Who's in charge? In whose interest? The experience of ownership and accountability in the charity sector

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Abstract: In the UK as in other countries, charities are companies, bound by company law as well as regulatory constraints of the non-profit sector. Many are tiny, micro-businesses, but others are sizeable enterprises and several hundred employees and thousands of beneficiaries. All but a few are led by voluntary boards of directors/trustees, and in many of those the trustees are also the "members" of the company, that is, the legal owners of the business, as shareholders are in conventional companies. This paper explores the literature of charity boards and governance and reflects on recent personal experience of boards to develop a research agenda to expand our understanding of the puzzles associated with the question "Who's in charge?", as well as to elaborate a typology of interests the *governance* of the sector serves.

Keywords: Charity boards, non-profit organisations, directors, trustees, boards, corporate governance

Introduction

For the past several years, charities in the UK have laboured under a cloud and in a spotlight. The spotlight came in early 2018, when one of the largest charities in the country, Oxfam, faced allegations of sexual abuse by senior members of its relief teams working in fragile environments, including Haiti. They were exploiting people they had been sent to help.

The cloud was closer to home. The social care sector was shocked by several cases in 2011-13 of abuse in homes and hospitals for elderly people or others with learning disabilities and mental health problems. The operators involved were not charities, but the sector includes many charitable organisations, including some quite large ones.

These cases galvanised concern about the nature of governance in charities. At Oxfam, the allegations stemmed from work in 2011. Oxfam had investigated them but said nothing and did seemingly little. What did senior management know, and when did they know it. Where was the board? In the case sector, what had the regulators been doing? Why did it take a television documentary to highlight the problem? Could residents and families of other care homes, including those in the charitable sector, count on the boards of those organisations to do a better job?

This paper is a personal reflection on such questions concerning my appointment to charity boards, starting in early 2018. It begins with a seemingly trivial incident, but one that begs the question of who's in charge, in the end, in these odd legal entities called charities. As you will already have gathered, this paper takes a less-than-conventional approach to academic writing. I feel impelled to do so by the very personal, even visceral feelings that prompted its creation. I find a licence to make such an attempt[1] in recent calls from business and management scholars and editors of important journal to rediscover the form of the essay and exploit its purpose (Barley, 2016; Suddaby, 2019; Vince & Hibbert, 2018).

On my first day as chair of the trustees of a moderately large charity – also my first day as a trustee of any charity – I was confronted with an issue – a straightforward one – I hadn't anticipated. Several former trustees were legally still regarded as "members" of the company. Under the articles of association, we would need to provide them an annual report and invite them to an annual meeting. Under the proposed articles, we could do away with annual meetings, provided that the company members and the trustees were identical. Few charities seemed to have as members anyone other than the trustees, I was assured. If the board agreed to ask the non-trustee members to stand down, it would be my duty to write to them to explain the reason and seek their agreement. Or should we simply dismiss them? What would I like to do?

As a corporate governance scholar, I was fully aware of the idea of "members". It is a peculiarity of British law, dating back to the centuries before incorporation with limited liability and referring to the role played by shareholders, the top of the pyramid accountability. Boards of directors – or of trustees[2] – are the next tier. They are legally responsible and personally liable for the affairs of the company. Unlike members, they do not enjoy limited liability; the courts afford them considerable discretion, akin to the "business judgement" rule in the US State of Delaware, much copied in other jurisdictions.

But when you become director of a company, especially as chair, and you know next to nothing about the business, and there are a thousand people whose livelihoods depend on the business and almost as many vulnerable people depending on the services the other thousand deliver, you can be forgiven for having an odd sensation. After all, you receive no gain, have nothing at stake in the business, and no direct engagement in the services that the charity provided. Were you really supposed to know what it *feels* like to be accountable only to the other member-directors who are looking to you for guidance?

That first day-in-the-boardroom set out the puzzle of this paper: Who is really – in practice, not just in law – in charge of charities? Who holds directors accountable for their decisions, for the use of money from the public – from the state or from public donations? Who sues the directors when things go wrong, in the way that shareholders of public companies can take them and the company to court? The question of "in whose interest" is articulated in regulation – the beneficiaries', not the donors or directors – but that only blurs the distinction between how it works in practice. What happens when beneficiaries are to a large extent people unable to exercise judgement over their affairs, when the directors are *de facto* and perhaps even *de jure* their guardians? Directors may dismiss the managers for poor performance, and even step in, temporarily, to manage its affairs in times of crisis. But does this confluence of roles of member-director-guardian change the nature of the director-manager interface? These were questions – with legal, moral, psychological, sociological and perhaps even economic facets – I hadn't anticipated. I had an uncomfortable feeling in my stomach, as well as cognitive dissonance, even though I knew the literature of corporate governance rather well.

This essay explores that gut reaction and mental noise, by looking at what the literature of charity governance has already examined, and what law and regulation do and how that might account for the differences between normal companies and this strange variant.

I seek to articulate, though not to resolve, the puzzle of who "owns" a charity, not merely legally, but also in the psychological sense. The paper concludes with observations of a practical sense, thinking out loud about what director/trustees can do, even in absence of hard evidence or even reasonable theory.[3]

To do so it draws upon two common types of charitable enterprises: Let's call them "care" and "arts" (see Table 1). As it happens, I serve on two charity boards, one of each type. This classification does not arise from a well-researched typology of charities. There are many others, but these are large and encapsulate the issues of others. Both address instances of market failure; one however stems from sensations of personal anguish, while the other is fun.

Table 1 - 'Care' and 'arts': similarities and differences

	"Care" archetype	*"Arts" archetype*
Form	Company limited by guarantee	Company limited by guarantee
Members	Typically, trustees	Typically, trustees
Trustees	Typically, people with some connection to the care	Typically, people with interest in the art form
Beneficiaries	Service users, those who need care	Two types: artists and audiences, who serve each other
Sources of funding	Local government, health service	Local government, national agencies, corporate and personal donors
Purpose	Address market failure arising from disability of beneficiary to engage in market	Address market failure arising from imbalances in cost of production and price requirements
Commercial/charitable split in activities	Overwhelmingly charitable	Mix, often dominantly commercial

Using these two as archetypes lets us explore what it means – legally, cognitively, emotionally, to be in charge of a charity, and what that means for the nature of accountability, within the organisation and with respect to the larger society. Let's first compare charities with more conventional companies to understand the layers of governance that apply and how they differ. Here I draw parallels not only to commercial companies but also to social enterprises. We turn then to charity boards, how they compare with more conventional companies. This discussion is situated in UK, and more specifically in English law. Aspects of it will differ in other jurisdictions, but probably more in the detail than in the principle-level lessons I seek to draw. After a brief overview of two main and contradictory perspectives on governance, we'll consider the (or, more precisely, my) experience of being in the strange limbo of being on the board of a charity. The paper then concludes with reflections of what we don't know about charities and how we might understand to find out more.

Governance layers

"Governance" is a slippery term. The Cadbury Code (1992), which articulated corporate governance in the UK and became a model for codes around the world, defines corporate governance as "the system by which companies are directed and controlled". Gourevitch and Shinn (2005, p. 3) call it "the authority structure of a firm", while Perrow (2002, p. 198) sees governance as defining "property relations".

While much charity-governance research has focused narrowly on boards, the situation within charities, as Cornforth (2012) explains, is more complex than the literature suggests. As with listed companies (see Nordberg, 2011), charity governance comes in multiple layers, and these two types differ in important ways. Both work in markets, and the structure and dynamics of those markets shape the freedom of action of the organisations. Arguably, the purpose of the charity sector is to provide services in cases of market failure (Payton & Moody, 2008); to neo-liberal economists, however, market failure is also the main justification of the state, so are charities the solution to state failure? Should we even be asking such questions (cf. Booth, 2008), given the weaknesses of the concept of market failure, when more complex issues exist? The terms "market failure" and "property relations" that governance arrangements concern are abstractions that take us a long way from the task – providing support for people in one form of need or another, which seem not to be met in other ways, and which have benefits for society at large.

Such organisations compete for government grants or service-delivery contracts, with incentives to innovate for greater value capture through efficiency or new product/service development. But markets, especially in non-standard services, are less than perfect, and, as discussed above, the charitable sector exists in part to overcome examples of market failure. So, it's not surprising that governance through market forces is less than perfect, too.

Organisations typically interact with four types of markets: supplies, labour, capital and goods/services. Most are similar in character across public-, private- and third-sectors, with the notable exception that charities – to address market failure in goods and services and inelasticity in supplies – often depend on non-market access to capital (e.g. grants and donations) and non- or sub-market access to labour (e.g. volunteers, potential-earning sacrifices), while escaping tax on any surpluses generated.

Other layers include law and regulation. On the statutory side, both charitable and ordinary companies must all comply with the Companies Act and other civil and criminal laws. Company law articulates the rules of company formation, conduct and dissolution, and importantly for our purposes the duty of directors. This works at a high-level, a blunt instrument of governance, open to much interpretation.

Regulation then takes over, to put limits on the interpretation. Many sectors – perhaps all – are regulated, with the strength of oversight broadly proportional to the prospect of social harm and power imbalances between seller and buyer. Utilities are fundamental and attract much regulation; so too banking, and pubic hazards like waste management. Health and social care attract high levels of regulatory oversight on the grounds that beneficiaries are vulnerable owing to their potential incapacity as well as information asymmetries.

Such services might be undertaken by other forms of organisations. Private, for-profit service providers take a lot of outsourced government business, but they avoid sectors where the extent of market failure is especially pronounced. Social enterprises – for-profit but not profit-focused companies – are another possibility. Like B-corporations in the United States, Britain's community interest company (CICs) are often called hybrids (Battilana & Dorado, 2010; Battilana, Sengul, Anne-Claire, & Model, 2015; Ebrahim, Battilana, & Mair, 2014). Such firms operate under a logic or ethos, articulated in their founding documents that call for owners to be willing to sacrifice financial value maximisation for the sake of community betterment. (For a summary of governance layers, see Table 2.)

Table 2 - Governance layers in organization types and their *power*

Governance layer	*Charity (care)*	*Charity (arts)*	*Community interest companies (CIC)*	*Corporation*
Market for goods, services	Local commissioners *Powerful*	Customers; patrons, donors; national commissioners *Powerful*	Customers *Weak*	Customers *Sector-dependent*
Market for labour	Professionals; minimum wage *Powerful, mitigated by intrinsic motivation*	Volunteer; minimum wage; professional *Moderate, mitigated by intrinsic motivation*	Followers; minimum wage *Moderate*	Professionals; skilled labour; minimum wage *Powerful*
Market for capital	Seed capital, often from government *Powerful*	Seed capital, often from government *Powerful*	Social investors *Powerful*	Traditional debt, equity markets *Moderate*
Market for supplies	Commercial, with tolerance *Moderate*	Commercial, with tolerance *Moderate*	Commercial *Powerful*	Commercial *Sector-dependent*
Market for donations, legacies	Believers *Powerful, mitigated by intrinsic motivation*	Believers; philanthropists *Powerful*	Believers; philanthropists *Powerful*	Not applicable
Law – most	Company law; charity; exemption from some taxes *Moderate*	Company law; charity; exemptions from some taxes *Moderate*	Company law; CIC *Moderate*	Company law; international and national *Moderate to weak; jurisdiction arbitrage?*
Regulation (for whose benefit)	Central government agency (for beneficiaries) *Powerful*	Central government agency (for donors, beneficiaries) *Moderate*	Industry; local government agency (for market counter-parties) *Weak*	Industry; national and multi-lateral (for market counter-parties) *Sector-dependent*
"Owners"	Puzzling	Puzzling	Owner-managers; benefactors *Powerful*	Shareholders *Structure-dependent*
Boards	Volunteer (in the main), working and trophy *Powerful*	Volunteer (in the main), trophy and working *Firm-dependent*	Owner-managers; advisers, paid *Moderate*	Executive and non-exec, paid *Firm-dependent*
Governance code	Charity sector *Weak*	Charity sector *Weak*	Small firm *Weak to non-existent*	Codes for listed, unlisted firms *Weak (private) to moderate (listed)*

Cases where market failure is most acute and property relations are least clear offer little if any incentive to for-profit private firms or CIOs. Here is where charities operate. They seem to come in at least two main varieties, with differing regulatory oversight: Charities serving the most vulnerable (i.e. "care") are generally more tightly monitored than those serving the able who need aid to engage in the market (i.e. "arts").

Charity boards

Regulation is insufficiently granular to monitor and control the work of organisations in any sector. That's the role of boards of directors. Charities empanel directors for many of the same reasons that corporations do. They want advice from outsiders, whose experience may involve different sectors and a variety of skills, and they need – often in law – a mechanism of accountability. And yet governance of non-profit and voluntary organisations is often viewed as problematic (Cornforth, 2001).

There are a variety of forms of charities in the UK, "associations", "trusts", "charitable companies", "charitable incorporated organisations", "corporations created by Parliament", "Royal chartered bodies", and "community benefit societies".[4] Trusts and associations tend to be smaller entities, and they are not considered legal personalities; most substantial entities use the "company" form, though more recent ones take advantage of the less complex legal form of the CIO. For simplicity, we'll focus our discussion on "companies".

Charities are just like other companies, until they aren't. In UK law,[5] they are often organised as companies "limited by guarantee". That means there is no paid-in share capital as such. Directors merely guarantee to contribute one pound (ca. $1.30) should the company need it. Directors are generally protected from personal liability, though not in the case of fraudulent trading.

In law, directors of charitable companies aren't allowed to benefit directly from the charity itself. Traditionally, that has meant that these positions were held by volunteers, unpaid individuals charged with overseeing the work of those paid to undertake the charitable activities. While changes in law now permit charitable companies to enact governing documents that permit payment, the practice is still rare. As a result, directors are unlikely to be motivated directly by their (non)remuneration.

Moreover, charity boards differ from those in British listed companies in an important way. Listed companies – and companies in general – have unitary boards, where executives sit alongside non-executive directors. Such boards are associated with collaborative action, emphasising the "service" role of directors (Hillman, Nicholson, & Shropshire, 2008). They run the risk that non-executives will be "captured" and pay insufficient attention to their "control" responsibilities. Nonetheless they have been strongly defended by corporations and investors alike during the 1980s and 1990s, when European legislation sought to abolish them to enhance boards as a controlling mechanism of corporate governance (Montgomery, 1989; Nordberg, 2017; Spira & Slinn, 2013).

Charity boards, by contrast, are made up entirely of outsiders. Executives are not permitted to sit on boards of the charities that employ them. This has similarities to the two-tier board structures common in continental Europe (Maassen & van den Bosch, 1999). Such structures are meant to enhance the "control" role of boards and protect against capture, though such outside directors can be neutralised through executives' manipulation of information flows (Bezemer, Peij, de Kruijs, & Maassen, 2014).

Charities often attract the great-and-good to their boards of trustees, people who can open doors to donations or smooth the way to access to funding. Such directors serve their charities in much in the way that listed companies used to collect "trophy directors" (Dobrzynski, 1996; Fisch, 1997) and may still do to meet quotas for women (Branson, 2012; Orbach, 2017).

But charity trustees in Britain are not just figureheads. They are legally directors of the companies established for charitable purpose. They attest to director duties described in the 2006 Companies Act, which bind them to "promote the success of the company in the interests of its members as a whole" while having "due regard" for the interests of other stakeholders (UK Parliament, 2006, Section 172.1). The term "members", through centuries of precedent, means the owners of the business, the shareholders in normal companies. The roles of director and member are therefore legally distinct. Directors have a duty to members; they have unlimited, personal liability. Members' liability is limited (depending on the terms of incorporation), and limited rights. They receive reports from the directors, but they do not automatically have a voice on policy, except indirectly through their right to appoint directors. But members are, in law, the principals; directors are their agents. Members have the legal right to elect the directors; directors have a fiduciary duty to members.

Agency and stewardship

These distinctions point to another part of the charity board puzzle that links back to one of the main theoretical debates in corporate governance: Is executive and board behaviour better described by agency theory or the contradictory arena of stewardship?

Agency theory (Fama & Jensen, 1983; Jensen & Meckling, 1976) assumes economic actors will act in self-interested ways. Agents may not share the interests of principals, and through information asymmetries are able to divert corporate resources for personal gain. To align individual behaviour with organisational goals requires a two-pronged approach: incentives for managers that are congruent with the organisation's aspirations, and hierarchical mechanisms to monitor them and control their actions.

Stewardship theory, by contrast, sees individuals as acting, in the main, in line with the organisation, motivated by a collectivist, social approach and concerned with satisfying higher needs of self-esteem and personal fulfilment (Davis, Schoorman, & Donaldson, 1997). Its conclusions are the opposite of agency theory. Let people get on with the job. Trust them, don't monitor. This suggests that accountability is interpersonal, horizontal, and enacted as much through peers as supervisors.

Agency theory predicts a self-interested struggle over control over resources, irrespective of property rights. Stewardship theory, by contrast, assumes a pro-social attitude, collaboration not contestation, and a sense of duty to others, not just respect for rights.

This brings us back to the problem outlined at the start of this essay. In implementing our new articles, wasn't I, as director, and we as a board, depriving members of their rights? Did this action take away their "property", in some sense, even in members of a company have no rights to the assets of a business? Was our high-minded attempt to relieve absent members of any reputational risk really an example of high-handed disregard of members' interests? Was this perhaps more an example of an agency problem that boards were meant to counter, than an example of the stewardship directors should show to the members whose interests they are meant to defend? Or is this just a definitional storm in an intellectual teacup, a meaningless piece of mental gymnastics? Do charities have what we usually call "owners"?

The experience

For one of the charities I serve, let's call it CareSW, life began following the 1990 National Health Service and Care in the Community Act. Starting in the 1980s with reforms by the Conservative government under Margaret Thatcher, such "care in the community" was a way of introducing market pressure in the place of governance by state bureaucracy (Andrews & Phillips, 2000). It was an element of what has been called the New Public Management (Ferlie, Ashburner, Fitzgerald, & Pettigrew, 1996; Hood, 1995), where the state withdraws from one of its agency conflicts – owning and regulating care by placing delivery in the hands of outside organisations (including charities) subject to market pressures – while retaining regulatory oversight. The other conflict – as customer of the regulated service – proved too big a problem to solve.

The other charity, we'll refer to it as ArtsSW, has a different background. It arose for the sake of operating a large, diversified performance venue, replacing local government bureaucrats with professional arts managers. Its charitable status allowed the venue to undertake risky ventures, such as, a) letting new or less-well known producers of art put on shows likely to draw only narrow audiences; or b) conducting work with schools and other charities to bring arts-focused projects to people with various life problems. To cover the gap, ArtsSW also showed big name movies, popular theatre, and hosted conventions and trade shows. Between the two were popular arts: a symphony orchestra, touring theatre companies, and movies that while not blockbusters still drew crowds to the art-house side of cinema.

CareSW needed its directors to provide the commercial experience, legal and compliance advice, and financial acumen to supplement the skills the largely care-focused management team. The management team drew extensively on the directors, with joint board/management working groups on major project and tight liaison between the CEO and chair. Most of the directors also had personal ties to the care the charity offered.

ArtsSW needed commercial ideas, too, though more as a sounding board and the sort of boundary-spanning discussed in the literatures of entrepreneurship (Zott & Amit, 2007), top-management (Geletkanycz & Hambrick, 1997) and both corporate (McNulty & Stewart, 2015) and public governance (van Meerkerk & Edelenbos, 2018). It could help to have a director was also well-connected to local government, prominent in local education circles, or had ties to the national arts scene, to open doors, as resource dependency theory suggests (Hillman, Cannella, & Paetzold, 2000). ArtsSW needed help with control as well. Few charities are so well endowed that they can forgo financial monitoring from the board. But that monitoring is also a "service" function – for example, financial ideas as well as warnings – which suggests the distinction theoreticians draw between "service" and "control" is less pronounced in the lived experience of boards.

At CareSW, directors were deeply engaged with – though not quite involved in – the business. The joint board-management working parties provided opportunities for directors to interact with mid- and lower managers, as well as the senior management, with learning spreading in both directions. Individual directors frequently visited the properties that CareSW managed, speaking not only to home managers but also to service users and frontline staff. That many of the directors had personal engagement with the care offered, through relatives or friends or in prior work, heightened the engagement with the CareSW's activities. Emotional bonds strengthened, alongside the intellectual input to strategy, control and compliance.

At ArtsSW, directors were less engaged, attending more events than they might have as members of the public, and acting as flag-wavers when dignitaries from local government or national arts funders were around. They were encouraged to let friends know of special events, in the hope that their enjoyment might lead to donations or end-of-life legacies. Some delivered "service" similarly to what happened at CareSW, working with mid- and lower level staff on projects designed to raise ArtsSW profile in the local community or with the wider arts world. Directors served the company more as ambassadors, perhaps, than as controllers (Fama, 1980).

What I saw in both these organisations were individuals who came to serve on the boards out of psychological attachment – more affective than cognitive – to the work of the charity. Where listed companies win investors as shareholder/members through their attractiveness as producers of dividends and capital gains, charities appeal for donor-funds and would-be directors because what they do offers something that society needs and markets cannot deliver. Listed companies attract outside directors for the status it confers and the chance to be involved with a financial success. These charities attract directors for similar reasons, and perhaps even for vainglorious ones. And it's easier to get appointed as a paid director of a listed company board if you've already served on an unpaid major charity board. In short, charities directors are not entirely without self-centred motivation.

In short, then, listed companies – and private companies as well – have non-executive directors who have incentives to act in self-interested ways. They thus share the agency problem that managers exhibit, though in a different direction, one that might act as a brake on corporate malfeasance. At charities, by contrast, the lack of remuneration, the chance of reputational risk, and the prior emotional as well as intellectual engagement with the work of the organisation introduces an antecedent to stewardship in charity board directorship and membership.

The motivation is not quite so straightforward. Charity boards confer upon directors other, non-pecuniary benefit. You meet the great-and-good; you gain experience as a director that can open the door to paid, corporate directorships. Still, the risk of presenting an agency problem is diminished, even if their motivation is not entirely other-directed and aimed at collective benefit, as the literature on stewardship might suggest.

Stewardship and accountability

These observations lead me to think that there is something similar between the stewardship exhibited by employees and even senior managers (Davis et al., 1997) and the way directors of charities approach their (largely unpaid) work. Hernandez (2012) suggests that the collectivist approach and self-sacrifice in stewardship within corporations arise through structural factors in control and reward systems that together engender cognitive mechanisms that are other-regarding and oriented to the long-term. If rewards are based on self-efficacy and self-determination, and if control system promote collaboration and collective responsibility, then they also contribute to building affective commitment. Enacting these cognitive and affective mechanisms builds psychological ownership, which leads to stewardship behaviour.

Psychological ownership has been seen empirically in studies of employee actions in situations in which the workforce has had rewards based on equity stakes – share options or other equity-based pay (Holmes, 1967; Pierce & Rodgers, 2004; Pierce, Rubenfeld, & Morgan, 1991). These conditions induce commitment to organisational goals, leading to greater immediate efficiency and effectiveness through self-development in the direction of the organisation. This is especially true when psychological ownership is combined with legal ownership, or at least the claim of future legal rights that options represent.

Since the financial crisis, policy in the corporate sector has been striving to replicate such commitment among institutional investors, as seen in the UK Stewardship Code (FRC, 2010), a measure copied in many other countries (for discussion of an example, see Chiu, 2016). But scholars and practitioners have doubts about whether market actors could ever operate in that way (Reisberg, 2015). In their analysis of the possibility of investor stewardship, McNulty and Nordberg (2016) suggested psychological ownership would be needed to create the conditions for the long-term orientation and collaboration of investor and companies the code envisaged. But their model of engagement also demonstrated the array of impediments that might prevent it, not least developing affective commitment arising *after* legal ownership, when the investors already hold the rights, and when ongoing engagement involves considerable costs.

The situation is charities is, however, fundamentally different. As discussed above, the "members" of a charity – that is, the holders of the legal ownership – seem very often to have affective and cognitive commitment to the cause of the charity *before* they join as member-directors. Getting over that hurdle is easy. In social-health care charities, many of the directors have psychological ownership created by experience within their families of the problems that the charities they serve seek to address. In arts charities, many have affection for the outputs of the artists, have artists in the family, or have worked in the arts. In both charity archetypes, psychological ownership of member-directors seems to pre-date legal ownership, and a "service" orientation, with its forward-looking focus on innovation, is embedded on appointment (see Figure 1). Unlike investors in capital markets, and more like investors in family-controlled firms (Cannella, Jones, & Withers, 2015), member-directors identify with the company, reinforcing psychological ownership. Moreover, in charities, both psychological and legal ownership are separated from any financial arrangements. Charity member-directors are, so to speak, interested in the business but have no interest in it.

When directors of a charity are also its members, then they are accountable, directly, only to themselves. That is not to say they are unaccountable. Regulators play an important, as do donors and funders for the sake of continuing operation, and the same applies to a large extent in other organisational forms. But in the governance layer of "owners", these member-directors are accountable only to themselves. They fire each other, if they choose to, as I did, in effect, by telling non-director members I wanted them to stand down.

remain that way unless stewardship takes a stronger hold on our scholarship.

[1] “To attempt” in French is “essayer”; an essay is an attempt to answer a question, not the answer. A French synonym is “une tentative”.
[2] This paper uses the terms “trustee” and “director” essentially as the same thing with respect to charity boards. The title “director” in UK company law applies to someone who sits on the board of any type of company. The term “trustee” in English law refers to someone given control over assets in trust for one or more beneficiaries or for charitable purposes.
[3] For a detailed discussion of “reasonableness” in corporate governance theory, see Nordberg (2018).
[4] For details, see Section 11 of the trusteee guidance document of the Charity Commission at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/734288/CC3_may18.pdf
[5] The examples were are formed English (and Welsh) law; the legal position in Scotland and Northern Ireland is similar in many regards.

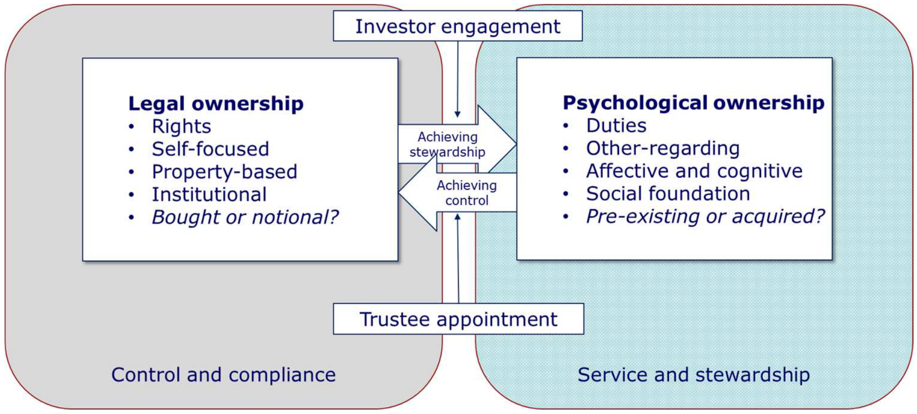

Figure 1 - 'Member' stewardship through ownership

But that assumes that accountability is always hierarchical. Roberts (1991, 2001) argues that in practice we find horizontal as well as vertical accountability. The vertical variety is associated with power over rewards and punishment; it "individualises", and it can operate at a distance. The horizontal variety is associated with repeated interaction over long period of time; it "socialises", and it operates only in quite intimate circumstances.

Similarly, and in the setting of health care, the philosopher Baroness O'Neill (2002a, 2002b) argued that the accountability against targets was often counter-productive. Instead she advocated the importance of "intelligent accountability", the interpersonal variety, dependent on relationships and openness.

Discussion and research agenda on charity boards

Charity boards may be accountable only to themselves, but directors are accountable to each other. As members, they elect new directors and can dismiss others. As directors, they face dismissal or being outvoted or ignored through the "intelligent accountability" of the judgement of peers. If this is the case, then it does not prevent groupthink (Janis, 1972; Maharaj, 2008; Whyte, 1952/2012) from arising through excessive deference (including to a new chair who doesn't yet understand the business!). Let's consider then what research might teach us about what happens, and ought to happen.

An empirical agenda – who is in charge?

Who is in charge, empirically, in charities? First, let's think about board-management relations. While boards are constitutionally separate from management, that doesn't imply they are in a strong position to monitor management or contribute to resource provision. So, do charity boards work in the way, with the same benefits to "control" and downsides to information flow, that supervisory boards do in the two-tier boards in continental Europe? Information flows are still controlled by the executives, and a confrontational stance by the board might be punished by executives withholding important information and ignoring board directives. Given their lack of financial interest in the outcomes, to what extent and in what ways do charity boards exercise their structural power over management? Do charity boards meet in camera, without the executives present, and if so, what issues do they consider?

Who is charge within the boardroom? Studies of corporate boards suffer from the "black box" phenomenon owing to a lack of access, but the accounts we have suggest there is a mixture of collaboration and bullying, mutual respect and intimidation, coalitions and cliques. In corporate boards, Leblanc and Gillies (2005) found that persuasiveness was central to director effectiveness. In a very rare case of observation research using video recording, Bezemer, Nicholson, and Pugliese (2018) found the chair's approach was decisive, though with a somewhat surprising twist: active involvement of the chair in debates tended to hinder engagement of other directors, research that hints at a need for chairs to engage in non-traditional modes of leadership, of the shared (Bolden, 2011) or servant (van Dierendonck, 2011) varieties.

Are "members" ever in charge? Notionally, members in UK law hold legal ownership, but in the case of charities without financial interest and without right to use the company's resources. As regulators can withdraw charitable status and thus impede any actions of members, what significance does membership have? Moreover, how does their lack of financial interest of members or member-directors affect their cognitive engagement? Assuming I'm right that psychological ownership of charities pre-dates the legal, how does affective commitment to the cause influence development of cognitive engagement with the business? How might affective commitment impair development of the critical edge needed to conduct monitoring? And under what conditions are charity directors either *committed* to the work, *engaged* in ways short of commitment, or just performing the *basics*?

A normative agenda – in whose interest?

There are many other issues that arise about the functioning of charity boards and how they might be more effective. Let me articulate one before moving on to the most important issue of all – in whose interest?

Effective boards would seem to require having a strong view of what constitutes effectiveness and how a board would know whether it was. The first of those issues has been an important topic in the normative corporate governance literature. A particularly noteworthy example is focus on inputs and processes by Forbes and Milliken (1999), while other scholars have examined the role of structures (Zahra & Pearce, 1989) and directors' psychological and interpersonal qualities (Samra-Fredericks, 2000). Cornforth (2001) attempted to translate such concerns into the charitable sector, creating a list of characteristics of effective boards. More recently, the policy agenda in corporate governance has emphasised the importance of board evaluation as a tool of assessing effectiveness (Nordberg & Booth, 2018). But evaluation is a time-consuming exercise, and volunteer directors of charitable companies may think they're done enough. Moreover, evaluation may not be particularly costly for a large, listed company. For charitable ones, they could tip the balance into deficit. What can – what should – charities do to ensure their boards work better? If this policy direction is seen as an imperative, what other mechanisms can the sector or the state find to make the process easier to conduct?

And in whose interest do we do this? The simple answer is the one that figures only in corners of this paper, so far, and in the literature only generally: the beneficiaries. It is for their benefit that the charity exists. The purpose of regulators is to set the rules and ensure that actors play by them. In commercial settings, that means they operate to ensure the counterparty in a market transaction can count on the other side fulfilling its obligations, and to mitigate the effects of power imbalances that might make the market less efficient.

As we've discussed, charities operate where markets don't work particularly well. Here the regulators pick up some of the slack in governance, concerning deficiencies in markets in goods and services. But do their actions on behalf of beneficiaries also make up for the deficit in governance that arises when the distinction between boards and owners collapses? Are regulators – at considerable distance from the service delivery – well enough equipped to represent the beneficiaries' interest? In "arts", the risk is that the underprivileged will miss out on the benefits of the experience of art, and that artists may lose the ability to develop their talent. In "care", the main problems seem to arise in the lack of attention – the lack of care – in the day-to-day actions, where regulators seem ill-equipped to intervene promptly, allowing the sort of scandals noted at the start of this paper to arise.

So, how do charity boards ensure the voice of the beneficiary is heard and understood? Given the inherent power imbalances, the confidentiality due to beneficiaries, and the reasons why their concerns cannot be addressed by markets, it is important that board do something? Exploratory research into what happens now, what works and doesn't, might well help us to work out what ought to be done.

Conclusions

Charities perform important services for society, services that markets alone probably would not provide, and services that, increasingly since the 1980s, the state has declined to provide, at least directly. The New Public Management approach may be ideological, but there is something in the argument that the state is too distant to deal such cases, and that a more granular, personalised and accountable approach is needed.

This paper has attempted, through a personal account, to articulate some of the gaps in the understanding. I don't pretend this represents either a rigorous attempt at something small or a broadly valid analysis of the sector and its issues. What I think is true is this: that charities are different, that they require more of the attention to governance that the corporate sector has received, and that they are unlikely to get it for the same reasons of market failure that affect their service delivery. Charities draw on hand-me-downs in governance thinking, the way that charity shops deal in hand-me-down clothes and personal belongings. It's likely to

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