from the station and would be there within half an hour. Since Sudbury station is less than a mile from the venue I enquired further, to be told that those organising their three week stay were unaware that Sudbury had a station. Worse, they had been sent to Ipswich, 25 miles further from London than Sudbury, whence they had been coming daily by taxi. How on earth? Do large charities always really understand local circumstances?

Lastly, three weeks ago the main doors of HSBC in Sudbury were found open at 5.00 in the morning by the newsagent round the corner starting his deliveries. Being a decent cove he stood guard over the bank for half an hour until the police arrived. Five days later when I congratulated him on his public spirit he said he had heard nothing from the bank. Being a busybody, I called into HSBC and told the manager. "He will be hearing from head office" she confided. "But he is only 75 yards away. Surely somebody could have popped round or even telephoned to say thank you" said I. "That is not allowed by bank rules" she unbelievably but no doubt truthfully replied. How on earth can intelligent mortals devise such dehumanising, commonsense-free regimes? What demoralisation, literally, it engenders. What lunacy on stilts. Yet are not volunteers sometimes lost through impersonal treatment?

Your charities will no doubt have your own examples – I hope not in-house – of such bureaucratic mildew; of over managed, non-sensicality; of a supine, backs-to-the-wall, risk averse mentality; of, in short, a systems dazed, rule crazed mindlessness which destroys the will to live. Am I overdoing it? Perhaps. But sadly not by much.

As some may know, I stood down from the House of Lords two years ago. Having worked flat out over the previous eight years, not least in seeing through the Charities Act in 2006, I had various reasons for my perhaps over radical decision. But chief amongst the public ones was my increasing sense that the proliferation of statute law, whether mainstream Acts or Parliament or statutory instruments, has become a sort of democratic dry rot. When I made my maiden speech in 1998 on this very threat I quoted the vivid phrase uttered by John Pym, leader of the Parliamentary Cause in the 1642 Long Parliament when he described the rule of Charles I as having destroyed what he called "the vigour and cheerfulness of allegiance" of the citizenry without which there could be no good society.

There is little enough political vigour or cheerfulness apparent these days. Consider. Less than one in four voted at the last Euro elections. Less than a quarter of under 25's voted at the last general election; despite Labour having a large overall majority, nearly twice as many citizens didn't vote at the last election as voted for Labour. The total membership of the political parties combined is now less than that of the Royal Society for the Protection of Birds. That's not a happy picture, especially when the European dimension is cranked in, where the level of disconnectedness is even more acute than for Westminster. And what indeed of the Irish referendum? If I wanted to make us very miserable, I might start on the social statistics, of the prison population, of family and marriage breakdown, of addiction and mental ill health, or read out the latest Rowntree

research. But I suspect you have had enough and I don't want to be written off as a disillusioned old man.

I'm not, but I am in warning mode. It is because I am an unshakeable optimist about the deep decency and common sense of the British people that I believe we can pull the ship round if we pull together. But I must revert to regulation, perhaps strangulation is a better word. Parliament now legislates around 13,000 pages of new law a year – a net increase of around 10,000 pages on the statute book annually. Much of that is ill-considered and little of it is consistently, let alone fully, implemented. Don't forget, case law – we are still supposed to be a common law country – is on top of that.

All this begets further barrow-loads of Government circulars etc. and plenty of private sector mindless overkill. The FSA regulatory output now measures around 9,000 pages. Every activity is affected.

As for charity regulation, the third Charities Act in under 15 years is now on the statute book and slabs of it are one by one clunking into effect, not to mention the rafts of secondary legislation.

I have to say that if you ask me whether I would rather have the whole of the Charities Act 2006 or none of it, with no picking and choosing, I think I might have none of it. Having sat through endless weeks and months arguing the toss this way and that, and having put down around 200 amendments, of which about one quarter were accepted, I am not at all sure that, in the end, it won't be the lawyers and accountants who benefit most and the charities with no staff – the vast majority – who groan under it.

I don't want to run down my own profession. No one after all chooses to be a charity lawyer to maximise his or her earnings, but I do see things going wrong. The problem with tidal waves of detailed legislation is that it inevitably begets specialisation and the more specialisation comes in, the more complication comes in its wake. Specialists can deal with the complications, so that's alright! It's just the 99.9% of the world who don't understand it who suffer.

I asked two of my experienced colleagues at Bates Wells & Braithwaite about their impressions. Stephen Lloyd said this: "The current law is full of bear traps. For me an example is the substantial donor rules in FA 2006 which are a nightmare of Kafkaesque complexity. Company law is also ridiculously weighty and oppressive; state aid rules as well – many charities get caught in a vicious spiral, to no benefit, all caused by governmental pusillanimity".

Julian Blake had this to say: "The public sector/third sector contracting environment is one in which everyone can agree with the rhetoric of high-level policy, but which is scarred by unreconstructed bureaucratic procedures. Top-down direction does not become practical and effective at implementation level where their accountability is judged more by process and procedure than actual delivery".

When I started many lawyers would do charity work largely pro bono. They often followed well worn paths and usually took the view that “if it aint broke don’t mend it”. In my time I have come across spectacular examples of charities, in some cases almost ignoring their constitutions and yet doing brilliant work and I’m afraid vice versa.

Today, for example, governance is the buzzword. There are books, pamphlets, hubs, consultants, courses and seminars galore on governance. It is important. But is it overdone? May we be inadvertently empowering only those trustees who feel comfortable with all that and thus scaring off trustees of less professional, more practical bent? Constitutional navel-gazing should never be at the expense of advancing the charitable purposes. The managerialism I started by decrying is, I believe, increasingly infecting charities. Bureaucracy develops a life of its own. The Charity Commission, which has the unenviable task of implementing the new law, tries hard, but there is always a danger, especially with new and inexperienced staff, of adopting the tick box approach which can be so destructive to good regulation and hence the motivation of volunteers. They vote with their feet.

Indeed, despite best intentions, expensive government initiatives, sometimes from the Office of the Third Sector, can inadvertently beget a disproportionate preoccupation with the paperwork. Accountability then becomes a two-edged sword. Small charities, which are usually highly effective, wilt under inappropriate procedures.

My daughter ran a small front line charity in Hackney until very recently helping bereft young adults mainly from the huge council estate. With her staff of four the paper chase to which they were subjected by local and central government and sad to say, by some grant-giving foundations, was severely disproportionate and counter productive despite the robust support of her trustees.

And then there is the compact, now ten years old. What can one really say of that? How many marks out of 10? Fine ministerial rhetoric is no substitute for downstream achievement.

I come back to where I began. Charity predates the State and probably the law. It is the free-est, most organic expression of human goodwill one to another. That freedom and spirit are truly priceless and must not be ground down by bureaucracy, diverted by opportunism or perverted by fear of risk.

The Royal Society of Arts, you may know, is currently running a project entitled the ‘Glory of Failure’. That may be slightly, “in your face” but the point is profound. A minority of charities have limited purposes – alms houses, Donkey Sanctuaries, you name it. But where the objects and/or the means of achieving them allow the widest discretion to trustees I consider there is generally a duty for those Trustees to take calculated risks, which is to say to innovate. Trustees should have courage to seek new ways of meeting old problems; of undertaking the equivalent of fundamental scientific research. So, risk assessments yes; but only if there are risk-aversion assessments.

Perhaps I could end with a few suggestions as to how to advance the sentiments behind the title of my talk.

First, ensure that the trustees really are the movers and shakers of their charity. How often do they become somehow bypassed by a dominant chair or the staff, in the nicest possible way. Trustees are there to set the strategy and determine the priorities, but too often the chair and/or chief executive leave them with little more to do than note and approve. So make them part of the real planning and use their talents and experience. Stop the board getting bored.

Then, keep the trustees eyes on the purposes, first second and third. Also remember the charity is part of the voluntary sector.

Thirdly, make life rewarding for trustees as well as staff and foster links and trust between the two.

Fourthly, have a bureaucracy audit, possibly appointing a bureaucracy buster.

Fifthly, never stop asking why and how better, and so take measured risks.

Sixthly, bring onto the Board at least one trustee under the age of 35, preferably a trustee under the age of 25 and perhaps another from your beneficiary class, as Mencap so successfully did.

Seventh, get the board out and about occasionally. Meet your beneficiaries. They usually know best. Allow them to give something back to you; it recharges commitment and equalises relationships.

Next, use advisers sensibly but sparingly. When in doubt take the positive, practical, commonsense line – and don't be afraid to allow a certain liberality of functioning which allows room for eccentricity and novelty and can distinguish between effectiveness and efficiency. Keep it simple.

Lastly, remember - and I mean this - that charity is sacred.