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

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Abstract

Purpose: This paper examines the puzzles of "ownership", the legal and psychological commitment of directors, through the experience of the work of boards at non-profit organisations.
Design/Methodology/Approach: An exploration of the literature on charity governance leads to a first-person reflection on the tensions in directing two common types of non-profit organisations.
Findings: In the UK as in other countries, charities are companies, bound by company law as well as regulatory constraints of the non-profit sector. This creates responsibilities of ownership without the material benefits. In contrast to corporate share ownership, a sense of psychological ownership may pre-date appointment as a director, facilitating stewardship behaviour, facilitating stewardship and accountability.
Research implications: This paper calls for expanded empirical work on boards of non-profit organisations, giving a focused agenda of aspects to highlight the differences between charities and the corporate sector.
Practical implications: The focus on psychological ownership can influence recruitment, induction and organisation of the work of charity boards, helping to ease resource deficits.
Social implications: With pressure mounting in deliver of public services, the charity sector needs to fill growing gaps in provision. The constitution of boards plays a valuable role.
Originality/Value: By incorporating psychological ownership in a framework of accountability, this paper points towards both a research agenda and practical considerations for charity boards.

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

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Introduction

In recent 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 in a television documentary 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 – including the large trust whose board I had just joined as chair – 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 governance in charities. At Oxfam, the allegations stemmed from work in 2011. Oxfam had initially investigated them but said nothing and did seemingly little. What did senior management know, and when did they know it. Where was the board?[i] In the care 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 boards of those organisations? Might charities working in lower-profile sectors also be affected?

This "viewpoint" article, a personal interpretation, begins with a seemingly trivial incident but one that begs larger governance questions. As a practitioner, I write in first person, impelled by the personal, even visceral feelings that prompted it. As a scholar, I take a licence to adopt this stance from recent calls from editors of management journals to explore new approaches to answer unresolved issues (e.g. Barley, 2016; Suddaby, 2019; Vince & Hibbert, 2018).

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.[ii] Let us look, then, at a small puzzle in charity governance and hold it unfolds into something larger.

The first day, the first puzzle

It was my first day as chair of the board of a charity, one classified as "major" in the British system – and my first day as a trustee of any charity. I was confronted with an issue I had not anticipated. Through an oversight, several former directors were still "members" of

the company, a quaint British term in company law signifying legal ownership. Under the articles of association, we would need to provide them an annual report and invite them to an annual meeting. If they stood down, we could do away with annual meetings. Then only current trustees would be "members" and any board meeting would serve the purpose. Few charities, I was assured, have members other than the trustees. If the board asked non-director members to stand down, it would be my duty to explain the reason. Could we simply dismiss them? What would I like to do?

As a corporate governance scholar, I appreciate the peculiarity of "members". The designation dates back centuries, before corporations had limited liability and when most large businesses operated as partnerships. Members then sat on the board. In contemporary usage, however, it refers to the role played by shareholders, the top layer in a hierarchy of accountability (cf. Belyea, 2013). Members elect directors and approve the accounts. In normal companies, they also enjoy residual property rights, a benefit the members of charities do not share.

Boards of directors – or of trustees[iii] – are the next tier. They are accountable to "members" and are legally responsible and personally liable for the affairs of the company. In charity law, trustees may take no material benefit from the organisation. If the trustees are the only members, while their ownership responsibilities are high, their rights are few – they elect and dismiss their peers.

When you become director of a company, especially as chair, you suddenly realise that the livelihoods of perhaps a thousand people and the lives of just as many vulnerable people depend on your decisions. How could you know what it *feels* like to be accountable only to the other member-director-trustees who are now looking to *you* for guidance?

That first day-in-the-boardroom sets out the puzzle of this paper: Who is in charge, *practically*, not just in law? Boards hold managers to account, yes, but who holds directors accountable? In public, for-profit companies, shareholders appoint directors and can sue them when something goes wrong. Who sues charity directors?

The question of "in whose interest" is articulated in regulation. The charity serves the interest of beneficiaries, not donors or directors. But that blurs the distinction between formal institutional arrangements and how it works in practice. Take this setting, social care: What happens when beneficiaries are people unable to exercise judgement over their affairs, when the directors are *de facto* and sometimes even *de jure* their guardians?

If the answer is the regulators, then that just pushes accountability out of the organisation and a long way from day-to-day activities and information flows. What the philosopher Onora

O'Neill (2002) calls "intelligent" accountability needs to be closer to home. Who – or what – makes a trustee-director accountable?

These were questions – with legal, moral, psychological, sociological and perhaps even economic facets – I had not fully anticipated. I had an uncomfortable feeling in my stomach, as well as cognitive dissonance. 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.

To do so it draws upon two common types of charitable enterprises: Let's call them "care" and "arts" (see Table 1). These are the two most common types of charity in Britain and have the greatest income.[iv] 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 two are large types; they encapsulate issues the others face. Both address instances of market failure, though with different implications; one stems from 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

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 principle-level lessons. After a brief overview of two main and contradictory perspectives on governance, we will consider the (or, more precisely, my) experience of the strange limbo of charity the board membership. The paper concludes with reflections of what we do not 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) call it "the authority structure of a firm", while Perrow (2002) sees governance as defining "property relations".

While much charity-governance research has focused narrowly on boards, the situation within charities is more complex than the literature suggests, as Cornforth (2012) explains. As with listed companies, charity governance comes in multiple layers, and these two types differ in important ways. Both work in markets, the structure and dynamics of which shape their freedom of action. 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? The terms "market failure" and "property relations" that governance arrangements concern are abstractions. They reduce complexities and 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 create value through efficiency or product/service development. But even markets that do not fail are less than perfect. So, it is even less surprising for charities, compared to corporations, that governance through market forces is less than perfect.[v]

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, they 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 the social contribution of taxation 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 and the additional provision of charity law. Company law articulates rules of formation, conduct and dissolution, and importantly the duty of directors. This works at a high-level, a blunt instrument of governance, open to much interpretation.

Regulation then takes over, limiting interpretation. Many sectors are regulated, with the strength of oversight broadly proportional to the prospect of social harm and power imbalances. Utilities attract much regulation; so too banking, and public hazards like waste management. Health and social care attract high levels of oversight on the grounds that beneficiaries are vulnerable because of both personal incapacity and 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. Britain’s community interest companies (CICs) are often called hybrids, like “benefit corporations” in the United States (Battilana, Sengul, Anne-Claire, & Model, 2015). CICs and other hybrids are a relatively new corporate form in Britain, with protection for directors from certain types of shareholder actions when directors pursue activities that do not contribute directly to shareholder value. Such firms operate under a logic, normally articulated in their founding documents, that calls on owners to sacrifice rights for the sake of community betterment.

Elaborating the model for corporations in Nordberg (2011, Chapter 4), these different types of organisations have layers of governance arrangements. Some are external, including pressure from different types of markets (product-service, labour, supplies, etc.), from law and regulation; others are internal (owners, boards); and sector-based voluntary codes of practice. These governance layers constrain the organisations to differing degrees, indicated in Table 2 by the description of their *power* (in italics).

Community interest companies and conventional corporations work in fields where power relationships are favourable and markets function well. If we look at social care, private firms developed their business models on two trends: an ageing population, pointing to demand growth, especially among the well-off in society; and rising real estate values, pointing to capital appreciation. This model worked well until supply caught up with demand and growth

of property prices slowed. The squeeze on profits led to lapses in service quality of the type that created the cloud over the sector.

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 government 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 grants, donations, legacies	Governments; believers *Powerful, mitigated among believers by intrinsic motivation*	Believers; philanthropists *Powerful*	Believers; philanthropists *Powerful*	Not applicable
Law	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, owing to 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*	National codes for listed, unlisted firms *Weak (private) to moderate (listed)*

Not all social care providers can adopt that model, however. Cases where market failure is most acute and property relations are least clear offer little if any incentive to for-profit private firms or hybrids. People with physical and learning disabilities or mental health issues need more specialised care. They represent a poor market opportunity. Here is where charities operate. Because the markets they operate in mainly in failure, the state is often the customer, and its buying power is particularly great. Charities face an absence of alternative buyers and power over suppliers. Labour costs are under pressure, as charities compete with the state (in Britain, the National Health Service) for professionals, while support workers may earn nearly as much in less stressful roles. These pressures are mitigated in part by the desire of individuals to care for others: that is, they often have intrinsic motivation. Margins are tight, which matches a not-for-profit business, at least until there is a structural downturn (or a pandemic), when the business itself becomes vulnerable.

In the arts, power relationships differ, as does the relationship with the state. Customers are many, but so too are alternatives for discretionary spend. Yet the appetite in many cases

cannot match the cost of production, so the state steps in as donor, rather than customer, making grants to arts organisations to fill the gap between revenue and cost. Other, private donors may also make up the difference. They are often believers, and so have intrinsic motivation. Labour costs are mitigated by the intrinsic motivations of the creators and the lack of other outlets.

While law sits in the background most of the time, and codes are voluntary, regulatory oversight is also strong, though to differing degrees. Charities serving the most vulnerable (i.e. "care") are generally more tightly monitored than those serving people who need help to engage in a market (i.e. "arts"). These external layers of governance prescribe the boundaries of board discretion. This leads us to an internal layer, boards, and then back to "ownership" and how that seems to work in the charitable sector.

Charity boards

Regulation is insufficiently granular to monitor and support the work of organisations. That is the role of boards. Charities empanel directors for the same reasons that corporations do. First, they want advice from outsiders, with knowledge of different sectors and different skills. Second, they need a mechanism of accountability. Enjolras (2009) gives a generally positive account of the ways that boards of voluntary organisations deal with checks and balances, control procedures and incentives for collective action. And yet governance of non-profit and voluntary organisations is often problematic (Cornforth, 2001).

In their US-based study, Harris, Petrovits, and Yetman (2017) found that strong boards helped, but that accountabilities outside the board were more closely associated with lower incidences of fraud. In Britain, Abdullah, Khadaroo, and Napier (2018) found that years of government austerity led to creeping use of business language in governing charitable arts organisations, but does it bring with it the risk of mission creep?

There are a variety of forms of charities in the UK. Trusts and associations tend to be smaller entities, and they are not considered legal personalities; most substantial entities use a "company" form, though more recent ones take advantage of the less complex legal form of the Charitable Interest Organisation (CIO). For simplicity, let us focus on "charitable companies".

Charities are just like other companies, until they aren't. In UK law, they are often companies "limited by guarantee", with no paid-in share capital. Members merely guarantee

to contribute a nominal amount (£1.00) should the company need it. Directors have unlimited, personal liability, however, though courts tend to enforce it only in cases of fraudulent trading.

In law, directors of charitable companies, as trustees, are not allowed to benefit directly from the charity itself. Traditionally, these positions have been held by unpaid individuals who oversee the work of those paid to undertake charitable activities. While changes in law now permit charitable companies to pay a director's fee, the practice is still rare and subject to regulatory approval. 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 (analogous to regulatory capture; cf. Baker, 2010). 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).

Charity boards, by contrast, are made up entirely of outsiders. That means they have similarities to the two-tier board structures common in continental Europe (Maassen & van den Bosch, 1999). Such structures enhance the "control" role of boards and protect against capture. Whether that constraint has practical significance is a question for empirical investigation (see Saj, 2013, for a discussion of director/executive collaboration). Directors' oversight 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, people who can open doors to donations or smooth the way to winning state funding. Such directors serve their charities much as listed companies collected "trophy directors" in the years before Enron collapsed (Dobrzynski, 1996).

But charity trustees in Britain are not just figureheads. They are legally directors, who 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 "regard" to 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, perhaps their primary duty. They have unlimited, personal liability. By contrast, members' liability is limited (depending on the terms of incorporation), for which they are granted 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 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 a key theoretical governance debate (Bernstein, Buse, & Bilimoria, 2016): Is executive and board behaviour better described by agency theory or the contradictory arena of stewardship?

Agency theory (Fama, 1980) assumes economic actors will act in self-interested ways. Agents may not share the interests of principals and can exploit information asymmetries 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. In the non-profit sector, Coule (2015) observes that principal-agent assumptions can drive narrow views of accountability. Dent (2014), however, argues that non-profits are, in effect, owner-less organisations; their boards are self-perpetuating. If boards act as the sole point of accountability, then direction and action rests with officers, not directors, leading to "generally abysmal" governance (Dent, 2014).

But agency theory is only one way of considering governance. Stewardship theory, by contrast, sees individuals as acting, in the main, in line with the organisation's goals, motivated by a collectivist, social approach, seeking to satisfy 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 constantly. This accountability is interpersonal, horizontal, and enacted as much through peers as supervisors.

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

This brings us back to the problem outlined at the start of this essay. In implementing our new articles, was not I, as director, and we as a board, depriving members of their rights? Did this action take away their "property", in some sense, even if members have no rights to the

assets of a business? Was our high-minded attempt to relieve absent members of any reputational risk a 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 with 1980s reforms by the Conservative government under Margaret Thatcher, such "care in the community" introduced market pressure for the sake of efficiency (Andrews & Phillips, 2000). It was an element of what has been called the New Public Management (Ferlie, Ashburner, Fitzgerald, & Pettigrew, 1996). But it solved a governance issue too: In providing and regulating care, states faced an agency conflict. Community care places delivery with outside organisations (including charities) instead, while the state retains oversight. The conflict goes away. But states have another conflict – as customer of the regulated service – which proved too big a problem to solve directly. That is why regulators are constituted as notionally independent of government.

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 government bureaucrats with professional arts managers. Its charitable status allows the venue to undertake risky ventures, such as a) letting new or less-well known producers put on shows likely to serve only narrow audiences, or b) working with schools or other charities to bring arts-focused projects to people with life problems. To cover the gap, ArtsSW also stages commercial productions and hosts conventions and trade shows. Between the two extremes lies the bulk of the output of popular arts: classical music, touring theatre companies, and movies that draw reasonable crowds. This interest in and reliance upon commercially oriented productions is in line with what McKay, Moro, Teasdale, and Clifford (2015) call the marketisation of non-profits.

CareSW needs its director-trustees 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 draws extensively on the directors, with joint

board/management working groups on major projects and tight liaison between the CEO and chair.

ArtsSW needs commercial ideas, too, though more as a sounding board for the boundary-spanning discussed in the literatures of entrepreneurship (Zott & Amit, 2007), top-management teams (Geletkanycz & Hambrick, 1997), corporate and public governance (van Meerkerk & Edelenbos, 2018), and charities (Duncan & Schoor, 2015). It helps to have directors well-connected to local government, prominent in local education circles, or with ties to the national arts scene. Such individuals open doors to valuable and scarce resources, as resource dependency theory suggests (Hillman, Cannella, & Paetzold, 2000). ArtsSW needs help with control as well. But its 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 are deeply engaged with – though not directly involved in – the business. Joint board-management working parties lead directors to interact with mid- and lower managers, as well as the senior management, with learning spreading in both directions. Individual directors frequently visit the properties that CareSW manages, speaking to service users and frontline staff. Nearly all the directors have personal experience of the types of care offered, through relatives or friends or in prior work, which heightened their engagement. That means that emotional bonds to the mission (if perhaps not the organisation) pre-date appointment and then strengthen through the board work. As a result, directors deepen their personal connection to the charity even as they deliver intellectual input to strategy, control and compliance.

At ArtsSW, directors are less engaged. They might attend more shows than they would otherwise and act as flag-wavers when dignitaries from local government or national arts funders visited. Managers encourage them to let friends know of special events, in the hope that their enjoyment might lead to donations or end-of-life legacies. Some deliver "service" in ways similar to those at CareSW, working with mid- and lower level staff on projects. In short, directors served the company more as ambassadors than as controllers.

What I see in both organisations are individuals who come to serve on the boards out of psychological attachment to the work of the charity, more affective than cognitive. Moreover, this psychological commitment is of a moral nature (Greene & Haidt, 2002).

Listed companies win investors as shareholders (i.e. members) through their attractiveness as producers of dividends and capital gains. But charities appeal for donor-funds and would-be directors because what they do provides society with goods that 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 is easier to get appointed as a paid director of a listed company board if you have already served on an unpaid major charity board. That is, the motivation of charities directors is not entirely altruistic, suggesting altruism and the self-serving are hard to separate (Segal & Lehrer, 2012).

Listed and private companies have non-executive directors with incentives to act in self-interested ways, but also personal reputational risk that leads them to exercise control, addressing the agency problem in corporate governance. By contrast, at charities the lack of remuneration and intellectual as well as *emotional* engagement of directors often pre-dates work with the organisation. That is, this antecedent to stewardship (Hernandez, 2012) is often precedes both charity board directorship and membership. The risk of such work presenting an agency problem is diminished, even if directors' 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. In corporations, rewards can be based on self-efficacy and self-determination, and control systems can promote collaboration and collective responsibility. If so, then they also contribute to building affective commitment. Enacting these cognitive and affective mechanisms builds psychological ownership, which leads to stewardship behaviour (Hernandez, 2012).

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 (Pierce & Rodgers, 2004). Similar observations have been made about people who choose to work in charities (Benz, 2005). 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, 2012), 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) suggest psychological ownership is needed to create the conditions for the long-term orientation and collaboration of investor and companies the code envisaged. But their model of active ownership also demonstrated the array of impediments that might prevent it, not least that affective commitment arises *after* legal ownership, when the investors already hold the rights, and because engagement involves considerable costs.

The situation at charities is, however, fundamentally different. As discussed above, "members" of a charity – that is, the holders of the legal ownership – often have affective and cognitive commitment to the cause of the charity *before* they become member-directors. In social-health care charities, many directors have psychological ownership through relatives with the problems the charities 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, psychological ownership seems to pre-date their legal status, and a "service" orientation, with its forward-looking focus on innovation, is embedded prior to 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 financial arrangements. Charity member-directors are, so to speak, deeply interested in the business even if they 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, however. Regulators provide for charities something of the upwards accountability that corporations get from owners. And they can fire each other, if they choose to, as I did, in effect, by telling non-director members I wanted them to stand down.

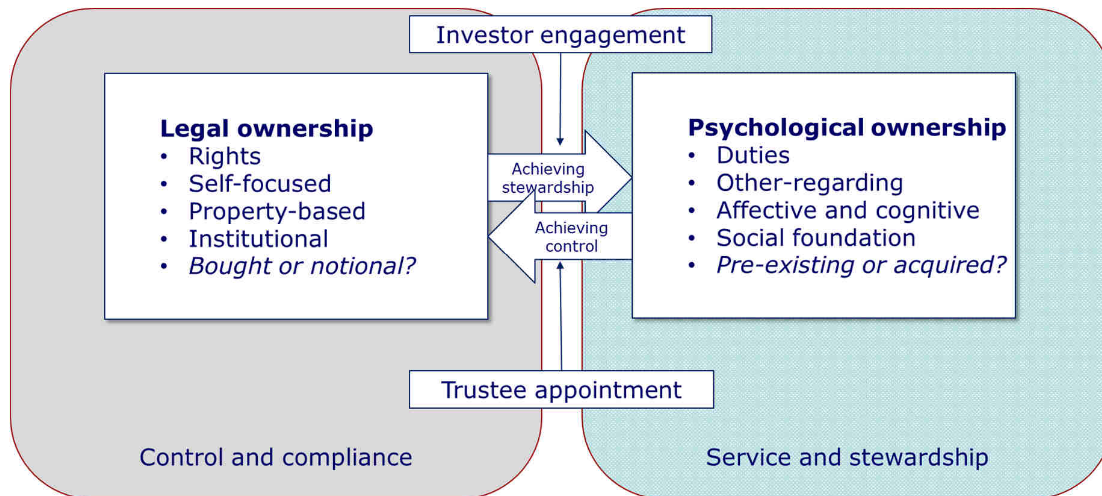

Figure 1 - 'Member' stewardship through ownership, investor vs. trustee-members

But that assumes that accountability is always hierarchical. Roberts (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 periods; it "socialises", and it operates in intimate circumstances. Similarly, and in the setting of health care, the O'Neill (2002) argues that accountability of the regulatory type, against targets, was often counter-productive. Instead she advocates 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, however, then it does not preclude groupthink (Janis, 1972; Whyte, 1952/2012) from arising through excessive deference. Let us 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? While boards are constitutionally separate from management, they are not necessarily 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 controlled by the executives. A confrontational stance by the board might be punished by executives withholding important information, ignoring board directives, or leaving for more remunerative work. 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? To what extent 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 twist: active involvement of the chair in debates tends to hinder engagement of other directors. That hints at a need for chairs to engage in non-traditional modes of leadership: shared (Bolden, 2011) or servant (van Dierendonck, 2011). These studies suggest parallels in charity governance, as well as a way of understanding the puzzle with which this article began, the rights of "members" and their psychological ownership.

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. Regulators can withdraw charitable status and thus impede any actions of members, so what significance does membership have? Moreover, how does their lack of financial interest of members or member-directors affect their cognitive engagement? If the psychological ownership pre-dates the legal, how does affective commitment to the *cause* influence development of cognitive engagement with the *business*? Is effectiveness of the trustee the same as effectiveness as *director*? How might affective commitment impair development of the critical edge needed to conduct monitoring? And under what conditions are charity directors committed to the work, engaged in ways short of commitment, or just performing the basics?

This paper has addressed only tangentially the emergence of hybrid organisations often called social enterprises, working in the same general areas that charities inhabit. Here the sense of ownership is probably more palpable, as the founders work with a profit motive, and investors have at least a residual claim on the assets if somewhat less power over direction of the business than they would in conventional corporations. This is an area calling out for greater research. In keeping with this paper's direction, that includes assessing how, at the

outset, psychological ownership and stewardship, on the one hand, and legal ownership and agency on the other, interact. We might also consider how those relationships develop over time.

A normative agenda – in whose interest?

Other issues 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?

The question of effective boards is an important topic in normative literature on *corporate* governance. Forbes and Milliken (1999) emphasise processes; Zahra and Pearce (1989) structures; and Samra-Fredericks (2000) directors' psychological and interpersonal qualities. Cornforth (2001) translates such concerns into the charitable sector, creating a list of characteristics of effective charity boards. Heemskerk, Heemskerk, and Wats (2015) link effectiveness in the non-profit sector to behavioural factors.

More recently, the policy agenda in corporate governance has emphasised the importance of board evaluation as a tool of assessing effectiveness (Nordberg & Booth, 2019). But evaluation is time-consuming, and volunteer directors of charitable companies may think they have done enough. Moreover, for charitable ones, the cost could tip finances 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. 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.

But charities operate where markets do not work particularly well. Here the regulators pick up some of the slack in governance, concerning deficiencies in markets. Do their actions on behalf of beneficiaries also make up for the governance deficit when the distinction between boards and owners collapses? Are regulators – at considerable distance from the service delivery – well enough equipped to represent beneficiaries' interests?

In "arts", the underprivileged may 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 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 should charity boards ensure the voice of the beneficiary is heard? Given power imbalances, the confidentiality due to beneficiaries, and the reasons why their concerns cannot be addressed by markets, it is important that boards 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.

Reflections in lieu of conclusions

The two specific problems sketched the start of this paper – the spotlight on Oxfam, the cloud over the social care sector – set a context that makes palpable the social issues we face in situations where markets fail. 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 its argument that the state is too distant to deal such cases, and it has a conflict of interest when in charge of both delivery and regulation. That suggests a need for more granular, personalised accountability.

In this paper I articulate some of the gaps in the understanding. The research it proposes will help us come closer to solutions to the puzzle I posed at the outset. 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 is likely to remain that way unless stewardship takes a stronger hold on our scholarship. We need better research and study, which can inform a stronger education for charity trustee-director-members.

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[i] This phrase resounded in the aftermath of the collapse of Enron Corp. in 2001; see MacAvoy (2003).

[ii] For a detailed discussion of "reasonableness" in corporate governance theory, see Nordberg (2018).

[iii] 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.

[iv] According to the National Council of Voluntary Organisations, the trade association for the charitable sector in the UK, “social services” and “cultural and recreation” in 2018 were the two largest subsectors, ranked by both employment and income. See https://data.ncvo.org.uk/profile/activities/#by-subsector. Accessed July 22, 2020.

[v] One justification for organisations, a hierarchical form of governance, is the inefficiencies of markets (Williamson, 1973).

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