Nonprofits and Narrative: Piers Plowman, Anthony Trollope, and Charities Law

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Recommended Citation

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2009 Mich. St. L. Rev. 989

ABSTRACT

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What are the narrative possibilities for understanding nonprofit law? Given the porous barriers between nonprofit law and the literature about it, there are many. Here I consider two. First, nonprofit law and nonprofit literature are each enriched and made fully explicable by reference to the other. Nonprofit law has grown in parallel with literature. It may even be that important legal texts, texts about doing and being good, were imported directly from literary sources into law. Second, in writings ranging from sensational journalism to high literature, nonprofit laws and the scandals involving their violations have captured the public imagination for centuries. That nonprofit law deals with human concerns such as faithfulness and the struggle to do good also makes nonprofit literature effective in creating the rich background against which the law can be better understood.

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INTRODUCTION

It often strikes me as funny when my students report that they plan to "work at a nonprofit." You might think that students seeking public interest jobs would understand that the word "nonprofit" is a somewhat imprecise legal term referring to a type of corporation or trust. After all, law students study legal forms. Future venture capitalists do not proclaim, "I want to work for a limited liability partnership." They say, "I want to work in venture capital." Law students who want to work at big firms don't articulate their dreams by declaring, "When I graduate I will form a professional corporation and affiliate with a legal partnership." They say, "I want to litigate," or "I'm interested in intellectual property."

I'm often tempted to respond to these students by asking, "Really? Any nonprofit? Handgun Control, Inc.? The National Rifle Association? The Massachusetts General Hospital? The Grosse Pointe Yacht Club? The NFL? The Cato Institute? Or, perhaps, the ACLU?" But I don't. That kind of sarcasm can be mean. And I know that these students don't want to tell me that they intend to work for a charitable corporation (or trust) exempt from taxation under §501 of the Internal Revenue Code. Nor do they wish to convey their passion for gainful employment at an organization "that is precluded, by external regulation or its own governance structure, from distributing its financial surplus to those who control the use of organizational assets."

At some level, I understand what these students mean to say. They want to work for the public good.

Students are not the only ones who have difficulty articulating what they mean by the term "nonprofit." Legal scholars have similar trouble. So much so that a good deal of the action in charities scholarship involves identifying and defining the nonprofit species. (This is not only a problem for legal scholars; economists have spent many decades struggling to identify the nonprofit firm's objective function.) Luckily, even without precise definitions, we are able to form nonprofits and work productively through them to achieve publicly spirited ends. Maybe this is because nonprofit law is informed by, perhaps sustained by, extra-legal sources. Maybe stories about nonprofits, formal and otherwise, provide a backdrop against which

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we can better understand and interpret the law. As Robert Cover explains, a legal "tradition includes not only a corpus juris, but also a language and a mythos—narratives in which the corpus juris is located by those whose wills act upon it." And, as I explain below, not only do stories support the law, but sometimes the law supports the stories.

Legal scholars have documented the many interactions between law and literature. They explain how stories about law advance law, undermine justice, reinforce social roles, and capture the public imagination through fictionalized accounts of legal events. However, according to Professor Mae Kuykendall, the identification of literary aspects of law and the use of narrative techniques in its analysis have "claimed ground in some fields of law, such as criminal law and the legal treatment of minorities," but have not been employed in other fields such as business law. Moreover, judges have not successfully used narratives as part of their analytic or persuasive arsenal in deciding corporate cases, and stories are not typically used to make corporate law socially comprehensible. Kuykendall further explains that the dearth of narrative approaches in business law scholarship results not from some terrible oversight on the part of legal scholars but rather because the law of corporations is not a fruitful subject for narrative: "Corporate law is abstract, because its subject is not readily reducible to human stories."

In inviting me to speak at the Michigan State University College of Law's Symposium on Business Law and Narrative, Professor Kuykendall asked me to consider whether the law related to charitable corporations is similarly story-proof or whether it is more amenable to narrative techniques than she finds corporate law. I'm not sure that I agree with the premise about the mismatch between business law and narrative. And even if Professor Kuykendall's conclusions were once accurate, I am skeptical that they describe the state of corporate law and the possibilities for its analysis in this new era in which inadequate regulation is widely seen as a cause of corporate failures and the harm they cause.

Regardless of whether business law is a suitable subject for the methods of law and literature, the short answer to her question of whether non-

5. For a long list of the ways in which law and literature are related, ranging from the uses of "legal fictions" in legal writing to the role of law in fiction, see the introduction to Richard A. Posner, Law and Literature: A Misunderstood Relation 1-21 (1988).
7. Id.
8. Id. at 541.
profit law lacks narrative materials is, “no way.” In studying nonprofit law—particularly, but not only, case law—one is often confronted with stories of people trying to do good, to be true custodians of charitable purposes, and to find their way into heaven. There are images and stories everywhere you look.

It is beyond the scope of this Essay to demonstrate that nonprofit law can and does employ similar narrative techniques as do other areas of law, such as criminal law, that more obviously rely on rich narratives about crucial events or the parties’ characters. But it wouldn’t be hard to make the case. Consider, for one, the 1954 opinion in which the California Court of Appeals forgave George Pepperdine his likely breach of fiduciary duties because his motives were pure. There the court first equated the Pepperdine Foundation with the man himself and then excused any breach, even one due to “a breakdown of his intellectual powers or a transmutation of his intelligence in his new world of disbursing charity.”

The characterization of Pepperdine as a man of uncommon generosity drove the decision, perhaps at the expense of legal doctrine. At another time, another judge might not have focused on Pepperdine’s personal story of hard work and generosity but rather on the costs of Pepperdine’s behavior for the foundation’s objects.

Moreover, to understand a nonprofit’s mission requires a story with at least a few sentences of text. This is one reason why the Internal Revenue Service recently redesigned the Form 990, the annual information return that nonprofits must file with the Service. The new form includes space for

9. Nonprofit law is not a single body of law. It comes from various sources of law and all levels of government including the common law of trusts and property, federal and state tax law, state business and nonprofit codes, and formal and informal powers held by state attorneys general. See Marion R. Fremont-Smith’s comprehensive work on nonprofits, Marion R. Fremont-Smith, GOVERNING NONPROFIT ORGANIZATIONS: FEDERAL AND STATE LAW AND REGULATION (2004). For a brief summary of these laws, see Jill R. Horwitz, Why We Need the Independent Sector: The Behavior, Law, and Ethics of Not-for-Profit Hospitals, 50 UCLA L. REV. 1345 (2003).


11. Fremont-Smith, supra note 9, at 200 (noting that courts typically require a higher standard of care in fiduciary duty cases than employed in this case, but that some observers argue that publicly-spirited citizens who serve without compensation should not be held to high fiduciary standards).

12. Like the examples Martha Minow uses in Stories in Law, the Pepperdine case can be retold in a way that demonstrates how stories in the common law are like stories in literature. According to Minow, storytelling “dwells on particulars while eliciting a point that itself may be molded or recast in light of the story’s particulars reviewed in a different time.” Martha Minow, Stories in Law, in LAW’S STORIES: NARRATIVE AND RHETORIC IN THE LAW 24, 25 (Peter Brooks & Paul Gewirtz eds., 1996).
text regarding the organization’s mission and activities. Nonprofits can’t characterize their work by checking a box, nor can the Service determine whether the work merits tax exemption by tallying check marks. If you need more examples of nonprofit narratives in the legal and popular world ask yourself why there is so much talk about the importance to nonprofit institutions of retaining their reputations for good character. Of course, nonprofits, like for-profits which must attract and retain customers, have to remain in good standing with donors and regulators—but I think there is more than an instrumental concern underlying the legal and popular discourse regarding nonprofits doing good. If we thought of nonprofits as merely a nexus of contracts and their behavior as instrumental, there would not be so much worry about the tarnishing of the nonprofit halo. It is precisely because we have an understanding of what it means to be a nonprofit that the scandals are so damaging, and why it is so important for nonprofits to be able to tell a story about their goodness.

However, as I said, my goals in this Essay are more literal and less ambitious than comprehensively analyzing the use of narrative in charities law. I hope only to make two observations about nonprofit law and its narrative possibilities. First, the barriers between nonprofit law and literature are porous, and each is enriched and made fully explicable by reference to the other. The law has, at least, grown in parallel with literature and it is possible that an important legal text may have been copied directly from a literary source. Even the internal revenue code sections regarding the income tax exemption for charities—law that would seem to be about as divorced from literature as possible—have a history in poetry. The discourse of nonprofit organizations and their laws is not remotely limited to the language of corporate organization. It reflects our most serious inquiries into what it means to do good and be good.

Second, the law of nonprofits and scandals involving legal violations are nothing like Professor Kuykendall’s description of analogous corporate law stories. They are not “filled with boring details about finance and dominated by the figure of money, a subject of endless fascination and desire,”

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14. For example, Professor Darryll Jones commented that the use of professional fundraisers and their high fees cause “erosion of the nonprofit halo” because of an “almost prostituting of a nonprofit’s name.” Miark Hrywna, 10 Years Later: UCC Case Changed Fundraising Contracts, NONPROFIT TIMES, July 1, 2009, at 1, 4; see also Evelyn Brody, Agents Without Principals: The Economic Convergence of the Nonprofit and For-Profit Organizational Forms, 40 N.Y.L. SCH. L. REV. 457, 460, 492 (1996) (noting that the nonprofit form comes with a halo); Evelyn Brody, Hocking the Halo: Implications of the Charities’ Winning Briefs in Camps Newfound/Owatonna, Inc., 27 STETSON L. REV. 433 passim (1997) (discussing the tension between the notion of nonprofits as selfless service providers and nonprofits as profit-oriented businesses).
yet invariably seen as a nonstarter for a good read." Considering the list of famous literary works about crime, particularly violent crime, and trials, one might be tempted to think that criminal law is a uniquely suitable legal subject for fiction. But this is not so. Nonprofit scandals, including those based upon somewhat technical violations of the law, have captured the public imagination. These scandals have attracted sensationalist journalists as well as more serious writers. Nonprofit law makes for a page-turner. And those attributes that make it a good read—for example, that it deals with deeply human concerns such as faithfulness and the struggle to do good—also make nonprofit literature effective in creating the rich background against which the law can be better understood.

Before I go any further, I want to offer a preliminary note. There are many uses of the term “narrative” in the law and literature scholarship. Here I gesture towards the most basic of the ideas. I ask whether there is a story (or stories) to be told in nonprofit law: Are there characters? A sequence of events? Narrators? A point of view? Is anything happening? In this Essay, I offer first an example of the centrality of literature in charities law, and then an example of a very good work of fiction based on charities law. In doing so, I am not employing narrative techniques for the purposes to which they are commonly used, such as unearthing suppressed narratives to advance justice or “as an antidote to the sterile technicality of the social sciences,” or using fictionalized accounts to critique the law.

My project is largely empirical. I find literary language in the law of nonprofits, sometimes in the very text of the law. And I identify nonprofit law as central to the plot of a famous novel. These observations about the connections between nonprofit law and literature may help us understand how nonprofit law has lasted so long in such incomplete and imprecise form. And the example of law in literature I discuss below addresses nonprofit law with such skill that it brings to life the subtleties of the law and, importantly, its unavoidable costs to human flourishing that a reading of statutes or cases might not highlight.

In the first Part of the Essay, I focus on literature in law. I discuss William Langland’s fourteenth century poem Vision of Piers Plowman and its links to nonprofit charities law. As has been noted by charities scholars,
the poem is strikingly similar to the Statute of Elizabeth’s Preamble.\textsuperscript{19} Whether the poem is a direct source of the Preamble or merely a striking parallel to it, the connection suggests an untapped possibility for narrative techniques in nonprofit law. The use of literary sources in this body of law and in its interpretation may serve a significant function in creating a rich understanding of charities despite the relatively undeveloped nature of the doctrine. In Part II, I shift to law in literature. I offer the prominent, and also much-discussed, example of Anthony Trollope’s \textit{The Warden}. That Trollope lifted the outlines of his story from contemporary charities cases suggests that this area of law is ripe for narrative approaches to understanding the law and that nonprofit law can serve as a source for engrossing literature. By the end of the Essay I hope to show that my students might be on to something. Despite their imprecision, their words are made comprehensible by reference to a rich background understanding of nonprofits and nonprofit law, some of which comes from the interplay of law and literature as well as popular discourse. In other words, we can fill in their legal talk with cultural knowledge, including literary knowledge. This may well be just how nonprofit law operates. At least I hope to show that nonprofit law makes for a great read.

I. LITERATURE IN NONPROFIT LAW: \textit{THE VISION OF PIERS PLOWMAN}, THE STATUTE OF ELIZABETH, AND AMERICAN CHARITIES LAW

This Essay is not the place for a thoroughgoing review of the law of charities which, in recognizable form, dates to first century Rome and possibly ancient Egypt.\textsuperscript{20} Nor—unfortunately, since it is a fascinating story—is this the place for a review of the struggle between Henry VIII and the Church over the property rights of charitable corporations. At the time, the Church’s charitable corporations held “an estimated one-third to as much as one-half of the entire wealth of England.”\textsuperscript{21} Talk about theater. Obviously a detailed review of the mortmain statutes and all the drama that history entailed is too much for a short essay on nonprofits and narrative. But you should not be deceived into thinking that stories in charities law, replete with villains and heroes, are a recent phenomenon.

\begin{footnotesize}
\begin{enumerate}
\item[\textsuperscript{20}] Fremont-Smith, \textit{supra} note 9, at 3.
\item[\textsuperscript{21}] \textit{Id.} at 23 (citing William A. Orton, \textit{Endowments and Foundations}, in \textit{5 Encyclopedia of the Social Sciences} 531 (1931)).
\end{enumerate}
\end{footnotesize}
As a reminder of how far back the link between narrative and nonprofits goes, I'll begin at the common starting point for charities law scholars, 1601, with the Statute of Charitable Uses (also known as the Statute of Elizabeth). In addition to being the convention among charities lawyers, starting here makes sense for my purposes. The Preamble to the Statute of Elizabeth, which enumerates several charitable purposes, both (1) shaped the range of acceptable charitable purposes in later English and American law and (2) closely resembles a famous fourteenth century poem.

A. The Statute of Elizabeth and *Piers Plowman*

The Statute of Elizabeth, “An Acte to redresse the Misemployment of Landes Goodes and Stockes of Money heretofore given to Charitable Uses,” was intended to clean up misuse of charitable assets and provided for the appointment of a charities commission. It begins with a Preamble that includes the following list of charitable purposes:

relief of aged, impotent and poor people, for maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars in universities; for repair of bridges, ports, havens, causeways, churches, sea-banks and highways; for education and preferment of orphans; for or towards relief stock or maintenance for house of correction; for marriage of poor maids; for supportation aid and help of young tradesmen, handicraftsmen and persons decayed; for relief or redemption of prisoners or captives, and for aid or ease of any poor inhabitants concerning payment of fifteens, setting out soldiers, and other taxes.

As several scholars have previously noted, this list is remarkably similar to one found in William Langland’s fourteenth century poem *Vision of Piers Plowman*, in which Truth advises rich merchants about the path to salvation:

> Merchants to the good had many years,  
> But none a poena et a culpa would the pope them grant,  
> For they hold not her holy days as Holy Church teacheth,  
> And they swear ‘by their souls’ and ‘so God must them help’  
> Clean against conscience merchandise to sell.  
> But under his secret seal Truth sent them a letter  
> That they should buy boldly what they liked best,  
> And afterwards sell again and save their profits  
> Therewith to amend maisons Dieu and miserable folk help;

22. Statute of Charitable Uses, 43 Eliz. 1, c. 4 (1601) (Eng.).
To repair rotten roads where plainly required;
And to build up bridges that were broken down;
Help maidens to marry or make of them nuns;
Poor people and prisoners to find them their food;
And set scholars to school or to some other craft;
Relieve poor religious and lower their rents --
'And I shall send you myself Michael mine archangel,
That no devil shall you daunt nor fright you at death, . . . .24

As in the Preamble to the Statute of Elizabeth, drafted well over two
hundred years after the poem, relieving suffering, repairing public infra-
structure, getting food to the poor and to prisoners, and supporting scholars
all count as doing good. As was fitting of the time, religious purposes were
somewhat limited. Joseph Willard explained in an 1894 article in the Harvard Law Review:

the "releve religion" of the poem is narrowed in the act to the "repair of churches;"
and the "marien maydenes, or maken hem nonnes" is shorn of the latter clause by
the Protestant legislature of the daughter of Tudor King Harry; as indeed it would

24. WILLIAM LANGLAND, THE BOOK CONCERNING PIERS PLOWMAN (Rachel Attwater ed.,
Donald Attwater & Rachel Attwater trans., 1957), available at
http://www.courses.fas.harvard.edu/~chaucer/special/authors/langland/pp-pass7.html (pro-
viding a translation of The Vision of Piers Plowman, known as the B-text version). The
original reads:

Ac under his secret seel Truthe sente hem a lettre,
[And bad hem] buggen boldely what hem best liked
And sithenes selle it ayein and save the wynnyng,
And amende mesondieux thermyd and myseise folk helpe;
And wikede weyes wightly amende,
And do boote to brugges that tobroke were;
Marien maydenes or maken hem nonnes;
Povere peple and prisons fynden hem hir foode,
And sette soolers to scole or to som othere craftes;
Releve Religion and renten hem bettre.
"And I shal sende yow myselfe Seynt Michel myn angel,
That no deval shal yow dere ne [in youre deying fere yow],
And witen yow fro wanhope, if ye wol thus werche,
And sende youre soules in saufte to my Seintes in joye.'
hardly have become them to have treated that as a charity which her father had regarded as treason, or to have peopled the convents which he had broken up.\textsuperscript{25}

The absence of religious purposes in the Preamble did not mean that religious uses could not be charitable uses during the seventeenth century. Although commonly referred to as a comprehensive list, the Preamble was not meant to define all acceptable charitable purposes. Rather, at least at the time it was drafted, the Preamble defined those uses "deemed to be within the equity of the statute" and to be enforced by the charity commissioners.\textsuperscript{26} Those wishing to establish trusts for religious purposes needed to "proceed by simple bill or, in later years, by information."\textsuperscript{27} Later, however, the courts relied more heavily on the Preamble, concluding that "the limits assigned to the statute of Elizabeth are sufficiently extensive to take in almost every act, purpose, or object which can be considered as having any legitimate connection with charity."\textsuperscript{28}

The link between the poem and the law is unsettled. Some scholars believe that the law was derived directly from the poem, which, if true, would be a striking example of literature as law. Willard, for example, found "an enumeration of charitable objects so full and so closely similar to that of the act, that it seems as if the Protestant Parliament of Elizabeth had borrowed the great church-reforming poet's verses for the staple of their enactment."\textsuperscript{29} James Fishman envisions a different route between the poem and the Preamble, reporting that "[t]he poem was an important part of radical Reformation literature," and was used for contemporary political purposes in the sixteenth century.\textsuperscript{30} Fishman further suggests that although the manuscript of the poem had circulated since Langland wrote it in the fourteenth century, it makes sense that the poem was ripe for use in the sixteenth century because it was only published in book form in 1550.\textsuperscript{31} And it may

\begin{itemize}
\item \textsuperscript{25} Willard, supra note 23, at 71.
\item \textsuperscript{26} GARETH JONES, HISTORY OF THE LAW OF CHARITY 1532-1827 120 (1969).
\item \textsuperscript{27} Id. at 58.
\item \textsuperscript{28} Id. at 133 (citing W.R.A. BOYLE, A PRACTICAL TREATISE ON THE LAW OF CHARITIES (London 1857)). See also JEAN WARBURTON, TUDOR ON CHARITIES 3 (9th ed. 2003) (explaining that although it was not intended to do so, "the preamble has had a limiting effect because the judges have not felt it open to them to hold purposes charitable unless they could fairly be said to be within the spirit and intendment of the preamble" (citing Morice v. Bishop of Durham, (1804) 9 Ves. 399, 405, per Sir William Grant M.R.; Williams' Trustees v. IRC, [1947] A.C. 447, 455, per Lord Simonds)).
\item \textsuperscript{29} Willard, supra note 23, at 70.
\item \textsuperscript{30} Fishman, supra note 19, at 46 & n.187 (explaining that the poem had been censored as anti-clerical for nearly two hundred years, but publication was permitted in 1547 as "An Act for the Repeal of Certain Statutes Concerning Treasons" (citing 1 Edw. 6, c. 12 (1547))).
\item \textsuperscript{31} Although it was only printed in 1550, there were many manuscript versions in circulation before then. Sarah A. Kelen, Peirs Plouhman [sic] and the "formidable array of
be that Langland wrote in a manner easily accessible and ripe for copying by those drafting statutes because he had "extensive knowledge of legal theory and practice," and there is some evidence that he was a legal scribe and had legal training.32

Other scholars, however, are skeptical that Parliament lifted the text directly from the poem. Blake Bromley dismisses as romantic "the notion that an epic religious poem inspired the Preamble's creation," and instead argues that the Preamble is a reflection of the Elizabethan state's agenda for charitable giving.34 He demonstrates that the same list of purposes enumerated in the Preamble can be found in the titles of various Tudor statutes passed around the same time and that the lists in the Preamble and the poem are not identical; "the absence of any reference to hospitals in the Preamble is [conclusive] evidence that the Vision of Piers Plowman is not the Preamble's source."35 Observing the similarities between the two sources, Professors Keeton and Sheridan infer that:

[This] fourteenth-century poem strikingly anticipates the language of the definition contained in the statute of 1601, and it would therefore seem, not that the framers of the statute consciously borrowed from Piers Plowman, but that the essential elements of the definition were already well-established and were generally known so early as the fourteenth century.36

In fact, according to Langland scholar Joseph Wittig, "Piers Plowman has had an enthusiastic audience from the time it was written," probably not for literary reasons but because it "celebrat[ed] long-cherished ideals."37 It was issued three times in the first year it was printed.38 That the poem was likely written in a western dialect,39 somewhat different from the English used by the Courts when the Preamble was drafted, also makes it unlikely that the Preamble was copied from the poem. Still, the poem and the Preamble are awfully similar.

Regardless of whether the poem was reproduced in the statute or the content of the poem independently percolated through sixteenth century
society, the similarities suggest some observations about nonprofit law and narrative. First, law and literature count the same human endeavors as pursuing good. Maybe this isn’t so surprising. After all, one could trace a great deal of the secular law straight to the Bible. Even so, the literary structure in the Preamble is striking, as is the fact that poetry advising the reader on how to get into heaven found its way into statute.40

Second, the law that uses the same language as the poem, the Statute of Elizabeth, is a law of great consequence. It outlined which organizational purposes were granted:

(1) the [substantial] privilege of indefinite existence; (2) the privilege of being valid, even if the gift was in such general terms that it would be void for uncertainty if for non-charitable purposes ...; and (3) the privilege of obtaining fresh objects, if those laid down by the founder were, either initially or subsequently, incapable of execution .... 41

Third, although statute drafters are not usually poets, or certainly not poets of Langland’s stature, the Preamble is good reading.

B. English and American Charities Law

The observations regarding the similarity between the Statute of Elizabeth and Piers Plowman are not only of historical interest. It may be true that sixteenth century lawmakers were better poets or, at least, knew their poetry better than our lawmakers. But the Preamble has been valid law for centuries; indeed, some contemporary judges use it, and charities scholars debate it even today. The poetic language has remained compelling to judges, lawyers, and scholars alike.

The Preamble to the Statute of Elizabeth was legally binding for English charities until quite recently. When the statute was repealed in 1888, the Preamble was explicitly preserved.43 And, although the Charities Act of

40. See generally White, supra note 4 (discussing the connection between legal texts and other narrative material).
41. KEETON & SHERIDAN, supra note 36, at 1.
42. See infra notes 51-60 and accompanying text.
43. See Mortmain and Charitable Uses Act, 1888, 51 & 52 Vict., c. 42 (Eng.) (repealing the Statute of Elizabeth). Although the schedule of Acts Repealed indicates that, regarding the Statute of Elizabeth, “The whole Act” is to be repealed, Section 13(2) preserves the Preamble. Id. It reads,

Whereas by the preamble to the Act of the forty-third year of Elizabeth, chapter four (being one of the enactments hereby repealed), it is recited as follows:

... [the act then recites the Preamble] ... and whereas in divers enactments and documents reference is made to charities within the meaning, purview, and interpretation of the said Act:

Be it therefore enacted that references to such charities shall be construed as references to charities within the meaning, purview, and interpretation of the said preamble.
1960 "repealed the law of mortmain: the Act of 1888, and hence the provision therein which preserved the preamble," it redefined charity with reference to sources outside of the act, presumably including the case law which continued to rely on the Preamble. It was not until only a few years ago when things really changed. The Charities Act of 2006 amended English charities law by expanding the categories of charity and imposing the requirement that charities advance a public benefit. So maybe, after four centuries, the Preamble, if not dead, is resting.

The Preamble has also had tremendous influence on American charities law. The Statute of Elizabeth has been explicitly invoked throughout the history of American charities law. Many of the same charitable purposes contemplated by English law were imported into colonial law. Not all states, however, directly imported English statutes. Following the American Revolution, some states repealed all English statutes, including the Statute of Charitable Uses and its Preamble. In fact, the U.S. Supreme Court ruled that, in those states, the chancery courts did not hold equitable powers over charitable dispositions because such powers derived from the Statute of Elizabeth; this view, however, subsequently came to be seen as mista-

Id.; see also Pemsel v. Comm'rs of Income Tax, (1888) 22 Q.B.D. 296.
44. WARBURTON, supra note 28, at 3.
45. See Charities Act, 1960, 8 & 9 Eliz. 2, c. 58, § 38(4) (Eng.) ("Any reference in any enactment or document to a charity within the meaning, purview and interpretation of the Charitable Uses Act 1601, or of the preamble to it, shall be construed as a reference to a charity within the meaning which the word bears as a legal term according to the law of England and Wales.").
46. JONES, supra note 26, at 133 n.4. See also McGovern v. A-G, [1982] Ch. 321, 331 ("[T]he law requires a number of conditions to be fulfilled before trusts can be accepted as being charitable. The general rule is that in order to achieve charitable status a trust, however philanthropic, must satisfy each of the following three requirements. (1) It must be of a charitable nature, within the spirit and intendment of the preamble to the Charitable Uses Act 1601 . . . as interpreted by the courts and extended by statute," as well as other requirements.)
47. Charities Act, 2006, c. 50, §2(1)(b) (Eng.). Guidance regarding the definition of public benefit can be found at www.charity-commission.gov.uk. According to the American Law Institute's Principles of Nonprofit Organizations, "Just over 400 years later, the Charities Act 2006 became law. (The Charities Act applies in England and Wales; Scotland's 2005 version differs slightly, and Northern Ireland's law is still being drafted.) The Charities Act expands the categories of purposes that qualify as charity, requires charities to prove how they benefit the public, and increases the Charity Commission's role in compliance and enforcement." American Law Institute, Principles of the Law of Nonprofit Organizations, pt. II, ch. 1, at 17 (Preliminary Draft No. 5, Feb. 2009).
49. Id. at 219-21.
Even in those states that rejected English statutes, the purposes enumerated in the Preamble provided some guidance for colonial law.

Although not an exhaustive review, consider the following examples of the prominence of the Preamble in American legal argument and law. In *Trustees of Dartmouth College v. Woodward*, the Supreme Court declared that Dartmouth was a private corporation, established by a charter that formed a contract with the government, and that, therefore, the governor could not determine its board membership without violating the contract. Arguing for the trustees, Daniel Webster invoked the Statute of Elizabeth to demonstrate that the college's "laudable and charitable design of spreading Christian knowledge among the savages of our American wilderness," was a proper eleemosynary purpose and, therefore Dartmouth was an eleemosynary corporation, a species of private corporation. He said:

Eleemosynary corporations are for the management of private property, according to the will of the donors. They are private corporations. A college is as much a private corporation as a hospital; especially a college founded as this was, by private bounty. A college is a charity. "The establishment of learning," says Lord Hardwicke, "is a charity, and so considered in the statute of Elizabeth. A devise to a college, for their benefit, is a laudable charity, and deserves encouragement." The legal signification of a charity is derived chiefly from the statute 43 Eliz., c. 4. "Those purposes," says Sir. W. Grant, "are considered charitable which that statute enumerates." Colleges are enumerated as charities in that statute.

American courts have frequently cited the statute to identify the range of purposes typically identified as charitable. In the 1838 *Case of The Medical College of Philadelphia*, the counsel for the college relied on the Preamble as evidence that the medical college was a Pennsylvania charity. In 1839, the New York Chancery Court noted "that bequests to charity, not within the enumeration of the Statute of Elizabeth, have been since, though rarely sustained," and, rather repetitively, that the statute "has been adopted as defining what are to be regarded as charitable objects which this court will protect. It is an enumeration of those objects which are to be deemed charities. It has been taken as a specification of what are charitable uses . . . ."
American courts also occasionally noted that they were not constrained by the list, but the protests sometimes rung hollow. In a 1941 decision regarding the appropriateness of a Board of Tax Appeals disallowance of a deduction from the estate tax for a bequest to a temperance board, Judge Clark of the Third Circuit Court of Appeals refrained from “[a]ny extended discussion of the Statute of Elizabeth and the incorporation of . . . its preamble in English and American law,” to avoid being “pedantic.” He protested that “any emanation from Elizabethan days cannot be currently conclusive.” Yet he then went on to cite the entire Preamble and, ultimately, relied on scholarly views on the appropriate scope of extensions to the statute as a suitable basis for interpreting the 1926 Internal Revenue Code.

A few years later, a dissenting Justice of the Supreme Court of Ohio reminded the majority:

Our modern concept of what is or is not a charitable purpose is based upon the enumeration of charitable purposes in the preamble of the Statute of Elizabeth, 43 Elizabeth, Chapter 4, commonly known as the Statute of Charitable Uses adopted by Parliament in 1601. One of the charitable purposes therein enumerated was the “maintenance of sick and maimed soldiers and mariners.”

The influence of the Preamble on American law continues to this day. In its February 2009 draft document on charitable purposes, the American Law Institute introduces the subject by explaining that, while the definition of permissible charitable purposes is evolving, “[c]haritable organizations are defined under a common law tradition that traces back to the Statutes of Elizabeth in the fifteenth and early sixteenth centuries.” The link is made explicitly since “[t]he list of charitable purposes set forth in subsection (a) traces back to the famous preamble in the Statute of Charitable Uses.”

What counts as an acceptable charitable purpose today differs by state, but state law and commentators frequently look to the federal income tax code for their definition. Section 501(c)(3) defines public charities as:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no

56. See, e.g., Fontain v. Ravenel, 58 U.S. 369, 375 (1854) (“We are neither dependent upon the Stat. 43 Eliz., or the common law prerogative, to sustain such a charity.” (citing 2 How. 195)).
58. Id.
59. Id. at 112-14.
62. Id. at 17.
part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

This list is not reproduced from either Langland or the Preamble. We no longer enumerate marrying off maidens as a good work (although caring for destitute single mothers does count) and many organizations with purposes that fall outside of either Piers’s vision or the Preamble to the Statute of Elizabeth receive federal tax exemption (for example, amateur athletic groups that do not provide facilities). But the Preamble does come into play.

For example, a great deal of effort goes into defining the term “charitable” in the tax code (and, as mentioned above, elsewhere). The definition of “charity” is legal, and its meaning is not based on a contemporary, popular understanding of charity as consisting of gifts to impoverished beneficiaries. But neither does its legal meaning come from statute. In fact, the Service does not itself define charity in nonprofit regulation. It refers to the common law, which is deeply informed by the Preamble.

In addition to providing legal content, attention to the Preamble can aid contemporary legal interpretation. Trying to define “charity” is challenging in part because the meaning of language changes over time (a problem that Professor Sanford Levinson identified as both a subject of literary criticism and a problem for constitutional interpretation). Meanings change over the short term, but they change considerably over a period of 400 years, and this evolution makes interpretation hard. Yet, in our struggle to interpret words, the Preamble still offers help. For example, in a policy debate about a seemingly unrelated and utterly contemporary problem in health policy—whether nonprofit hospitals merit their federal tax exemp-

64. Even before the establishment of tax exemption for U.S. charities, Joseph Willard helpfully explained the difference between the common and legal definitions of charity: While . . . the law of charities had its main roots in the religious notions of the medieval period, it would be a mistake to look exclusively to the religious or moral side of charity for the origin of our law. “Undoubtedly,” says a distinguished jurist [J. Dwight], “in one sense charity may be defined to be all the good affections which men ought to bear to each other; but, before the matter becomes the subject of legal cognizance as a charity, there must be a gift to a general public use. This may in some cases embrace the rich as well as the poor.” Willard, supra note 23, at 71 (citation omitted).
66. See generally Sanford Levinson, Law as Literature, 60 TEX. L. REV. 373 (1982). Unlike Levinson’s point, mine is rather blunt. I am not demonstrating either that language is indeterminate or that such indeterminacy generates uncertainty for the law. I only wish to say that the Preamble is a source that can help reduce indeterminacy.
tions—I discussed the Preamble, *Piers Plowman*, and changing meaning of the term “mysese” and whether it meant sick specifically in terms of health or more generally in terms of misery and suffering. A contemporary charities scholar remarked that “[v]iewing the . . . categories [accepted as charitable] as substantially the totality of the concept of charitable, there is a striking similarity between the Preamble to the Statute of Charitable Uses enacted in 1601 and the Department of the Treasury regulation under IRC § 501(c)(3).” So maybe Langland has had a hand in drafting our laws as well.

II. NONPROFIT LAW IN LITERATURE: ST. CROSS HOSPITAL AND *THE WARDEN*

Nonprofit law is not only concerned with judging whether organizational purposes qualify as charitable. It also polices existing charities and their fiduciaries for abuses, particularly the diversion of charitable assets from their intended uses. Although the purposes listed in the Preamble have attracted most observers’ attention to the statute over the past 400 years, the statute was designed to prevent the misuse of existing charitable assets.

As recent press reports suggest, abuses of charitable assets did not end in 1601. The *New Yorker* recently published “Rich Bitch,” an article about Leona Helmsley’s charitable bequests. The piece focuses on the eight billion dollar bequest to a trust for “‘purposes related to the provision of care for dogs,’” but also discussed the more general legal issues related to bequest to pets. There have been many other stories in the popular press. Did ACORN inappropriately engage in electoral activities and voter registration fraud? Remember William Aramony and his girlfriend living the high-life on the United Way’s tab? How about the foundations associated with Fannie Mae and Freddie Mac excessive lobbying against regulations that would apply to the mortgage lenders? And what of the Mormon


69. Statute of Charitable Uses, 43 Eliz. 1, c. 4 (1601) (Eng.).


71. *Id.*
Church's work opposing California Proposition 8? Or those ministers politicking from the pulpit during the 2004 Presidential election?

Just as these scandals fascinate us now, the major charities scandals of the nineteenth century similarly captured the public imagination. They even found their way into popular fiction. Charles Dickens offered a thinly veiled account of the misuse of funds at the Cathedral Grammar School at Rochester in Household Words. He identified as "serious mischief . . . an unaccountable increase in the incomes of the Dean and Chapter, and a most extraordinary stagnation and stand-still in the funds allotted to the scholars." Here I focus on another major scandal from the mid-nineteenth century involving fiduciary breaches at an ecclesiastical institution, a scandal involving St. Cross Hospital near Winchester. (The almshouse, purportedly "England's oldest continuing almshouse," still exists as a registered charity).

The St. Cross Hospital scandal provided a gripping plot for Anthony Trollope's The Warden, the first of Trollope's Barsetshire novels, and to a somewhat lesser extent, Barchester Towers. Like those in Rochester, St. Cross Hospital's difficulties were widely publicized. Keats found St. Cross "a very interesting old place, both for its gothic tower and alm-square and for the appropriation of its rich rents to a relation of the Bishop of Winchester," noting that it was "a charity greatly abused." The widespread appreciation of actual and fictional narratives regarding charities scandals over the past several centuries presupposes a fairly rich idea about how nonprofits should and are required to operate.

Trollope refers to St. Cross explicitly in the novel. At the beginning of Chapter Two, he describes St. Cross to set the context of public agitation
regarding impermissible uses of charitable funds: “The well-known case of the Hospital of St. Cross has even come before the law courts of the country, and the struggles of Mr. Whiston, at Rochester, have met with sympathy and support. Men are beginning to say that these things must be looked into.” Although at least one scholar finds it “strange that [Trollope’s] commentators have paid so much attention to St. Cross and none at all . . . to Rochester,” the St. Cross case facts are strikingly similar to those in The Warden and, beyond the general wrong of diverting charitable funds, not much at all like those at Rochester.

A. St. Cross Hospital

The history of St. Cross is long and complicated. Since detailed accounts are provided elsewhere, I’ll summarize only the relevant facts here, reporting mainly from Robert Martin’s chapter on St. Cross in his history, Enter Rumour: Four Early Victorian Scandals. The St. Cross scandal, was a source of growing public frustration at the self-interested and widespread practices of the church. It centered on Reverend Francis North whose father, the Bishop of Winchester, “collated him to the Mastership of St. Cross Hospital, Winchester,” the last of multiple and lucrative positions he had assigned to his son. In appointing his son, the Bishop was merely continuing a long tradition of nepotism. He himself had been granted one of the most lucrative of all ecclesiastical positions in England in 1781 by King George III through the maneuverings of his brother, the Prime Minister and later the Earl of Guilford. Unfortunately for Reverend North, the public was soon to lose patience with such practices.

St. Cross Hospital was founded in the twelfth century by Henry de Blois, the grandson of William the Conqueror, to:

provid[e] for “thirteen poor impotent men and so reduced in strength as rarely or never to be able to support themselves without the assistance of another.” They were to be given food, clothing, and lodging, and besides these, one hundred “other poor men of good conduct, and of the more indigent” were to receive free dinners.

80. TROLLOPE, THE WARDEN, supra note 77, at 10.
83. MARTIN, supra note 78.
84. Id. at 154.
85. Id. at 138, 142-43.
86. Id. at 157.
During its early history, it was administered by the Hospitallers of St. John, but "passed under the direct supervision of the Bishop of Winchester in 1303." By the seventeenth century it was claimed that the original governing documents were lost. Thereafter hospital operations were guided by a document known as the Consuetudinarium, which included the provisions allowing the master to benefit from profits related to the leases of lands. Additional purposes were added to the foundation over the years, including provisions for supporting "men of gentle birth who were reduced in the world."

Over time, as the property holdings had grown increasingly valuable, the Master’s revenue share, compared to the brothers’ share, grew considerably. This was not only because the brothers’ share was identified as a fixed sum, but also because the Master used a system of leasing on fines, such that in exchange for a single large sum he leased the lands for a low rent over multiple generations.

The fines became the property of the Master, with a deduction of 2d. in the pound for each Brother and 6d. for the Chaplain; this deducted sum was added to the relatively small annual rent roll and applied against the running of the Hospital, so, although it appears at first to have come out of the Master’s pocket, it actually was a purely paper deduction from his income. The fine system meant that for years in advance the property and its fair income were alienated from the Hospital for the sake of immediate cash.

Reverend North’s unusual appointment as lay, rather than spiritual, Master exacerbated the inequity. It allowed him to earn the fines in exchange for signing the leases while leaving the Steward to manage the hos-

87. Id. at 157-58.
88. The precise purposes of the original charity are not known, possibly because the hospital statutes were lost. "By 1696 quarrels between the Master and the Brethren led to the drawing up of a Consuetudinarium, or Customary, which recorded the prevailing practices of the Hospital and those within the memory of the oldest members." Id. at 158. This document, which was submitted "to the Bishop, as Visitor, for ratification as a guide to future conduct of the charity," included provisions directing "that the Master is to receive all profits and revenues, out of which he is to bear the whole charges of the establishment, and that, if there is any surplus, he has the right to retain it himself." Id. at 158-59. In addition, the Master was to control the leases, had rights to the personal estates of the Brothers who died in the hospital, and powers "to appoint the Chaplain and Steward of the Hospital"; each brother was to receive "2d. in the pound on the amount paid for the renewal" of each lease and the Master was to receive the rest for his personal use. Id. at 159.
89. Id. at 158.
90. Although the inmates were known as the "brothers of St. Cross," they were not monks. The Hospital of St. Cross, History, http://www.stcross.f2s.com/history (last visited May 20, 2010). Brothers still live in and manage the hospital. See The Hospital of St. Cross, Becoming a Brother, http://www.stcross.f2s.com/becomeabrother.htm (last visited May 20, 2010). Applicants must be over sixty years old and no longer employed. Id. For application forms, see id.
91. MARTIN, supra note 78, at 159.
pital and the Chaplain to perform the religious duties for the hospital and the Parish. (The fictional character in *The Warden* held both offices). Apparently Reverend North was a generous and caring Master. He provided extra services for the Brethren from his own funds and raised the stipends of the Brethren, Steward, and Chaplain. When Reverend North became the Earl of Guilford in 1827 (the title passed from his uncle, the Prime Minister, and his cousins first), he resigned several of his many benefices, but not the Mastership of St. Cross.

Over time, public attention turned to the large disparity between the funds going to Reverend North and those going to charity (to the Brethren and to other poor citizens whose tithes largely went to the Earl). The papers also took note of the corrupt fine system. At a legislator’s urging, the Queen ordered her attorney general to initiate an investigation of the charity, during the course of which the original governing documents were found, most of them in the Hospital. After lengthy proceedings in which Lord Guilford defended himself on the grounds that he followed the terms of the Consuetudinarian, the Master of Rolls found for the Attorney General. Despite its victory in court, the fate of St. Cross was grim. The Hospital was placed into receivership and run by a fifteen-member trusteeship. Although its remaining assets were protected from theft, the most valuable assets had to be sold off, leaving the Hospital quite poor by the time the receivership was lifted in 1861.

B. *The Warden*

The legal problems at the center of *The Warden*—diversion of charitable assets and the dead hand—are the same as those at the center of the St. Cross scandal. The story centers on a well-intentioned and mild clergyman, Reverend Septimus Harding, the warden of the almshouse called Hiram’s Hospital. Hiram’s Hospital is just like St. Cross. It was established by John Hiram’s will in 1434 and houses twelve elderly, destitute former laborers

92. *Id.* at 160.
93. *Id.* at 162.
94. *Id.* at 164.
95. *Id.* at 166 (citing an article in the *GLOBE* printed October 21, 1843 that was a reprint of an article from the *HANTS INDEPENDENT*) (“‘By the mode of management now existing in St. Cross Hospital, it will be thus seen that a property belonging to it, and worth two thousand pounds a year, is comparatively valueless to the charity, and totally diverted from the purposes of the donors of the property—the relief and maintenance of the poor and destitute.’”).
96. *Id.* at 168-70.
97. *Id.* at 172.
98. *Id.* at 173. In addition, “[l]eases were to be signed for no more than twenty-one years and without fines. The Master was to receive a salary of £250 and was required” to perform religious services. *Id.*
known as bedesmen. The action starts with the discovery by Mr. John Bold—an arrogant and impulsive young surgeon as well as the suitor of Harding’s youngest daughter—that the Warden has been earning an annual income of £800 while the inmates receive only one shilling six pence per day.  

This seemingly inequitable state of affairs had come about because Hiram’s will specified that the bedesmen were to earn a fixed amount (six pence per day) while, at least according to some participants in the drama, the Warden’s income was to come from current rents on the estate.  

Hiram and his lawyers had obviously considered neither inflation nor the appreciation of property values. (The bedesmen earned a little more than the will specified because the local church authorities authorized a small adjustment and because Harding, like his real life counterpart, supplemented their income from his personal funds). Bold, certain that the inequitable payments violated the terms of the charitable trust, convinced some of the bedesmen they were entitled to 100 pounds per year. The rest of the story traces Bold’s case, pursued in court and the newspapers, and its grim consequences for all the parties concerned.

Although Trollope found the plot in contemporary news stories and used it with few changes, The Warden is really a fictional account about a legal doctrine rather than a particular legal conflict. Surprisingly, even if the reader knows nothing about the historical setting or about the laws governing estates or charities, it is also a good story. Although not blockbusters, The Warden and its sequel, Barchester Towers, sold moderately well over a long period.  

In fact, The Warden caught the public’s attention and contributed to Trollope’s reputation as a major novelist.  

Harding’s struggle is not merely the story of a personal struggle set against the backdrop of a charity scandal. Although the novel is commonly understood as a story about church corruption and the resulting drive for reform, I think this characterization does not fully capture the story. The story is not merely about the church as a church. Had Hiram’s bequest been for the use of the church itself the story could have focused on corruption, but it would have been a different tale. That the wrongdoers are men of the cloth makes it a juicier and more timely story for the 1850s than if the organization had been secular—but the misuse of funds is misuse because of the legal obligations that flowed with them as charitable assets, not because


100. Id. at 3, 4.

101. TROLLOPE, AUTOBIOGRAPHY, supra note 79, at 94 (“The two novels] together have given me almost every year some small income. I get the accounts very regularly, and I find that I have received £727 11s. 3d. for the two. It is more than I got for the three or four works that came afterwards, but the payments have been spread over twenty years.”).


103. See, e.g., id. at 75, 78 (citing the criticism of The Warden and Barchester Towers in The Times in 1857 about the books as a treatment of the clergy).
it was clergymen who were using them incorrectly. Nor do I think Henry James’s claim that *The Warden* “is simply the history of an old man’s conscience”\(^\text{104}\) fully captures the story. The source of Harding’s troubled conscience is not whether he is being good, but whether he is being faithful to Hiram’s wishes as expressed, imperfectly, in the will. This is why I think that the legal story of the nonprofit organization—Hiram’s hospital—is the nut of the thing.\(^\text{105}\)

Moreover, the parties, their spoils, and their roles in the legal system form the novel’s structure. The hospital, the plaintiff, the defendants, and the press (which really raised the stakes) each get separate chapters that detail their roles in the conflict and their legal and public relations maneuverings. What we know about the characters frequently comes from what the characters believe about the law. Trollope’s picture of the gluttonous Archdeacon Grantly (the Bishop’s son and Harding’s father-in-law) and his family comes not only from the detailed portrait of the riches in their home and the weight of the food on their table, but also from Grantly’s belief that the church’s wealth rightly flows to him, his family, and his friends. We know that Harding is a kind, principled, and somewhat befuddled man only in part because of his love for his daughters and his generosity with the hospital’s inmates. We learn about his character most clearly, however, from his struggle to do what is right according to the law, even if it has disastrous consequences for him and the inmates about whom he cares a great deal.

I don’t think the Trollope’s subtly drawn picture of the law is merely an unintended consequence of his particular efforts to create characters who are recognizably human rather than, as he terms it, “puppets.”\(^\text{106}\) I think it is because the law, like Trollope’s characters, is subtly drawn. So not only does literature explain nonprofit law, but law illuminates literature. Trollope is a novelist first and foremost, and his characters are not there to make points or as stand-ins for legal arguments.\(^\text{107}\) This is why Trollope’s use of the law is so successful. It adds depth to portraits of the fictional characters.

Through the story we learn about the logic and limits of charities law, particularly the difficulty of honoring the dead hand and the costs of doing so. The legal struggle in *The Warden* does not easily admit of heroes and

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104. *Id.* at 99 (quoting HENRY JAMES, PARTIAL PORTRAITS 113 (London, MacMillian & Sons 1899) in a chapter on contemporary criticism of Trollope’s novels).

105. Well, maybe one nut. Martin thinks the St. Cross story is one of political reform: “St. Cross was important because it was a dramatic setting of the meeting between vested, traditional privileges and the modern urge to reform . . . .” MARTIN, supra note 78, at 13.

106. TROLLOPE, AUTOBIOGRAPHY, supra note 79, at 215-16, 277.

Trollope even makes a slightly sympathetic case for the church when, in describing the St. Cross case, he notes the Church’s claim that the assets were being well-used by rewarding servants of Christianity. He is dead-on regarding the law when his narrator implies that it doesn’t matter whether the Church is using the funds for good purposes, a questionable proposition in any event. If those purposes aren’t in accord with the founder’s wishes as expressed in the will, the Church must either comply or apply to the court for help in changing the purposes. In fact, according to the narrator, “it is asserted that Henry de Blois, founder of St. Cross, was not greatly interested in the welfare of the reformed church.”108 The reader learns that the crux of the battle between the Church and the reformers is about which side better represents the founder’s intent.

This charities law story bears no resemblance to Professor Kuykendall’s description of business law stories:

Business movies explore themes about money, greed, sex, the pace and excitement of velocity in trading, fathers and sons, and modern gadgetry, but they virtually never present a coherent narrative of corporate financial logic or point to a conclusion about business, except at the highest level of generality about the emptiness of modern organizational culture.109

Much to the contrary in The Warden. The law is the backbone of the narrative structure. The dramatic tension centers on the law’s requirement that the charity pursue the Hospital’s purpose as intended by Hiram, the difficulty of showing fidelity to charitable purposes over time, the legal mechanisms for ensuring that it happens, and the ways in which innocent actors get tripped up in the struggles. (Of course, the book also highlights that arcane legal procedure prevents justice from being done, if one thinks that justice would be enriching the elderly bedesmen at Harding’s expense).110

Further, and it might just be because of my professional interest, but I find the most compelling writing in the novel to be the writing about the case and Harding’s struggle. The stories of Bold’s romantic pursuit of Miss Harding and her response, the Grantly family avarice, the struggle between the senior and junior Grantlys, and other subplots provide amusement and varying perspectives on the main action, but Harding’s story is truly affecting. The old man’s efforts to adhere to the law cause him pain, including physical pain during a feverish episode in London. They also cause the bedesmen pain. Although we don’t get to know the individual bedesmen well, their portraits and the description of the harm that comes to them from pursuing what may well be their legal entitlement as beneficiaries to Hi-
ram’s will are haunting. Harding’s journey highlights how complicated and morally ambiguous the law of charities—a law that balances doing good with fidelity to donors’ wishes—can be. Not surprisingly, Harding, it turns out, was one of the characters of whom Trollope was the proudest.111

Perhaps, therefore, the strongest piece of evidence for the idea that narrative techniques are useful in nonprofit law is that Trollope gets the reader to see the difficulty and consequences of applying imprecise law to complex and changing circumstances. He gets the reader to see this much more acutely than legal texts and non-fiction commentary typically do. In explaining why he wrote sympathetically about the clergymen rather than characterizing them merely as inappropriate beneficiaries of the hospital’s assets, Trollope’s narrative highlights the moral uncertainty that necessarily inheres in even well-intentioned attempts to balance doing good and avoiding doing violence to a donor’s intent. He writes:

I had been struck by two opposite evils,—or what seemed to me to be evils . . . I thought that I might be able to expose them, or rather to describe them, both in one and the same tale. The first evil was the possession by the Church of certain funds and endowments which had been intended for charitable purposes, but which had been allowed to become incomes for idle Church dignitaries. . . . The second evil was its very opposite. Though I had been much struck by the injustice above described, I had also often been angered by the undeserved severity of the newspapers towards the recipients of such incomes, who could hardly be considered to be the chief sinners in the matter.112

Although he explains that when advocating a cause it is better to pick one side or the other, his discussion of his choice to offer a more balanced portrait demonstrates the partiality of the law. As he explained:

It was open to me to have described a bloated parson, with a red nose and all other iniquities, openly neglecting every duty required from him, and living riotously on funds purloined from the poor,—defying as he did do so the moderate remonstrances of a virtuous press. Or I might have painted a man as good, as sweet, and as mild as my warden, who should also have been a hard-working, ill-paid minister of God’s word, and might have subjected him to the rancorous venom of some daily Jupiter, [the newspaper that attacked Harding,] who, without a leg to stand on, without any true case, might have been induced, by personal spite, to tear to rags the poor clergyman with poisonous, anonymous, and ferocious leading articles. But neither of these programmes recommended itself to my honesty.113

He concludes that he came to understand that he was not the man to balance the two perspectives in one work.114 But all evidence is to the contrary. The resulting work is more subtle than Trollope admits in his self-evaluation.

111.  TROLLOPE, AUTOBIOGRAPHY, supra note 79, at 85, 96.
112.  Id. at 81.
113.  Id. at 82.
114.  Id. at 83. In addition, Trollope concluded, “I have already said of the work that it failed altogether in the purport for which it was intended.” Id. at 85. But we don’t have to accept his views on the matter.
There is no better portrayal of the costs of the dead hand than what happens when the terms of Hiram's will are revived. Who can forget the scene in which Harding says goodbye to Bell, the deaf, bedridden, and dying inmate grasping for his bounty? The avarice awakened in a dying Bedesman by the prospect of reinstating the terms of Hiram's bequest is terrifying. As Trollope describes it,

[Poor old Bell had nearly outlived all human feelings. “And your reverence,” said he, and then he paused, while his old palsied head shook horribly, and his shriveled cheeks sank lower within his jaws, and his glazy eye gleamed with a momentary light; “and your reverence, shall we get the hundred a year then?”]

Maybe the tangle of interests that arise in enforcing charitable purposes is why judges have such extensive equitable powers to reform those purposes. Maybe this area of law is of a sort where considering the two perspectives in one work of fiction is the right way to go. And maybe this is precisely why nonprofit law is so ripe for and suited to narrative techniques.

Finally, The Warden instructs readers in how the law works on the ground. It demonstrates the critical choices an advocate encounters in framing his case. For example, The Warden shows how Bold's framing of the case and the particular facts upon which he (and the media) focuses drive the story. Not surprisingly, Bold is not concerned about a violation of the terms of the bequest that is far more certain than the diversion of funds to Reverend Harding. Hiram was a woolstapler and the support he left was meant for twelve superannuated wool-carders. Since there were no longer wool-carders in the area, other laborers benefited. Yet Bold did not seek justice for wool-carders or reformation of the terms of the trust through a cy-pres proceeding. The story that Bold constructs and the media picks up is the story that guides the application of the law.

The Warden also demonstrates how non-legal actors affect the law in action and, in doing so, illustrates the complex interrelationships between law and other social institutions. Bold and the others engage in what may seem like a purely legal battle to rectify the problem that money may not be being distributed according to Hiram's specified purposes. But it is the publicity by the tabloid papers that moves the case along. In fact, the legal professionals drop out of the story altogether once the narrow legal issues that interest them are resolved. As in the real world, therefore, the story doesn't end on the doorstep of the court. It ends with uncertainty about whether Harding will be reassigned as the hospital warden that is not resolved until

115. TROLLOPE, THE WARDEN, supra note 77, at 276.
116. The “climactic courtroom face-offs” that one commonly sees on television are, as David Luban notes, “absurd.” DAVID LUBAN, LEGAL ETHICS AND HUMAN DIGNITY 2 (2007).
the end of the next novel in the Barsetshire series, Barchester Towers. This leaves the reader, rather than the court, to judge the case. 117

Professor Coral Lansbury has noted the judicial role of the reader in arguing that Trollope is a distinctly legal writer. In her book detailing the transactions that form the basis for many of his novels, she builds the case that his novels both take on a legal structure and are informed by legal reasoning:

Trollope is essentially a judicial writer in his willingness to hear all opinions and then let the final decision rest with the reader. One phrase is repeated throughout the novels: “The reader must judge for himself.” This requires more than a passive acceptance of the narrator’s interpretation of events: it calls for the active participation of the reader in the elucidation of character and the moral verdict to be reached. 118

Perhaps this observation does not go far enough. Trollope is not only a legal writer in his ability to demonstrate two sides of a conflict, he is a legal writer in his ability to communicate the complexities of nonprofit law more generally.

CONCLUSION

This brings me back to the beginning. What is the right response to students who want to “work for a nonprofit” or specialize in nonprofit law? Some gentle ribbing is in order. At some level they are being sloppy, and their comments provide a useful opportunity to remind them that the terms they use have distinct technical and popular meanings, even if those meanings develop in reference to each other. But when they speak in shorthand about nonprofits they are speaking with more accuracy than this description credits them. The law itself struggles to define the term “nonprofit,” and “doing something for the public good” isn’t a terrible way to understand at least part of the legal description of nonprofits.

Maybe the students’ understanding of the term nonprofit comes from the narratives about nonprofit law. Not only fiction, but the law itself tells colorful stories about the nonprofit employees, fiduciaries, and nonprofit organizations. These stories fill in a body of law that some have described as impossibly vague. And the law gives readers a way to understand what motivates literary characters, just as those characters’ beliefs about the law tells readers a great deal about the characters themselves. Moreover, as I hope I’ve demonstrated here, parts of it read like poetry because it very well may be poetry. Finally, because important human stories and dramas are at

117. I am grateful to Jim White for bringing this to my attention.
the heart of charities law, stories about how to be good and faithful at the same time, nonprofit law makes for a compelling source of fiction.