charitable legacies in an environment of change

Professor Cathy Pharoah and Professor Jenny Harrow, Co-directors of the ESRC Research Centre for Charitable Giving & Philanthropy at Cass Business School



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This report, like all Smith Institute monographs, represents the views of the authors and not those of the Smith Institute.

Preface

Paul Hackett, Director of the Smith Institute

The UK has had a tremendous record of charitable giving, inspired largely by the work of Victorian philanthropists. The introduction of the welfare state reduced the relative level of giving, and our tax system has often been blamed for not incentivising giving enough. Government measures taken in the decade preceding the recession went some way to turning this around, but the impact of the downturn is likely to reverse these gains.

It is against this background that this report has been written, taking forward the debate on modern philanthropy which the Smith Institute has pursued in different ways over the past two years. With charitable legacies worth almost £2 billion, they are of immense importance to both the third sector and the beneficiaries of charitable work. However, the impact of the downturn is likely to have considerable negative repercussions for legacy giving. With house and share prices falling, and with many donations made as a percentage of a legator's estate, the outcome is likely to be that charities receive a smaller absolute, if not proportional, amount.

The seriousness of the recession is as yet unknown, but the authors outline possible ways that the sector can weather the gathering economic storm and prepare for sunnier times.

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Introduction

Charitable legacies have provided vital foundations for the work of charities today, and their plans for tomorrow. They have bequeathed to charities a generous slice of the wealth of global capitalism and rising property values over the past three decades. Because most are "residuary", constituting a percentage of estate values rather than a fixed amount, legacy income to the top UK charities grew five-fold during this period. The centrality of legacy income to the overall resources profile of the UK's leading charities is becoming prominent in research and practice literatures. With charitable legacies worth almost £2 billion pounds today, the concerted campaigns of some charities to ensure that legacy giving is the norm rather than the exception in most wills demonstrates the innate value of these initiatives (for example, the "Remember A Charity" consortium).

But in a rapidly changing social and economic environment, a number of questions and challenges might affect the future of legacy income to charities. How easy (or how difficult) has conventional legacy fundraising been and how might an unpredictable recession impact on its activities? What special barriers to legacy fundraising might arise during recession, and in which organisations and institutions? If charity legacy challenges are mounted, what are the reputational risks and rewards for the charities concerned? Who are the legacy makers and how early (or how late) can legacy solicitation begin? Is our understanding of the concept of the charitable legacy changing? This paper aims to illuminate these questions, looking at the meanings of a charitable legacy, mapping patterns of legacy income in UK charities today, and exploring some of the important issues for donors, charities and fundraisers.

The meaning of making a charitable legacy

In beginning to respond to these questions, we review recent research and the kinds of data and data gaps with which charities are working. Central to this is our suggestion that the notion of the multi-faceted nature of the charitable legacy is worth exploring. Richardson and Chapman⁴ emphasise the importance of fund-raisers' professionalism in

¹ Pharoah, C (ed) Charity Market Monitor, Volume 1: Fundraisers (CaritasData, 2008); Pharoah, C (ed) Charity Market Monitor, Volume 2: Grant-makers & Corporate Donors (CaritasData, 2008)

² Pharoah, op cit (vol 1); Sargeant, A and Hilton, T "The Final Gift: Targeting the Potential Charity Legator" in *International Journal of Nonprofit & Voluntary Sector Marketing* no 10, vol 1 (2005), pp3-16 (http://www3.interscience.wiley.com/journal/110481870/home)

³ Figures from Legacy Foresight, 2009 (www.legacyforesight.co.uk/)

⁴ Richardson, D and Chapman, G "What Some Recent Research Tells Us about Planned Giving (Legacy Marketing) in North America" in *International Journal of Nonprofit & Voluntary Sector Marketing* no 10, vol 1, special issue on legacy fundraising (2005) (http://www3.interscience.wiley.com/journal/110481870/home)

approaching "legacy marketing", a newer name for an older product or outcome. Sargeant and Hilton⁵ name the bequest "the final gift".

The widespread definition of a legacy as an "amount of property or money left to someone in a will" emphasises the material element as key. In the context of an ageing population, however, Hunter and Rowles' critique the exclusive focus on material possessions as the primary form of legacy, and develop a typology of three distinct but overlapping categories of legacy: biological, material and a legacy of values. Of these three they suggest that the legacy or transmission of values is more important than the other forms.

In later research, with female participants ranging in age from 31 to 94, Hunter⁸ shows that:

... legacy emerges as a means of passing on the essence of one's self, in particular one's values and beliefs ... of making meaning of the end of life. The desire to leave a legacy is manifest in many different ways dependent on the individual and their culture.

She reiterates the case that "passing on values and beliefs is more important to older adults"; this suggests that at the very least for fundraisers, a far more nuanced perspective needs to be made in legacy approaches. This relates more easily to those charities seeking to assess donors' lifetime values with culmination in a legacy; perhaps less so to direct legacy seeking, both in terms of target and type of request.

With the multifaceted nature of the legacy concept emphasised, the charity legacy becomes more akin to giving away other cherished possessions, where decisions about the latter may also be made to "achieve symbolic immortality". To make a charitable legacy decision stand out from other related decisions might then be unwise, as might the modelling of celebrity will makers as worthy of emulation.

Moreover, the distinctiveness of the charity legacy from other forms of charitable during-life gifts, because of the immortality on offer, deserves further consideration.

⁵ Op cit

⁶ See, for instance: Oxford English Dictionary (2009) (http://www.askoxford.com/concise_oed/legacy?view=uk)

⁷ Hunter, EG and Rowles, GD "Leaving a Legacy: Toward a Typology" in Journal of Aging Studies vol 19, no 3 (2005)

⁸ Hunter, EG "Beyond Death: Inheriting the Past and Giving to the Future, Transmitting the Legacy of One's Self" in OMEGA: Journal of Death & Dying vol 56, no 4 (2007)

⁹ Bennett, R "Predicting the Lifetime Durations of Donors to Charities" in *Journal of Nonprofit & Public Marketing* vol 15, no 1/2 (2006)

¹⁰ Price, LL, Arnold, EJ and Curasi, CF "Older Consumers' Disposition of Special Possessions" in *Journal of Consumer Research* vol 27, no 2 (2000)

¹¹ See: Littler, J "I Feel Your Pain': Cosmopolitan Charity and the Public Fashioning of the Celebrity Soul" in *Social Semiotics* vol 18, no 2 (2008)

Thus Wade-Benzoni¹² explores the possibility that under conditions of mortality salience, "people will demonstrate more altruism towards future generations than towards needy contemporaries" – an especial challenge in recession, as charities generally seek income for immediate needs, and legators need to know that the charity will still exist beyond their demise.

Legacy giving also offers a logic of deferred giving that may increasingly appeal if recessionary pressures exacerbate the need as well as the desire by older family members "to pass on an early inheritance in their lifetime" to their children and grand-children, before they turn to thoughts of charitable bequests. Married women are much more likely to prioritise giving to family over charities than other women, but there is little research on how a society that is increasingly multicultural, and characterised by new, more fragmented, family and relationship structures, might choose to distribute its wealth at death.

Patterns of charitable legacy income

Value

Figures on legacies, like other charity income data, need to be treated with caution. Estimated at around £1.9 billion in total annual value, they represent 12% of the income of the largest fundraising charities.¹⁴ Because of time lags in the resolution of estate values, this figure may not include all of the legacies actually realised in any one year.¹⁵

There are also ambiguities in the concept of "charity", which, in addition to registered charities, may include a range of other tax-exempt organisations such as universities and trusts. Moreover, a full consideration of the value of legacy gifts to charities should also consider bequests of heritage assets to national institutions such as museums, universities and the National Trust; these are difficult to evaluate and fluctuate considerably, varying from around £200 million to £50 million over the past few years. 16

Just a fifth of total estates' value is cash, the vast majority being residuary – set at a proportion of final estate value to ensure both that the gift retains its value through inflation, and that if estates are smaller than expected, the charity will not get a larger

¹² Wade-Benzoni, KA "Legacies, Immortality and the Future: The Psychology of Intergenerational Altruism" in Tenbrusel, A (ed) Ethics in Groups: Research on Managing Groups & Teams (volume 8) (2006)

¹³ Ploeg, J, Campbell, L, Denton, M, Joshi, A and Davies, S "Helping to Build and Rebuild Secure Lives and Futures: Financial Transfers from Parents to Adult Children and Grandchildren" in *Canadian Journal on Aging* vol 23, supplement (2004), ppS113-S125

¹⁴ Figures from Legacy Foresight, 2009 (www.legacyforesight.co.uk/), and from Pharoah, op cit (vol 1)

¹⁵ HM Revenue & Customs 2008 statistical tables 12.2 (Exemptions and reliefs: estates above IHT threshold), 12.3 (Estates notified for probate: numbers and tax by range of estate for years of death), 12.6 (Taxpaying estates: assets by sex, age and marital status), 12.9 (Destination of assets on death) at

http://www.hmrc.gov.uk/stats/inheritance_tax/menu.htm

¹⁶ Ibid

slice at the expense of family and other beneficiaries. Decisions about today's charitable legacies were taken before the recession, when there was little worry that either the share given to loved ones or to other causes would do anything other than grow.

In the present unpredictable economic environment, it is virtually impossible to predict trends with any certainty. Recent analysis of five-year trends indicates that there has been a considerable slowdown in the rate of growth of legacy income, running at an average real 3% per annum, compared with the strong growth seen in the 1990s.¹⁷

The residuary quality of legacies, which means that charities receive a percentage of final estates rather than a fixed amount, has benefited charities enormously over the past few decades as rapidly rising share and property values have resulted in rising estate values. But this may prove more of a risk in a downturn; the value of a residuary legacy is subject to the vagaries of the market, and while share values may tumble, the value of a cash gift remains fixed.

The current imperative for charities to investigate the sensitivities of legacy values to house prices, and to raise public awareness of the impact of a downturn on their legacy income, has been highlighted, along with a warning not to hang on to bequested properties in the hope of an early bounce-back in property values.¹⁸ Charities can get detailed analysis and benchmarking of individual charity legacy trends from Legacy Foresight.

Beneficiaries

As a form of giving, charitable bequests have some special characteristics. They are by far the most valuable major gifts, and the bulk of their value goes to a small range of causes and organisations. About three-quarters of the value of charitable legacies is given to just 100 major national charities. ¹⁹ The proportion of legacies given to each major cause is set out below: the huge proportion that goes to health largely represents donations to Cancer Research UK, which received the highest legacy income of all in 2006/07, at £138 million, 9% of all charitable bequests. Cancer Research UK was followed by the Royal National Lifeboats Institution at £84 million, and then the Royal Society for the Prevention of Cruelty to Animals at £59 million.

Reasons for these patterns are partly historical, and new patterns are likely to emerge in a changing environment. For example, the new generation of multicultural, globally educated donors who have supported the exponential growth of international charities may well usher in an era of significant growth in charitable legacies to the international sector.

¹⁷ Legacy Foresight Legacy Market Audit (2004)

¹⁸ Key, T "House Prices and Charity Income" in Pharaoh, op cit (vol 1)

¹⁹ Pharoah, op cit (vol 1)

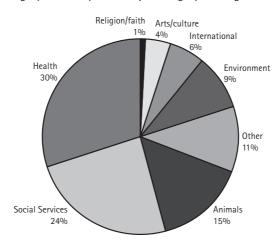


Figure 1: Share of legacy income by cause: top 100 legacy-earning charities, 2006/07

Source: Pharoah, C (ed) Charity Market Monitor (CaritasData, 2008)

Ability to attract large legacies is also partly related to external factors such as the strong brand presence and fundraising capacity of the major charities, but reasons are also integral to the scale of the gifts. Giving to well-established major charities with a strong reputation for impact in their field is a way of addressing risk in what is essentially a very major investment – particularly where the donor is not around to monitor performance.

Trust is central to patterns of legacy giving. This can leave smaller charities that have less strong brands and lower capacity at some disadvantage. (This is discussed further below.) An exception is the hospices, a constituency of small local charities benefiting from many large legacies. Hospices receive little statutory funding and derive just over a fifth of their income from legacies: £117 million in the financial year 2005/06.²⁰

Bequests are often used to endow a charitable foundation, or to top up the funds of a foundation created during a donor's lifetime. Through these foundations, legacies will ultimately often benefit many of the smaller charities, as well as providing major grants to universities, hospitals and arts institutions. New grant-making and operating foundations have proved a popular vehicle for the giving of the high-net-worth donors of the past couple of decades, and are likely to receive significant legacies from founders.

 $20 \ Help \ the \ Hospices \ Hospice \ Accounts \ 2007-2008 \ (www.help the hospices.org.uk/our-services/publications/publications-catalogue/)$

These, along with the community foundations that are attracting major local donors and building unique local endowments, may become increasingly strong competitors in the charitable legacy market, as the hospices have become. Such foundations represent a clear model for linking an individual's lifetime and legacy giving – the link so highly prized by today's fundraisers, who are increasingly turning to "relationship fundraising", building links from lifetime donor giving patterns to final legacy gifts.

There is still, however, considerable variation in the rates of growth of legacy income to different causes, with legacies to religious and faith-based causes continuing to increase at a very much higher rate than all others. Animal charities, which depend heavily on legacy income, continue to attract higher and faster-growing legacy incomes than causes such as social welfare, international development or the environment.

However, the behaviour of the legacy market for charities is hard to predict, with varying views about the likely shape and course of the recession making fundraising scenarios the more uncertain. Radeliffe in 2000 argued that non-profits should "adapt their legacy campaigns to meet emerging community and lifestyle trends ... [targeting] the particular attitudes, motivations and expectations of each community if legacy income is to rise rather than fall".²¹

But which communities, which lifestyles and which expectations will be the more crucial? The possibility of more evident and more public legacy divides within the charity sector is an increasing possibility – with the divided groups being: those with deep organisational and cultural roots as the "legacy naturals", those with ephemeral purposes and links as the "legacy not-neededs", and those too small to be able to tap into potential legacy sources.

Donors

Legacy donors are also a very special group. For every £6-£7 given to charitable causes by the public in life, around a further £1 is given on death. But charitable bequests are made by a tiny proportion of the UK's wealthiest people. Around 30,000 estates contain charitable bequests each year, just a tenth of all estates notified for probate. This figure can be set against the approximately 30 million living donors who give to charity every year.

²¹ Radcliffe, R "What Will Be the Impact on Future Legacy Campaigns of Changing Demographic, Economic, Cultural and Religious Trends?" in *International Journal of Nonprofit & Voluntary Sector Marketing* vol 5, no 3 (2000) (http://www3.interscience.wiley.com/journal/110481870/home)

Only about 9,000 of these estates are above the threshold at which inheritance tax becomes payable, but the charitable bequests made in these estates account for four-fifths of the value of all legacies. The strong preference of the very wealthy for charitable bequests over lifetime contributions in the US has been established in recent research.²² Although comparable figures do not exist for the UK, the value of the charitable bequests made by approximately 9,000 estates is higher than the aggregate giving of all our 3.7 million higher-rate taxpayers. The strong link between estate size and likelihood of leaving a charitable bequest is set out in the table below.

Table 1: Proportion of estates leaving a charitable bequest, by estate size, 2000/01

Estate value	Proportion with charitable bequest
up to £250,000	14%
£250,001-£500,000	27%
£500,001-£1m	25%
over £1m	38%

Source: HM Revenue & Customs figures for 2004

Just 15% of estates contain a charitable legacy. Forthcoming research will tell us more about the particular characteristics of the estates and donors of charitable bequests, but tax data indicates that today around half of wealth transfer takes place after the age of 85, and about another third between the ages of 75 and 85. Most final wills are made in the last few years of life, often in those years when women outlive their spouses. Around two-thirds of adults have yet to make a will, and many people die never having got round to it. By comparison, a considerable body of research shows that living donors give the most between the ages of 45 and 65. This represents a fundraising challenge that, as discussed above, is likely to require a considerably more nuanced approach, sensitive to the meaning of a charitable legacy to older donors.

US research indicates that tax factors play a significant role in the decisions of the very wealthy about whether to give before or after death. There are considerable tax incentives in the US to make "lifetime legacies", and a battery of financial products that also tend to attract the very rich.

²² Joulfaian, D "Choosing between Gifts and Bequests: How Taxes Affect the Timing of Wealth Transfers" in *Journal of Public Economics* vol 89 (Elsevier, 2005), pp11-12

²³ Micklewright, J et al, forthcoming research as part of ESRC research project RES-155-255-0061, Giving for Overseas Development (for further information contact John Micklewright at jm4@soton.ac.uk)

The advantage of the system is that it unlocks further funds for charity use today. The debate about whether to switch some of the charitable tax reliefs to incentives for lifetime legacies in the UK has rumbled on for at least a decade. Should it assume more urgency in a time of recession? Or, at a time of declining savings values, will it represent another way of selling off the charity silver? The net value of UK estates notified for probate is over £33 billion. Charitable bequests are equal to just 5% of this value, and it is tempting to explore ways of increasing this slice, whether through fiscal incentives or investment in fundraising.

Tensions in legacy income

The widespread perception that legacy income represents a wholly unexpected (and exciting) "windfall" for many charities belies the investment needed in legacy fundraising. It is fed by media announcements of major unlooked-for bequests, but perhaps also by some charities' failing to publicise in detail how they address such income streams. Perceptions, right or wrong, that some charities hold legacy "pots" whilst others do not also encourage the sense of competition between charities.

Nor is this to argue that legacies will always be wholly welcome (for example, Friends of Hospitals receiving bequests to purchase sophisticated equipment that might be either not needed or not maintainable), or left unchallenged by those with interests in the provision of particular wills. Dangers attend charities contesting families' legal attempts to overturn charity bequests, from cost to reputational risks, through unwillingness to be seen as aggressive in pursuit of money and a concomitant need to be seen as grateful (perhaps for anything?).

Australian research exploring the interaction of family provision law and charitable bequests in wills demonstrates growing familial challenges: out of 47 cases, 33 charities were receiving less than half their original designation, with "courts vigorous in upholding proper family provision as against charity bequests, portraying this as based on moral obligation".²⁴ This research was set out bluntly in the *Sydney Morning Herald* as "Families Fighting Charity Bequests".²⁵

Nor are legacies, once given and the donor gone, beyond the focus of the legator's family. For example, consider the long-running lawsuit from a family foundation alleging misuse by Princeton University of a £35 million donation, received to prepare graduate

²⁴ McGregor-Lowndes, M and Hannah, F Every Player Wins a Prize? Family Provision Applications & Bequests to Charity (Australian Centre for Philanthropy & Nonprofit Studies at Queensland University of Technology, 2008) (https://wiki.qut.edu.au/pages/viewpage.action?pageld=84285787)

²⁵ Paul Bibby "Families Fighting Charity Bequests" in *Sydney Morning Herald*, 22 November 2008 (http://www.smh.com.au/news/national/families-fighting-charity-bequests/ 2008/11/22/1226770801026.html)

students for careers in government. Though settled between the university and the donors' descendants in December 2008,²⁶ the case emphasised continuing interest in the extent to which donor intent can continue to be exerted post-bequest. Whether this outcome has had enduring benefit for the donor-intent camp and for would-be legators is also now debated. It is most clearly refuted by Eisenberg²⁷ in his assertion that this case wasted time, energy and money, and that "the children have made a philanthropic mountain out of a molehill".

Such intent will generally be assumed to be benign and legitimate; but this may not always be the case. In contrast to any case made for donor intent to be paramount, and especially at death, is the argument expressed by Bryson et al in their paper, pointedly entitled *Legacies from the Past, Problems for the Present: Dead Stakeholders & the Construction of Charitable Welfare.*²⁸ Here they draw on the nature of legacy in the sense of its enduring (but also potentially negative) impact, and (through English almshouses' development) examine "the legacy of dead stakeholders' intentions, who historically supply the charities with initial endowment capital ... [and who] determine who will be included or excluded from charitable welfare".

Changing the patterns of legacy giving

As noted above, some types of charity have their legacy role embedded firmly in local, regional and national giving cultures, by virtue of their focus – notably those addressing acute health conditions. Others are just beginning to address the issues of this type of fundraising. In the UK, for example, the universities' alumni reach is developing and changing, in line with lessening public funding for higher education. Routley et al, for example, cite the likelihood of alumni's receptivity to a bequest appeal.²⁹ However, McGill et al, exploring barriers to bequests for Australian universities, record the paradox of finding the best communications channels to alumni and the view that "... when it comes to doing a bequest ... the university's not one of the first places you'd think of."

26 Larry Abramson "Princeton Settles Case with Donors' Descendants" on *All Things Considered*, National Public Radio, 10 December 2008 (http://www.npr.org/templates/story/story.php?storyld=98098430); Freeman, NB *The Robertson versus Princeton Case: Too Important to Be Left to the Lawyers*, paper commissioned by Bardley Centre for Philanthropy & Civil Renewal (Hudson Institute, 2009)

 $(www.hudson.org/files/documents/BradleyCenter/Freeman_Commissioned_Paper_and_Responses.pdf)$

27 Eisenberg, P "The Robertson Case Was a Waste of Time, Energy and Money" in Freeman, op cit

28 Bryson, J., McGuinness, M and Ford, R "Legacies from the Past, Problems for the Present: Dead Stakeholders and the Construction of Charitable Welfare", abstract from the Association of American Geographers' annual conference in Pittsburgh, Pennsylvania, on 4-8 April 2000

29 Routley, C, Sargeant, A and Scaife, W "Bequests to Educational Institutions: Who Gives and Why?" in *International Journal of Educational Advancement* vol 7, no 3 (2007), pp193-201

30 McGill, P, Lye, A and Rundle-Thiele, S *Exploring the Barriers to Bequests in Wills to Australian Universities* (Griffith University, 2007) (eprints.usq.edu.au)

This response emphasises implicitly the possibility of a culturally shared but not often articulated view of a kind of hierarchy of charitable types to which legacies might be best directed. For those charities now outside the legacy fundraising sphere (see above) this raises a further challenge – not only in the request for a legacy per se, but in the need to make the case for their kind of organisation with their type of remit. Not all charities will wish to present themselves as the rock-solid and vital providers, where directed legacies will be in "safe hands". Those charities that are experimental, innovative, or working with exceptionally marginalised groups may wish to do the reverse; and who is to say that would-be legators will not respond, and that safety and security are always their paramount concerns for their gifts?

Clearly, context is central to changing charitable, professional and public perceptions of legacy giving, donor education and development, and the extent of need to memorialise oneself or others, or indeed to do so in secret. An overemphasis on the "older" or even "aged" would-be legator, for example, carries interesting risks. Developing research by Merchant and Ford³¹ on a conceptual framework for the role of nostalgia in giving to charity has value for this field, especially where it examines how personal nostalgia ("longing for the actual lived past") influences giving, and relates, among other factors, to age.

However, as Ford has emphasised in exploring this research,³² ageing per se is not that prominent in the link between nostalgia and giving, so that appeals to nostalgia may well be made successfully from a very early age. Targeting clearly youthful would-be legators may reasonably be seen as way beyond long-term planning; but its logic may become clear, and especially so if the upturn from the current recession is a very long time coming.

We have argued that legacy donors are a special group in the UK. This is so in both positive and negative senses. They make by far the most valuable gifts to charity, but their numbers remain tiny in proportion to the number of estates notified for probate. Relying on such a small proportion of people to sustain UK charities carries immense risks, which can only be heightened in recession.

If the value of charitable legacies drops at the same annual rate as house prices in 2008, that will mean a loss to charities of between £150 million to £200 million: this makes it even more vital to increase awareness of the importance of legacies to the work of charities, and the number of people who leave charitable bequests.

31 Merchant, A and Ford, J "Nostalgia and Giving to Charity: A Conceptual Framework for Giving & Research" in International Journal of Nonprofit & Voluntary Sector Marketing vol 13, no 1 (2008) [http://www3.interscience.wiley.com/journal/110481870/home]

32 Ford, J "Nostalgia and Giving to Charity: Developments and Agendas in Practice and Research", expert seminar for the ESRC Centre for Charitable Giving & Philanthropy and the Institute of Fundraising at Cass Business School, City University, London, on 25 February 2009 (http://www.cass.city.ac.uk/philanthropy/)

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The Smith Institute

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