Preface

The book grew out of a PhD thesis that was researched at King's College and awarded by the University of London in 2005. It could not have been written without the untiring encouragement, support and intellectual guidance of my supervisor, Professor Charles Mitchell, to whom I owe an enormous debt of gratitude. I also benefited greatly from additional supervision by Professor John Gardner in the first year of my research and Professor David Hayton in subsequent years. My thesis examiners, Professor Peter Luxton, of the University of Cardiff, and Dr Jeremy Kendall, of the University of Kent and the London School of Economics, offered invaluable insights and suggested improvements without which this book would be considerably the poorer. My warmest thanks go to each of them.

Thanks are also due to the following people for their support, academic and otherwise, during the writing of this book: my parents James and Melanie Garton, Rebecca Parry, Carla Crifò, Sally Curningham, Richard Baker, Sylvie Da Lomba, Alison Dunn, Raymond Plant, Elizabeth Garton, John Phillips, Tim Macklem, Margaret Bolton, Richard Hart and all at Hart Publishing, my colleagues in the School of Law at King's College and my former colleagues in the Faculty of Law at the University of Leicester.

A small part of this book contains material previously published, in revised form, in two journal articles. Acknowledgements go to Tottel Publishing and the editors of *Trust Law Irrervational* for allowing me to reproduce elements of 'The Judicial Review of the Decisions of Charity Trustees' (2006) 20 *TLI* 160, and to Hart Publishing and the editors of the *King's College Law Journal* for allowing me to reproduce elements of 'The Legal Definition of Charity and the Regulation of Organised Civil Society' (2005) 16 *KCLJ* 29.

The law is generally stated as at November 2008, although I am grateful to the publisher for enabling me at the proofs stage to take account of the implementation of certain parts of the English Charities Act 2006 in January 2009 and the Irish Charities Act 2009, which was enacted in February 2009.

Jonathan Garton April 2009 Attp://www.phookshop.com

	ole of Cases	v xi xix
140	ole of Legislation	XIX
1	Introduction	1
_	I. A Brief History of Organised Civil Society	2
	II. Civil Society and Regulation	4
	A. England	7
	B. Australia	11
	C. Other Noteworthy Reforms	11
	III. This Book	14
	IV. A Note on Methodology	17
	- 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1.	
2	Introduction I. A Brief History of Organised Civil Society II. Civil Society and Regulation A. England B. Australia C. Other Noteworthy Reforms III. This Book IV. A Note on Methodology Constitution of Civil Society A. Private Sector B. Public Sector	19
	I. Sector Model of Society	20
	A. Private Sector	21
	A. Private Sector B. Public Sector	21
	C. Informal Sector	22
	D. Organised Civil Society	23
	II. Unpacking Civil Society	23
	A. Legal Definitions	23
	B. Financial Definition	32
	C. Economic Activity	33
	D. Shared Structural Characteristics	34
	III. Summary	39
	•	
3	Functions of Civil Society	41
	I. Market Support	42
	A. Systemic Activities	42
	B. Environmental Activities	45
	II. The Provision of Public Goods	46
	A. Weisbrod's Theory of Market Failure	48
	B. Hansmann's Theory of Contract Failure	50
	C. Challenges to Contract Failure Theory	52
	D. Levitt's Theory of Government Failure	54

	E. Salamon's Theory of Voluntary Failure	56
	F. Public Goods and the Public Benefit Test	63
	III. The Provision of Private Goods Analogous to Public Goods	68
	A. Intangible Services	69
	B. Redistribution of Wealth	69
	IV. The Facilitation of Political Action	70
	A. Advocacy of Minority Interests	71
	B. Accountability of Government	73
	C. Pluralism and Civic Involvement	74
	V. The Provision of Cultural Services	75
	VI. The Facilitation of Self-Determination	76
	A. Altruism	77
	B. Mutuality	80
	C. Ideological Expression	82
	C. Ideological Expression VII. The Facilitation of Entrepreneurship A. Freedom to Innovate B. Retention of Control C. Civil Society Ethos VIII. Summary	83
	A. Freedom to Innovate	83
	B. Retention of Control	85
	C. Civil Society Ethos	87
	VIII. Summary	87
4	Foundations of Civil Society Regulation	89
	I. Traditional Microeconomic Ticories of Regulation	91
	A. Monopoly Power and Ani-Competitive Behaviour	92
	B. Excessive Competition	98
	C. Public Goods	98
	D. Externalities	99
	E. Information Deficits and Accountability	103
	F. Co-ordination and Irregularity of Production	108
	II. Traditional Social Justifications for Regulation	110
	A. Windfalls or Economic Rents	110
	B. Other Social Goals	112
	III. Justifications Specific to Civil Society	113
	A. Philanthropic Failure	113
	B. Challenges to Structural Characteristics	114
	IV. Limitations of Regulation	117
	A. Juridification	117
	B. Contradictory Regulatory Goals	119
	V. Summary	119
5	Boundaries of Regulation	121
	I. Blurring of Sector Boundaries	121
	II. Functional Overlap	125
	A. Organised Civil Society and the Public Sector	129

	B. Organised Civil Society and the Private Sector	133
	C. Organised Civil Society and the Informal Sector	134
	III. Micro Level Sector Interaction	135
	IV. Macro Level Sector Interaction	137
	A. Supplementary Relationship	137
	B. Complementary Relationship	138
	C. Adversarial Relationship	139
	D. Protean Nature of Boundary	140
	E. Social Origins Theory of Civil Society	140
	F. Impact on Regulation	141
	V. Summary	141
6	Regulation and Legal Definitions of Civil Society	143
	I. The Charitable Sectors in England and Australia	144
	A. Structure of the Charitable Sectors	145
	I. The Charitable Sectors in England and Australia A. Structure of the Charitable Sectors B. Charitable Purposes C. Functions of the Charitable Sectors C. Non-Charitable CSOs II. The Tax-Exempt Sector in the United States	147
	C. Functions of the Charitable Sectors	154
	C. Non-Charitable CSOs	164
	II. The Tax-Exempt Sector in the United States	164
	A. The Charitable Sector	165
	B. Non-Charitable Tax-Exempt Organisations	169
	III. The Limits of Existing CSO Regulation	172
	A. Non-Traditional Religion	172
	B. The Prohibition on Political Purposes	176
	C. Public and Private Benefit	181
	IV. Summary	185
7	Implementing Regulation	187
	I. Models of Regulation	187
	A. Regulation by the Legislature	188
	B. Regulation by the Courts	189
	C. Regulation by Executive Agency	192
	D. Regulation by an Official	197
	E. Supplementing Regulation by the Executive	198
	II. Strategies of Regulation	207
	A. Command and Control	207
	B. Incentive-Based Regulation	210
	C. Disclosure Requirements	217
	D. Education and Advice	218
	III. Summary	219

8 Conclusions	221
I. Defining 'Regulation' and 'Organised Civil Soci	lety' 221
II. Towards a Theory of Regulation	225
III. Designing and Implementing Regulation	227
Bibliography	233
Index	255

WALL WAN BOOKSHOP. COM