Dispensing ‘charity’: the fiscal limitations of an all-or-nothing concept

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In many jurisdictions, governments provide a range of fiscal privileges to third-sector organizations whose purposes or activities are deemed charitable or publicly beneficial. Such privileges may include exemption from taxes on income, or on purchases or supplies of goods and services. They may also include subsidies on the financial contributions that natural or legal persons make to these organizations. The subsidies reduce the price to the donor of conferring a certain quantity of financial resources to an eligible donee, either by offering the donee a matching grant, or by offering the donor a deduction from income otherwise taxable, or a credit against taxes otherwise payable.

This paper makes four arguments concerning the selection and design of such fiscal privileges in common-law countries. First, it argues that if governments use their fiscal tools to pursue normative goals, then they should select and design those tools with reference to normative concepts that are teleological and differentiable. In other words: in choosing the means, levels and areas of taxation and spending, governments need to consult and apply concepts and indicators that could enable them to represent the consequences of their choices on, say, social welfare. Moreover, they need concepts and indicators that could enable them to rank or gauge those consequences, not simply categorize them.

Second, the paper argues that the normative concept of charity – as it has originated and evolved in common law – is deontological and non-differentiable. In other words: charity is a quality attributed to civic purposes or activities that is considered meritorious on its own terms, and either present or not. To be sure, the concept of charity is linked to a concept of public benefit; and the latter could be construed as both teleological and differentiable. However, as applied under common law, public benefit is separated from these attributes: its existence – presumably above some threshold – is treated as a necessary but not sufficient condition for the existence of charity.

Third, in light of the previous two points, the paper argues that if governments use their fiscal tools to pursue social welfare, and if third-sector organizations engage in a range of purposes and activities that are diverse in terms of either the goods and services produced or the populations affected, then the governments should not frame their fiscal treatment of those organizations with reference to the common law concepts of charity or public benefit.

Fourth and finally, it argues that governments in common-law countries do not act in accordance with the third point: they frame their fiscal treatment of third-sector organizations with reference to charity, extending similar fiscal privileges to organizations deemed charitable, in spite of their purposes or activities having different consequences for social welfare. To be sure, in some instances these governments have introduced different fiscal privileges to different types of organizations. In so doing, they have circumvented the concept of charity, either by extending fiscal privileges to certain non-charitable organizations, or by denying certain privileges to charitable organizations, or – in rare cases – by providing different privileges to different charitable organizations. Such measures, however, are few, and have not been selected or designed with reference to a normative concept – in lieu of charity – that is teleological and differentiable.

The paper makes these arguments in sequence. With reference to optimal tax and expenditure theory, it presents a case for governments providing different fiscal privileges to
third-sector organizations having diverse purposes and activities (Auerbach and Hines 2002). It describes the origin and evolution of the concepts of charity and public benefit within English common law – processes that largely pre-date the provision of fiscal privileges to organizations deemed charitable (Charity Commission 2008, Jones 1969, Jordan 1959, Warburton 2000). The all-or-nothing quality of charity was appropriate given the concept’s original function and context. That function was to identify and distinguish the objects falling either within or beyond the jurisdiction of enforcement commissions that were created at the outset of the 17th century. In that context, the concept of charity was neutral in the sense that it neither implied nor required that the governing authorities should assign the same priority to the objects falling within the jurisdiction, and a different priority to those falling beyond. Moreover, the concept was benign in the sense that it limited neither the ability of those authorities to allocate tax revenues across charitable objects in accordance with their priorities, nor the ability of donors to allocate their private wealth across those objects in accordance with their priorities. Finally, the paper demonstrates how the legal concept of charity has shaped the fiscal privileges made available to third-sector organizations by describing and comparing the practices of five common law countries – Australia, Canada, England, India and Singapore.

References


