



Charities And Foundations In Norway

*A Legal And Financial Framework With Focus On The Olav
Thon Foundation*

Torstein Sandaa-Johansen & Madina Kairova

Supervisor: Guttorm Schjelderup

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Abstract

This paper seeks to examine the history and usage of charities and foundations in Norway. The number of large foundations has been on the rise, along with the interest in the charitable sector. In its purity a philanthropic venture, the borderline philanthropic motivation behind some charity has been questioned because of the tax savings connected to using the organizational form foundation. Specifically, the case of the Olav Thon Foundation's massive tax savings compared to the taxation of Olav Thon as a private individual has been used as an example. What is the impact of the increased use of charity through foundations on the Norwegian society? This paper examines the existing legal regulation and tax legislation on foundations and charity, to analyse how the Norwegian tax and legal system is equipped to handle the increased use of charity through foundations. What are the shortcomings and what are the potential sources of misuse? The examination has been done both by establishing a historic and theoretical background and a legal and taxational framework, and through analysing a relevant case in the transfer of the Olav Thon Group and much of Olav Thon's private fortune to the Olav Thon Foundation. The main findings in this paper are that the existing framework moves funds away from the government, as the collected taxes decrease when money is donated to a foundation, over to foundations with specific bylaws and rules for distribution. This indicates a shift away from a classic social democratic model in Norway. There are also no rules governing how much a foundation is obliged to distribute in grants, in contrast to a comparable country like Sweden. The paper also highlights a need for further empirical research on the impact of charity through foundations, as well as potential additions to the existing legal framework.

Preface

This paper is a part of the Master of Science degree in Economics and Business Administration at the Norwegian School of Economics. Both candidates have specialized in Financial Economics, and has throughout the master's programme gained insight and understanding of the various financial systems. This thesis marks the end of a combined 18 years of education.

The process of writing this thesis has been challenging, and sometimes downright exhausting, but also inspiring and enlightening. Due to the restricted existing literature and knowledge on the subject, it has proved incredibly educational, and has given us both a wealth of knowledge in a narrow but developing field. As the topic of foundations and charity is relatively new to Norway, the main challenge was the lack of existing literature – we found no comprehensive papers about tax and charities in Norway written before. Thus, it is our hope that this thesis can be used as a fundament for further research and development of the knowledge-base on foundations and charities in Norway.

We would like to use this occasion to first and foremost thank our supervisor, Professor Guttorm Schjelderup, for inspiring us on the topic and providing us with advice and guidance throughout the process. We would also like to thank Skattesenteret and Finans|Bergen for their support and confidence in our abilities. Gratitude also goes to our significant others for their patience, motivation and belief in this project. Lastly, we would like to thank each other, for none of this would ever have been finished without the other.

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Introduction

Trusts and charities have long been a known practice in the United States of America (US) and the United Kingdom (UK), but has only recently started moving to Norway and the other Scandinavian countries. This lack in practice may be founded in the extensive, and until recently expanding, welfare system in Norway. After World War II, Norway has almost consistently been governed by social democratic parties, resulting in a far-reaching welfare system. A sharp contrast to the Norwegian welfare model is found in the US, a country with limited federal involvement. Herein lies a possible connection between high use of trusts and charities in the US, and low use in Norway: In the US, private donors and trusts distribute wealth to the needing, while in Norway, the wealth is collected through taxes and distributed by the state.

The practice of charities gained additional media traction when Norwegian billionaire Olav Thon, a man without any direct family, decided to place his entire fortune in the newly formed Olav Thon Foundation (Berglund, 2013). The fortune, measured to somewhere around NOK 26 billion, was a major source of tax income for Hole, the municipality Thon lives in. The municipality operated with a 50% higher tax income than the average Norwegian municipality, and must resort to a budget cut of some NOK 70 million after Thon moved his fortune to his foundation (Brendhaugen & Skafjeld, 2013). This simple example illustrates the effect of moving funds from a private individual to a foundation: There is less tax income for the society as a whole.

The Olav Thon Foundation has received some criticism and had its philanthropic motives questioned due to the tax savings connected to the organizational form foundation, relative to the taxation of private individuals (Stiftelsesloven, 2005). According to the foundation's bylaws, they pledge to distribute up to NOK 50 million every year to charitable purposes, research projects and exceptional entrepreneurship, among others (Stiftelsestilsynet, 2013). In comparison, the Olav Thon Group LTD, the company founded by Olav Thon and fully owned by the Olav Thon Foundation, had a NOK 616 million profit in 2014, meaning they will only distribute around 8% of the profits (Proff.no, 2016). The criticism received is also founded in the tax savings experienced by having the fortune placed in a foundation: An estimate put these annual savings at around NOK 70 million (Berglund, 2013).

This paper seeks to answer the following questions:

1. How is the Norwegian legislation on charities and foundations structured?
2. Is the Norwegian tax and legal system able to handle the increased use of charity through foundations?

To answer these questions, the paper is divided into six main chapters: The first chapter introduces the business ventures and composition of the Olav Thon Foundation. The second chapter gives an outline on charities in an international context, with a specific focus on the UK and the US. This includes a theoretical framework to explain how size, composition and financing vary across charities in different countries. The third chapter explores what motivates charity and philanthropy. Here, different economic models explaining both the need for charity and the reason for charitable giving. In the fourth chapter, the legal framework and historical development of charities in Norway is explained. Both the relevant legislation connected to requirements for charities and tax legislation is explored. The fifth chapter contains an analysis of the Norwegian legislation on charities in view of the Olav Thon case. The purpose of this analysis is to examine how the tax and legal system applies to a foundation, which represents a change in the Norwegian charities sector: An increase in foundations who manage capital in the billions, and a general increase in the use of charity and foundations. Lastly, conclusions are presented in chapter six.

1. Olav Thon

1.1 The person

Olav Thon has been one of Norway's most successful businessmen for some 40 years. His company, The Olav Thon Group, is a consortium of hotels, shopping centers and real estate, and his fortune is valued somewhere around NOK 26 billion (Olav Thon Gruppen, 2016). Born in 1923, Olav Thon grew up in Hallingdal, the rural highland located between Oslo and Bergen. Thon showed a great sense for business early on, and when World War II hindered him from going to medical school, he chose to pursue trade instead. From the age of 18, Thon owned and ran a fur shop in Oslo, and during World War II started to invest in real estate in Oslo (Olav Thon Stiftelser, 2017a). The early ventures of Olav Thon have been the source of much of the criticism aimed towards him. He was accused of having profited heavily by trading with the Nazis during World War II, and was also accused of corruption and evasion of customs. The latter accusations resulted in a conviction in 1956. Thon was sentenced to pay NOK 50,000 in fines, NOK 80,000 in confiscations and was given a one-year suspended jail sentence. In comparison to other people tried for high treason in the aftermaths of World War II, Thon was treated mildly, under the pretense of *keeping the wheels turning in an already heavily damaged economy* (Sveinbjørnsson, 2008). From this point forward, Olav Thon shifted his focus heavily into real estate, buying several apartment buildings and city blocks in Oslo. In 1970, after failing considerably in the shipping industry, Thon bought a disused shipyard, which later became the largest shopping center in Norway (Thon Eiendom, 2016).

It was real estate that proved to be the cornerstone of Thon's empire, with his portfolio being a mixture of commercial and private real estate. This eventually led Thon to invest in hotels, and in 1989 he founded Rainbow Hotels, which were re-branded in 2005 to the Thon Hotels chain that is known today (Thon Hotels, 2017).

1.2 The Olav Thon Group

To better understand the complexity surrounding the incentive structure for choosing the organizational form foundation in the Thon case, one must understand the organizational structure of the Olav Thon Foundation. Originally owned by Olav Thon himself, the shares in the Olav Thon Group LTD were transferred to the Olav Thon Foundation in 2013 (Olav Thon Stiftelser, 2017b).

1.2.1 Key financial data

The Olav Thon Group has a liquidity ratio median of 4.38 in the period between 1998 and 2014. The average is 5.47, which is mainly due to a considerable outlier of 19.64 in 2014. As seen in exhibit 1, the equity ratio was declining in the period from 1998 to 2006, but has been rising from 2006 to 2014 (Proff.no, 2016). The sudden increase in equity ratio from 2006 to 2007 might be due to a change in the accounting principles, where real estate holdings are valued at real value, as is allowed by the IFRS accounting rules. This leads to a higher total value of the group's assets, and thus a higher equity share.

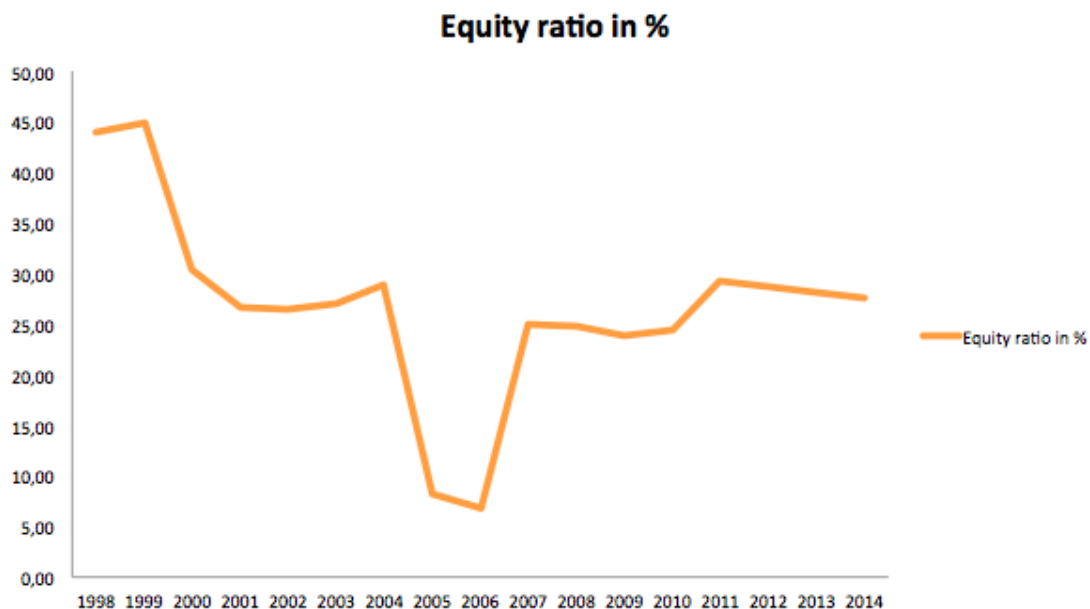


Exhibit 1: Equity ratio in %

The Olav Thon group has considerable assets, with NOK 7.5 billion in assets in 2014. The average return on assets in the considered period is 6.56%, and the median is 5.3% (outlier of 30.1% in 2007). The revenue between 1998 and 2014 is shown in exhibit 2. The average

revenue in the given period is NOK 382 million, although the firm experienced a considerable drop in revenues from 2011 to 2012, the trend line is upward sloping. In 2014, the revenue was NOK 259 million. In the years between 2012 and 2014, wage costs have remained a major expense, stabilizing at above 50% of the revenue (Proff.no, 2016).

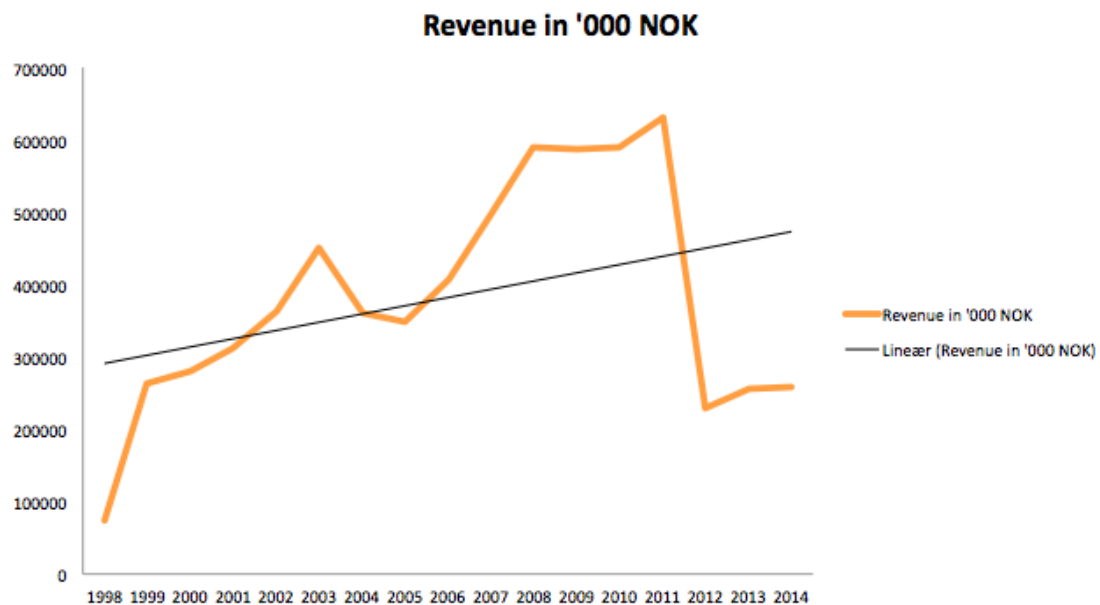


Exhibit 2: Revenue in '000 NOK

The average EBITDA in the period between 1998 and 2014 is NOK 30.2 million, with an upward sloping trend line, as seen in exhibit 3. This is somewhat a result of the tremendous increase in EBITDA in the period between 2005 and 2008. In 2014, EBITDA was NOK 28.1 million.

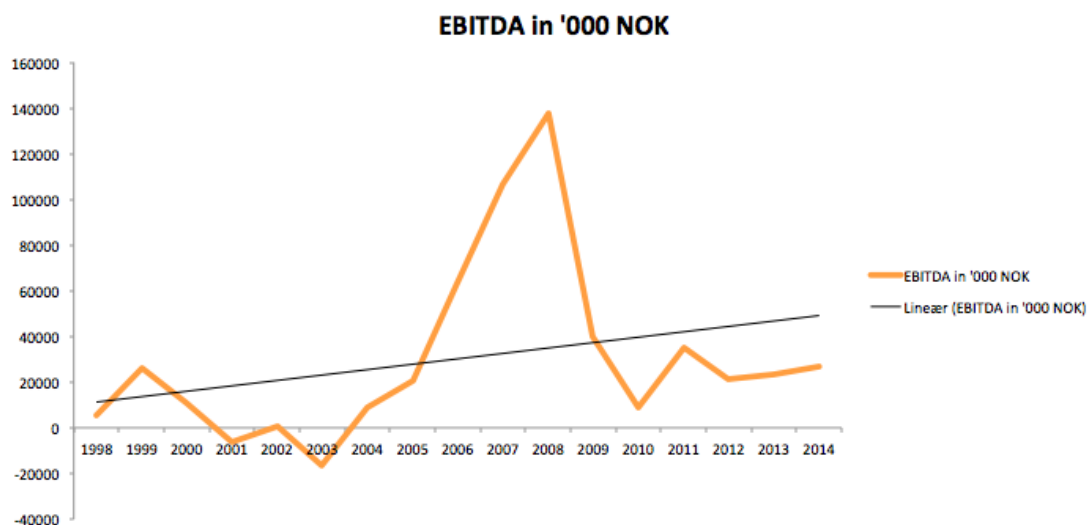


Exhibit 3: EBITDA in '000 NOK

Exhibit 4 shows the organizational chart of the Olav Thon ventures.

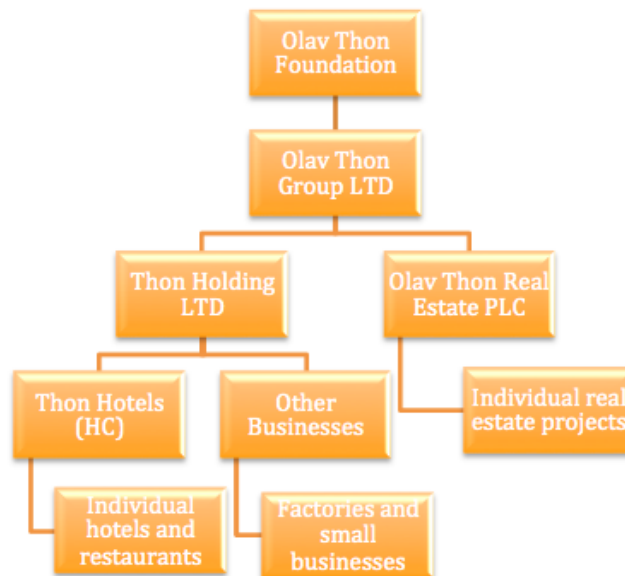


Exhibit 4: Organizational chart of the Olav Thon Foundation

The Olav Thon Group LTD is organized into two sub-divisions: Thon Holding LTD (which again is divided into the major branches Thon Hotels and Other Businesses) and Olav Thon Real Estate PLC (Olav Thon Gruppen, 2016).

1.2.2 Thon Hotels

Thon Hotels is a holding company, and is fully owned by Thon Holding LTD, which in turn is fully owned by the Olav Thon Group LTD. Each hotel is operated as an individual LTD, owned by Thon Hotels. The same model applies for the restaurants in the portfolio (Proff.no, 2017a)

Thon Hotels is one the leading Norwegian hotel chains, and operates 66 hotels in Norway, six hotels in Belgium and one hotel in Sweden (Thon Hotels, 2017). In addition to owning several hotels, Thon Hotels also owns several restaurants in Oslo. The hotels are operated after a price discrimination system, where each hotel represents a segment on the price discrimination scale. Budget is the cheapest, City slightly more expensive, and Conference the most expensive, aimed at business travelers and larger conferences. Most of the Thon Hotels are in Norway's two largest cities, Oslo and Bergen (Thon Hotels, 2017).

1.2.3 Olav Thon Real Estate

Olav Thon Real Estate has been a publicly traded company since 1983, and is traded on the Oslo Stock Exchange. The Olav Thon Group LTD owns 64.52% of the shares, which results in a structure where the Olav Thon Foundation directly and indirectly owns 71.9% of the shares in Olav Thon Real Estate PLC. Other notable investors are Investhion LTD (one of the many companies owned by Thon Holding LTD, located in the “Other Businesses” box in exhibit 4) and the Norwegian pension fund Folketrygdfondet, owning 7.38% and 7.06% respectively (Olav Thon Eiendomsselskap, 2016).

With 109 shopping centers and approximately 500 properties in commercial real estate, the Olav Thon Group is the market leader in commercial real estate in Norway (Olav Thon Gruppen, 2016). They have over 30 years of experience in the business, and the 2015 turnover in their Norwegian shopping centers was NOK 62.5 billion (Thon Eiendom, 2016). Their real estate portfolio is mainly limited to shopping centers, but also includes some proceeds from hotel and office space rental. Approximately 53% of the company’s holdings are in the Oslo area, and 87% of their holdings are in Norway. In 2014, Olav Thon Real Estate started expanding to Sweden, accumulating five shopping centers (Midtsjø, 2014). Today, their holdings outside Norway accounts for 13% of the portfolio, and the company has continued the expansion into the Swedish market (Olav Thon Gruppen, 2016).

The following exhibit shows the one-year, 3-year and 5-year history of the Olav Thon Real Estate stock price as of 22 September 2017.

One-year



3-year



5-year



Exhibit 5: Historical stock price of Olav Thon Real Estate (Nordnet, 2017)

1.2.4 Other businesses

The bundle “Other Businesses” are owned by Thon Holding LTD, and are highly different in both composition and business area.

Norsk pantelotteri LTD: A firm owned by Olav Thon and the Norwegian Red Cross, whose core business is a recycling lottery, where recycled bottles and cans are exchanged for lottery tickets. Thon owns 60% of the shares (Olav Thon Gruppen, 2016).

Investhon LTD: Investment company for Olav Thon (Proff.no, 2017a).

Time park: The fastest growing parking company in Norway. As most of Thon’s businesses, it is in the Oslo area, and is currently offering around 20,000 parking spaces (Olav Thon Gruppen, 2016).

Unger fabrikker LTD: Industrial productions and sales of input factors to the soap and cosmetics industry. The business is mainly export driven (Olav Thon Gruppen, 2016).

Conrad Langaard LTD: An importer and distributor of tobacco products and complementary goods to tobacco products. With a history reaching back to 1854, Conrad Langaard is one of the oldest tobacco distributors in Norway (Conrad Langaard, 2017).

Follo Fjernvarme LTD: A company producing, selling and distributing district heating. The heating is produced by burning waste. This company mainly supplies the major real estate structures in the Olav Thon real estate portfolio (Follo Fjernvarme, 2016).

1.3 Philanthropic ventures

Olav Thon has a history of philanthropy, and his first foundation was established in 1991. Olav Thon has currently established three major foundations: Olav Thon's Norwegian Tourist Association Foundation, Olav Thon Societal Foundation and the Olav Thon Foundation (Olav Thon Stiftelser, 2017a).

1.3.1 Olav Thon Tourist Association Foundation

As the first of Thon's three foundations, the Olav Thon Norwegian Tourist Association Foundation was founded as a cooperative initiative with the Norwegian Tourist Association. The purpose of the foundation is to promote mountain hiking and outdoors activities in Norway, based on Olav Thon's love of nature and mountaineering. Since 1991, the foundation has contributed to numerous buildings and renovations of the publicly available mountain cottages owned by the Norwegian Tourist Association (Olav Thon Stiftelser, 2017b).

1.3.2 Olav Thon Societal Foundation

Established in 2002, the Olav Thon Societal Foundation was started with NOK 30 million given by Olav Thon himself. As a societal foundation, it aims at giving economic contributions to activities that promotes health and societal values. The four main types charitable purposes supported by the Olav Thon Societal Foundations are:

- “Health initiatives, including medical research
- Measures for development and improvement of the physical environment
- Children and adolescents' upbringing conditions
- Contributions in favor of the elderly” (Olav Thon Stiftelser, 2017c).

1.3.3 Olav Thon Foundation

By far the largest of the philanthropic ventures is the Olav Thon Foundation. Founded in 2013, the foundation quickly became one of the wealthiest in Norway when Olav Thon transferred most of his holdings to it in late 2013. With an estimated fortune of NOK 26 billion, the foundation’s purpose is “to exercise stable and long-term ownership of the Olav Thon Group AS and its underlying businesses along the lines that Olav Thon has laid down for his business operations” and “to allocate funds to charitable purposes” (Olav Thon Stiftelser, 2017d).

The foundation also has a mandate to give up to NOK 50 million in grants each year, and to grant up to NOK 100 million in exceptional cases, to charitable purposes. Mostly, this will be granted to research in natural sciences (Olav Thon Stiftelser, 2017d).

March 5th, 2015 marked the first time the Olav Thon Foundation gave research awards and research grants, and this will continue at the same time each year. The grants are given in a ceremony at the University aula in Oslo, with a following celebratory dinner in honor of the winners at Hotel Bristol. Additional grants from the foundation are given biannually (Olav Thon Stiftelser, 2017d).

2. Charities

2.1 What is a charity?

The concept of *charity* is historically defined as *helping people in need*; the disabled, the poor and those suffering (Anheier, 2005). Usually connected to personality traits such as kindness, generosity and compassion, charity has its roots in religious traditions. Long before the establishment of government secular welfare systems, religious institutions bore the main responsibility for the relief of the unprivileged in many countries (Anheier, 2005).

Over time, charity concepts like philanthropy, volunteering and charitable giving appeared in literature to specify various charitable actions. A donation of time for public benefit purposes is referred to as *volunteering*, while a donation of money and goods for public benefit causes is referred to as *charitable giving*. Philanthropy usually refers to charitable giving by wealthy individuals aiming to reform society as whole. Anheier (2005) defines philanthropy as “voluntary dedication of personal wealth and skills for the public benefit” (p. 8).

The UK and US has a long and extensive history of use of charities, compared to the relatively short and restricted historical usage in Norway. Therefore, it is interesting to first examine the background and legal system concerning charities in the UK and US, before moving on to the Norwegian history and system in chapter four.

2.1.1 Historical Background

Charity can be traced back in history to around the year 2500 BCE, at the hands of the ancient Hebrews. They would collect a mandatory tax called a tithe, which was a tenth of the produce grown in the third and sixth year of the seven-year sabbatical cycle, and redistribute those funds to benefit the poor (Musoka & Elwolde, 1999). The word *philanthropy* first appeared around 500 BCE in the greek tragedy “Prometheus bound” by Aeschylus. Philanthropy was composed of the word *phil*, meaning love, and *antro*, meaning man, giving the literal translation “love of man” (Ancient Literature, 2009). The Greek interest in philanthropy continued in 387 BCE, when the Greek philosopher Plato founded his *Plato’s Academy*. The academy is considered the first organized school of political science, and was founded to work for the public good. It charged no fee, and all members worked there voluntarily (Chroust,

1967). In 27 BCE history has recorded the first Roman act of charity. The first Roman emperor, Augustus, gave public aid to an estimated 200,000 Romans as one of his first acts as emperor (Hazlitt, 1971).

The first notion of charity in modern times comes in 1180 from the Jewish author Moses Maimonides. In his book *Mishneh Torah*, Maimonides outlines the laws of charity through his eight levels of charity. It describes eight incremental levels of charity, where the greatest level is supporting a fellow Jew so that he will be able to live unsupported, and the lowest level is giving unwillingly (Chabad, 2017).

In England, the Parliament enacted The Charitable Uses Act in 1601, marking the first government-declared acceptance of the concept of charity in modern times. The act acknowledges a list of activities and purposes that the state believed to be in the benefit of society, and encouraged private donations towards said activities and purposes (Jones, 1969). In 1643, Harvard University arranged the first American fundraising drive, raising £500 (Philanthropy Roundtable, 2017). One of the pivotal moments in charity history came with the publication of the book “Democracy in America” by Alexis de Tocqueville. A heavily-quoted classic, this book highlights the inherent philanthropic spirit of Americans, laying much of the foundation of today’s understanding of philanthropy (Tocqueville, 1835).

In 1913, the United States Congress passed the Revenue Act. The Act exempts charitable organizations from paying taxes (Howard, 1961). Then, in the subsequent year, the world’s first community foundation was established in Cleveland, Ohio by the banker and lawyer Frederick H. Goff. His vision was to gather the philanthropic resources of the community into one permanent endowment, to better the conditions of the inhabitants of Cleveland. In 1931, the first donor-advised fund is established by a community foundation in Winston-Salem, North-Carolina (Cleveland Foundation, 2017).

Another turning point in the history of charities came in 1935. That year, the United States Congress passed legislation allowing corporations make tax deductions of charitable contributions. This marked the beginning of modern-day charity, and both progressive expansion and growth of charities and donations in the Western world. As shown in exhibit 6, the total charitable giving in the U.S. in 2013 amounted to \$335.17 billion.

Total giving, 1973–2013
(in billions of dollars)

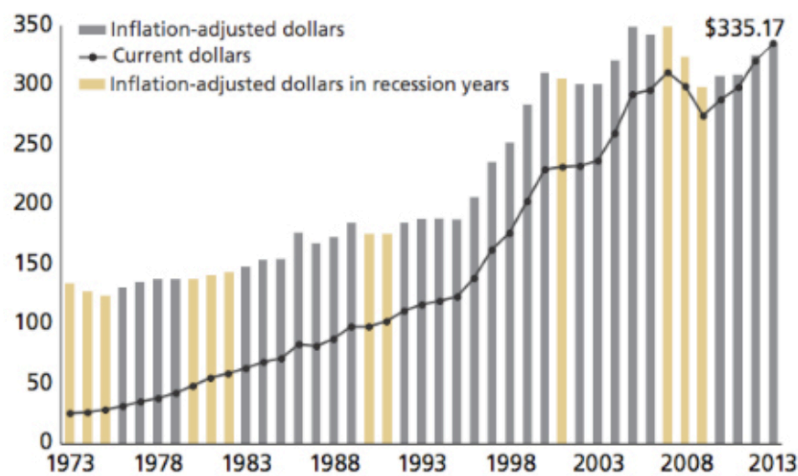


Exhibit 6: Total charitable giving in the US, 1973-2013 (*Giving USA, 2014*)

2.2 Legal forms

Terms like trust, foundation, fund and association are often connected to charity. These terms in their pure meaning, however, are just the organizational structures by which charity is often organized. Charities does not take any specific organizational form. They may be organized in a variety of forms, as an unincorporated trust or association, or as incorporated company. Legal systems differ between countries and so do organizational forms of choice for charity in these countries. In Norway, the typical organizational forms for a charity to take is foundation or association. For example, many Norwegian charities are traditionally organized as foundations¹, but are often called *fund*² or *legacy*³ in their names. The terms fund and legacy are used out of habit; these are not the legal organizational forms, just a byname of foundation. Further elaboration on Norwegian charities and terms foundation and association will be given in chapter 5.

¹ The Norwegian word for foundation is *stiftelse*.

² *Fond* in Norwegian.

³ *Legat* in Norwegian.

2.2.1 Trusts

While *trust* is one of the most widespread organizational structures utilized for charities in common law countries like UK and US, it is little known in civil law countries such as Norway. Instead, the legal form of *foundation* is widespread in Norway. Both trusts and foundations are legal forms utilized to hold and manage assets, and these terms are often used interchangeably. The name of a trust may have the word foundation in it, and vice versa, which makes differentiating between the two somewhat confusing. The crucial difference, however, is the legal ownership aspect. As will be discussed below, trusts do not have a legal personality, and are formally owned by trustees who are subject to fiduciary duties. Trustees act not in the name of the trust, but as owners of the trust which assumes they are personally obligated and accountable for the trust. Such a kind of legal relationship does not exist in Norwegian legislation. Unlike a trust, a foundation is a legal entity and has legal ownership over itself and its assets. As legal entity foundation can contract and be held accountable in its own name (Hudson, 2007).

Trusts first originated during the crusades in the 12th century, and intended to protect interests of absent landowners during a crusade. When leaving home to fight in the crusades, a landowner would transfer ownership of the land to a trusted person who would give his word to transfer ownership back when the crusader returned. The trusted person would manage the land and pay and receive feudal dues. Upon the crusaders return, the trusted person would often refuse to transfer ownership back. Disappointed crusaders petitioned to the King, because at that time English common law did not recognize their legal claims and stated that whoever owned the legal title had no obligation to transfer the ownership back. The King delegated the crusaders' matters to his Lord Chancellor, and he established the Court of Chancery, separate from common law justice system until 1873, to decide on the equity, or "the fairness", in these matters. In many cases, the Court of Chancery considered it unfair to the good conscience and morals that the trusted person could refuse to return ownership as agreed, and therefore recognized the crusaders' claims. In the name of fairness, the Court of Chancery, otherwise called Courts of Equity, would correct deficiencies and strictness of common law system. Thus, it became possible that legal owner who was entrusted the land for the benefit of the initial owner, could be forced to transfer it back. At that time, English courts started to recognize a division between legal and equitable ownership, and the concept of "use", known today as "trust", was brought to existence. Today's English legal system is a

fusion of the rules of common law and the equity law from the Court of Chancery, and cases are judged on both legal and equitable matters at the same time, giving prevalence to equity, or fairness. The first legislation on trusts, the Law of Trusts, was introduced with the first Trustee Act in the 1850s (Waters, 2007).

What is a trust?

Broadly speaking, a trust is asset(s) that an individual (settlor) has transferred ownership of to another individual or body (trustee) under the obligation that said asset is to be held and managed for the benefit of a third party (beneficiary) as described by the settlor's wishes or trust deed. A settlor may be called a trustor, a creator, or a grantor; this is the individual that creates the trust and gives the asset(s). A trustee is one or multiple individual(s) who are entrusted the asset(s) and holds them for another person's benefit (also called a beneficiary). There can be more than one trustee and more than one beneficiary. A trust implies a fiduciary relationship between a trustee and a beneficiary. The fiduciary relationship is a fundamental concept to the Law of trusts, which recognizes separation of ownership between legal and equitable (beneficial). According to the fiduciary concept, a legal ownership of the trust belongs to the trustee; and the beneficial or equitable ownership of the trust belongs to beneficiaries. A trustee, the legal owner, has however no right to benefit from assets and has a fiduciary duty of loyalty to manage assets in good faith, serving in the best interests of beneficiaries. So, only the beneficiary, despite of holding no legal title to the assets, has the privilege of receiving benefits from them. The trust, in other words, is more of a legal relationship between three parties (settlor, trustees and beneficiaries) rather than an organizational form (Hudson, 2007).

For a trust to be valid, a settlor must specify clearly the asset(s) being transferred, the trustee, the defined human beneficiaries, and the terms and conditions under which the trustee will act. All these elements are usually specified in the trust deed, a legal document that eventually governs the trust in courts. Specifying certain individuals as beneficiaries is termed as *the beneficiary principle*. This principle ensures that trustees may clearly identify trust beneficiaries. It also helps courts determine the correct people with equitable rights over a trust in case of disagreements, and when trustees fail in their fiduciary duties and start benefiting themselves. To ensure that the beneficiaries eventually receive their benefits and the trust ceases to exist, the Law of trusts prohibits perpetual existence of a trust (Hudson, 2007).

Trust types

Though the concept of trusts did not change over the years, the application of trusts has evolved. Different types of trusts can be found around the world today. So far, the basic principles in trust law have been described. The basic trust type is an *express trust* and *private trust*. By express it is meant that a settlor consciously expresses his will to create a trust. Private trust means that a settlor identifies certain people as beneficiaries, and not the public. In contrast to the express or private trusts are the *imposed* or *implied* trusts. Imposed trusts, as the name suggests, are imposed by law to correct the wrongdoings. For example, in a case when basic principles of trust law are breached, courts may impose the trust. Contrast to private trusts are *charitable trusts*, which are the exception in the law of trusts and additionally are subject to charity law. Charitable trusts will be discussed in detail in the next section. Trusts can be *revocable*, with flexibility to add or to remove beneficiaries and make other changes, or *irrevocable*, with no future changes flexibility. There are cases where trustees may be assigned as beneficiaries themselves, or when beneficiaries do not know of the trust's existence. The additional features depend on what settlor instructed initially in the trust deed. There are also *testamentary* trusts, created on the day person dies, and *living* or *inter vivos* trusts, as the name suggests, created while person is alive (Hudson, 2007).

Trusts as an organizational form work not only as an aid to help manage charitable donations, but as a safeguard for employee pension plans, a secure way of transferring and managing assets for children, and as a tool for organizing wills and bequests. Hence, trusts are not only used for charitable purposes. At least as widespread is using trusts for non-charitable purposes like wills, pensions and intergenerational asset planning, tax planning, asset protection from creditors and confidentiality. These non-charitable forms of trusts are often referred to as private trusts. Charitable trusts are an exception in the traditional English trust law because it requires trusts to benefit an ascertainable group of people, not an abstract purpose (Economist, 2013).

Charitable trusts

Charitable trusts do not follow the beneficiary principle, and can exist perpetually. Charitable trusts are charities organized as trusts and follow the Charities Act of 2011, the charity law in England and Wales (hence referred to as the Charities Act). To be recognized legally as a charity in England, a trust must have a charitable purpose only. According to the Charities act, a charitable purpose must meet two requirements:

- It must fall under one of the 13 statutory charitable purposes listed in the Charities Act and
- it must be for the public benefit.

Following is the list of 13 specific charitable purposes set out in paragraph 2 (2) of the Charities Act:

1. The prevention or relief of poverty.
2. The advancement of education.
3. The advancement of religion.
4. The advancement of health or the saving of lives.
5. The advancement of citizenship or community development.
6. The advancement of the arts, culture, heritage or science.
7. The advancement of amateur sport.
8. The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality or diversity.
9. The advancement of environmental protection or improvement.
10. The relief of those in need because of youth, age, ill health, disability, financial hardship or another disadvantage.
11. The advancement of animal welfare.
12. The promotion of the efficiency of the armed services of the Crown, or the efficiency of the police, fire and rescue services or ambulance services.
13. Any other purposes within sub-paragraph 4 (Hudson, 2007).

Paragraph 2 (4) of the Charities Act opens for other purposes than those listed in paragraph 2 (2) to be recognized as charitable. For example, existing charities with purposes not included in paragraph 2 (2) continue to be recognized as charities. And purposes that *may be reasonably*

regarded as analogues to, or within the spirit of any purposes listed in paragraph 2 (2) or of any existing charities, can be recognized as charitable (Hudson, 2007). The Charity Commission that monitors whether the charitable purpose requirement is met, also requires that the purpose is certain. An uncertain purpose cannot be assessed, because it is not clear whether it meets the charitable purpose requirement (Charity Commission, 2017a).

What is *for public benefit*? The Charity Commission interprets public benefit as having two principal aspects:

- *the benefit aspect*: It must be beneficial, and any harm that results from the purpose must not outweigh the benefit
- *the public aspect*: It must be provided for or available for a sufficient part of the public, not a closed group of people (Charity Commission, 2017a).

The sufficient part of the public is referred to as the *public class* of people. Such a part is different from purpose to purpose. For example, people living in one particular area or people having a particular *protected characteristic*, such as age or disability, will be considered as a sufficient part of public in most cases. The purpose for relief or prevention of poverty is not required to satisfy the public aspect as long it meets the benefit aspect.

In cases when a charity has multiple purposes, all purposes will be assessed for the charitable requirement. If one of the purposes is not charitable, the trust will not be approved as charity. For instance, political purposes are not considered to be charitable (Charity Commission, 2017b).

The majority of dispute cases go on a private trust trying to gain the charitable status. The most prominent example for this is the case *Oppenheim v. Tobacco Securities Trust* (1951), after which a *personal nexus test* was developed by courts. British American Tobacco created a trust for education of children of its current and former employees. The trust was denied charitable status on grounds of personal relationship between the founder company and beneficiaries. Despite the large number, children of employees do not fall in the category *sufficient section of public*. If the purpose was for the relief of poverty, like helping the poor employees' children, the public aspect would be disregarded (Hudson, 2007).

As mentioned before, the organizational structure trust does not exist in Norwegian legislation. One may, however, find existence of the fiduciary duty concept in Norway in the times of

nobility. The organizational structures *fideicommissum*⁴ and *entailed estates*⁵, have similar characteristics to the English law of family trusts. Just like trustees in the trust law, fideicommissums appeared as the formal owners of the wealth entrusted to them by the founder. This legal relationship made it possible to preserve wealth for future generations. Today only one entailed estate remained, which is the Jarlsberg estate. The Norwegian Constitution has, since its inception in 1814, included the paragraph 118 which forbids creation of new fideicommissum and entailed estates (NOU 1998: 7, 1996).

2.2.2 Nonprofit

Often *charity* and *nonprofit* are used interchangeably, which might seem confusing when researching the topic of charity. The term nonprofit describes organizations operating in the borderline between forprofit/private, public and household sectors. Some activities associated with the nonprofit sector, however, are being performed also within public and forprofit sectors, which makes the field of nonprofit conceptually ambiguous (Anheier, 2014).

Nonprofit is also referred to as *third, voluntary, independent, civil* or *charity* sector. Many activities that are deemed nonprofit have long existed in many countries, with charity being the most prominent nonprofit concept throughout history. But it is only in the recent three decades social scientists have begun focusing on nonprofit-related topics and conceptualizing the field of nonprofit studies (Anheier, 2014).

Nonprofit sector encompasses various activities like volunteering, giving, civic engagement and organizations like charities, associations, foundations, social clubs, universities, hospitals, museums, political parties and research institutions.

Other concepts like *civil society, social investment* and *social entrepreneurship* are also related to and contribute to understanding of the nonprofit sector. If one emphasizes on one aspect of

⁴ *Fideikommiser* in Norwegian.

⁵ *Stamhus* in Norwegian.

the sector at a time, all these different concepts will not capture the sectors entirety (Anheier, 2014). The whole is larger than the sum of its parts.

What is nonprofit?

Since research on and conceptualization of the nonprofit sector started recently, there is no conventional definition as such for a charity, nor for a nonprofit organization. While all charities can be said to be nonprofit, not all nonprofit organizations are charitable. When stating nonprofit, it is usually meant *non-profit-distributing* instead of *not-for-profit making* (Anheier, 2005).

In his book *Nonprofit organizations: Theory, management, policy*, Anheier (2005) discusses legal, functional, economic and structural-operational approaches to give nonprofit organization a conventional definition. This discussion is shortly presented below.

A legal approach to defining a nonprofit organization is the most certain way of definition in a national context. In the US, all nonprofit organizations are listed by the IRS, and one may track a definition from there. In Norway, there were no legal listing whatsoever before 2006, when Voluntary Organizations Register⁶ was introduced. In chapter 5, a Norwegian charity definition from the legal prerequisites to registering at the Voluntary Organizations Register is tracked. For cross-nationally comparative purposes, this legal approach cannot be applicable, particularly when countries practice different law systems. A civil law country (France, Germany, Japan and Norway) will have a different starting point for its definition of nonprofit organization than a common law country (US, UK, Australia). For example, in contrast to common law countries, a legal registration of a nonprofit organization in a civil law country does not imply tax benefit or any other benefits. Such benefit must be gained separately.

Another approach identified by Anheier (2005) and from which the legal definition is said to be originated, is functional definition. This approach defines nonprofit organization from its function and purpose. The most common function is a lack of profit motivation and promotion of public benefit purpose.

⁶ *Frivillighetsregisteret* in Norwegian.

Economic approach also stems from the functional nonprofit motive of nonprofit organizations. This definition distinguishes nonprofits by their revenue structure and nondistribution of profits to owners. To be defined as nonprofit from an economic perspective, organizations must have a major income source from voluntary private donations. Once the dominant income source are taxes or through sale of goods and services, organization can be referred to as public or for-profit, respectively (Anheier, 2005).

And finally, a structural-operational definition which was used for comparative purposes by the John Hopkins Comparative Non-profit Sector Project (JHCNP) to give a universal definition for a nonprofit organization. JHCNP definition has its basis in an organization's structure and operation. According to it, a nonprofit organization is "organized, self-governing, private, non-profit-distributing and voluntary" (Anheier, 2005, p. 48). By *organized* it means that only an institutionalized organization may be called nonprofit. This criterion excludes ad-hoc gatherings and other loose networks of people, and hence refines and makes the term nonprofit less vague. The *private* criteria distinguish nonprofit from governmental organizations. According to this criterion, nonprofit organization may receive governmental support, but not be initiated or operated by government officials. The criteria *self-governing* stresses the importance of a nonprofit organization to be private and non-dependent on government. A nonprofit organization must possess a certain degree of autonomy and independence. By *non-profit-distributing* it is understood a non-distribution to the organization's owners, founders, members, board and the related. The criteria *voluntary* means non-compulsory input from staff, board or contributions to some meaningful degree (Anheier, 2005).

While legal definition is best suited for comparisons within a country, a structural-operational definition is best for cross-national comparative approaches. Economic definition is practical for microeconomic research of financial behavior of nonprofits. So, there is no single true definition, each serves a purpose for a social scientist or a policymaker depending on the topic of research (Anheier, 2005).

2.3 Why do charities exist?

The economic explanation for the existence of a good or service is demand. As mentioned above, nonprofits operate between the market and the public sector. The charity and nonprofit sector produce goods and services that have not been supplied or are undersupplied by for-profit organizations and the government. The consequential question is then: Why do the government and for-profit organizations fail to supply these goods at sufficient levels?

First, it is necessary to point to the basic economic tenet that markets are the best at producing private goods and fail to produce public goods (Anheier, 2005). In economic terms, a public good is a good that is non-excludable and non-rival. A non-excludable good, when produced and sold to a person, cannot be prohibited from consuming by others. This leads to a free-rider problem: People tend to rely on others to pay for such goods, which makes such goods unprofitable to produce. Hence, there is no incentive for for-profit organizations to produce it, which is usually referred to as a market failure. This is the very reason why governments step in and take responsibility of public goods provision (Anheier, 2005).

And indeed, nonprofit organizations tend to produce neither pure private nor pure public goods, but quasi-public goods which exhibit some degree of exclusion. It is these types of goods that, while possible to exclude and make profit from, are not sufficiently provided in the market sector; and despite of market underprovision, are not offered by public sector.

As cited in Anheier (2005), Weisbrod (1975) and Hansmann (1987) came up with *median voter* and *trust* explanations to why the public does not offer quasi-public goods, despite a market underprovision. While Weisbrod's public good theory from 1975 explains government underprovision with the government's aim to satisfy the median voter, Hansmann's trust theory from 1987 points to information asymmetry to explain why market sector, while capable, underprovides certain goods.

Weisbrod argued that in a liberal democracy with a heterogeneous population the government aims to satisfy the median voter's demand for public goods, leaving other demand unmet. This demand gap is then met by nonprofit organizations. In the case of quasi-public goods, a question occurs why the gap is not met by for-profit organizations. Trust theory takes on namely this issue, and makes a point of the existence of information asymmetry in the delivery of certain quasi-public goods. Unable to do a quality check, a consumer then fears exploitation and bad quality from a for-profit organization due to its profit maximizing purpose, and

demands provision from a trustworthy source. While nonprofit organizations may produce goods in a less efficient way than for-profits, the non-distribution constraint is a signal to trust the nonprofit organization more than for-profit organization (Anheier, 2005).

2.4 Social origin theory

Salamon and Anheier (1996) developed a social origin theory to explain size, composition and financing variations of the nonprofit sector across different countries. According to this theory, variations are based on a country's historical development of welfare policy. Unlike conventional single-factor nonprofit theories, social origin theory appears to be better suited to analyze variations and similarities of nonprofit sectors cross-nationally (Sivesind, et al., 2002). Regarding composition of the nonprofit sector, the theory distinguishes between nonprofit provision of welfare services like health and education, and expressive advocacy activities like political expression, sports and environment. Regarding the size of the nonprofit sector, it is measured in terms of employment in the sector and expressed in relative dimensions, such as small or large. Regarding financing, state support, private giving and private fees, source of income are mentioned.

Four welfare regimes, liberal, social democratic, corporatist and statist, each of which reflect a certain configuration of social factors, are suggested by the social origin theory. In exhibit 7, two factors, namely level of public welfare spending and size of nonprofit sector, characterize each welfare regime (Sivesind, et al., 2002).

Public welfare spending	Nonprofit sector scale	
	<i>Small</i>	<i>Large</i>
<i>High</i>	Social Democratic	Corporatist
<i>Low</i>	Statist	Liberal

Exhibit 7: Social Origins Model of the Nonprofit Sector (Sivesind, et al., 2002)

While social democratic (Sweden) and corporatist regimes (France and Germany) are characterized by high public welfare spending, they differ in sizes of nonprofit sectors. A small nonprofit sector is predicted in a social democratic model, assuming that a larger part of public welfare spending is going to publicly provided social welfare activities rather than private voluntary provided welfare activities. In other words, an extensive public welfare state *crowds out* private nonprofit service providers. The explanation lies in the history of a working-class

movement that could demand and achieve the state responsibility in provision of welfare services after the church authorities were domesticated (Salamon & Anheier, 1996). Despite the prediction of limited nonprofit sector of welfare services, Salamon and Anheier (1996) do not imply an overall small nonprofit sector for social democratic countries. Apparently, working-class movements that ensured state provided welfare would not just disappear. Instead they took on a new role of maintaining expressive activities in form of membership organizations, typically with culture, politics or sports as a unifying purpose of interest. Thus, in a field of expressive interests, a nonprofit sector in social democratic regime will be relatively large (Salamon & Anheier, 1996). When it comes to liberal and statist regimes, they have similar small levels of public welfare spending. While in liberal regimes (UK and US) small public welfare spending predicts larger scale of nonprofit sector, it does the opposite for a statist regime (Brazil, Japan), mainly due to differences in traditions (Salamon & Anheier, 1996). Regarding financing, theory predicts that in liberal and social democratic models, private giving is likely to prevail. On the contrary, for corporatist regimes it predicts dominance of government financing; and for statist – private fee and service charges are said to be common source of a nonprofits' income (Salamon & Anheier, 1996).

2.4.1 Norway: A social democratic regime

In a social origin theory, Norway represents a social democratic regime. To what extent Norwegian voluntary sector is in line with this theory is discussed by Sivesind et al. (2002) in the book *The Voluntary sector in Norway*. Sivesind et al.'s findings generally support the main outcomes of the social origin theory. Indeed, the voluntary sector of welfare services in Norway is relatively limited, while the voluntary sector of expressive advocacy activities is relatively large (Sivesind, et al., 2002). However, the prediction that voluntary sector will be financed predominantly by private charitable giving does not hold. Data provided in Sivesind et al. (2002) shows that private donations comprise only 9% of total revenue in the voluntary sector. It is shown that the sector is much more self-sustained than in other European countries, with fees and services comprising 56% of total income, compared to 36% in EU countries. This will be further examined in a later chapter.

2.4.2 Government policies towards charity

Since charities and nonprofits provide services and goods demanded by the public in general, it is in the interest of government to encourage such public benefit activities. Nonprofits produce mainly quasi-public goods, and in this way, complement or supplement government's responsibility in public good provision. Indeed, in many countries nonprofit sector has received significant funding from the government (Anheier, 2005). Anheier (2005) points out that the growth of nonprofit organizations could not have continued solely on individual charitable donations.

Government promotion of charitable activities takes on various forms. A charity may receive government grants, be exempted from paying taxes, and its donors may be encouraged to donate more by deducting their donations from taxable income.

3. What motivates charity?

This chapter summarizes what economists have learned from research on the motivations behind philanthropy. In the discipline of economics, it is traditional to assume that individuals behave in their own self-interest, in a pursuit to maximize their own benefit. This standard assumption of self-interested behavior, at first glance, is hardly reconcilable with philanthropy, a notion that is naturally associated with actions for the public benefit. Thus, economists have always struggled to find a universal explanation for charitable behavior (Andreoni, 2006).

When observing various actions of philanthropy, one can explain philanthropic actions by both altruistic and self-interested motives. Motivated by altruism, the giver expects nothing in return for his or her donation, but simply enjoys the fact that the public good or service is produced. For example, an animal lover who donates to save rare species on another continent, may never see them, and hence never benefit from the donation. This animal lover acts altruistically. However, many individuals donate to charities in their local community and have a possibility to self-benefit from the public good they have contributed to. A giver who suffers from an incurable disease and donates to medical research that may find a cure, can obviously be assumed to expect self-benefit from the research results. These are examples that does not characterize pure altruistic behavior (Andreoni, 2006).

In early research, all forms of explanations for charitable giving, including the examples above, were generalized as *altruistic*, if the giver's only preference when donating is having more of the public good (Andreoni, 1989). While Becker (1974) was the first to formulate this as a model, Bergstrom, Blume and Varian (1986) gave it a thorough treatment (Andreoni, 2006). The model is referred to as *the privately provided public good model*, sometimes called a *pure public goods model*. Here, a giver desires a certain aggregate amount of public good either solely for the benefit of others, or for personal benefit as well. The crucial assumption is that he or she feels indifferent between personal donation and any other person's donation, as long as the desired amount of public good is provided (Andreoni, 2006). This model's theoretical implications, however, are inconsistent with empirical observations, and led to the introduction of an alternative *warm glow giving model*, sometimes called *the impure altruism model* (Andreoni, 2006).

The warm glow giving model, in contrast to the privately provided public goods model, assumes that a giver strongly prefers his or her own donation to any other person's donation,

namely because of the *warm glow* he or she wants to feel from personal donation (Andreoni, 2006). In the next subsections, the theoretical framework and implications from these models is outlined.

3.1 Private giving to public goods

Under *altruistic* assumption of donations, a giver's utility (2.1) is a function of a composite private good x_i and a privately provided public good G . That is, no charities or government finances public good, only individual altruistic contributions. A privately provided public good G is a sum of all private givers' contributions (2.1.2) $G = \sum_{i=1}^n g_i$. Measured in the same units, a public good can be produced directly from the private good by linear technology. While the utility function (1) is identical for all individuals, the money income m_i each individual is endowed with is different (Andreoni, 2006).

Each individual maximizes utility given the following constraints:

$$\max_{x_i, g_i} u(x_i, G) \quad (2.1)$$

$$s. t. x_i + g_i = m_i \quad (2.1.1)$$

$$G = \sum_{j=1}^n g_j \quad (2.1.2)$$

$$g_i \geq 0 \quad (2.1.3)$$

Under Nash equilibrium, which is assumed here, individuals find their own optimal amount to donate g_i^* , taking others' donations G_{-i} as given:

$$G_{-i} = \sum_{j \neq i}^n g_j = G - g_i$$

The maximization problem can then be rewritten with each individual choosing G rather than g_i :

$$\max_{x_i, G} u(x_i, G) \quad (2.2)$$

$$s. t. x_i + G = m_i + G_{-i} \quad (2.2.1)$$

$$G \geq G_{-i} \quad (2.1.3)$$

When inserting $G - G_{-i}$ for g_i constraints (2.1.1) and (2.1.3), total «social income» amounts to $m_i + G_{-i}$, both having same marginal effect on an individual's optimal G .

Setting marginal rate of substitution to 1, $\frac{\partial u_i / \partial G}{\partial u_i / \partial x_i} = 1$ and ignoring constraint (2.1.2), yields a solution: $G = f_i(m_i + G_{-i})$, or $g_i = f_i(m_i + G_{-i}) - G_{-i}$, where f_i is a gifts' function.

With assumption $g_i \geq 0$, optimal individual donation function yields to:

$$g_i^* = \max\{f_i(m_i + G_{-i}) - G_{-i}, 0\} \quad (2.3)$$

The maximization problem and Nash equilibrium in donations is depicted below in Exhibit 8.

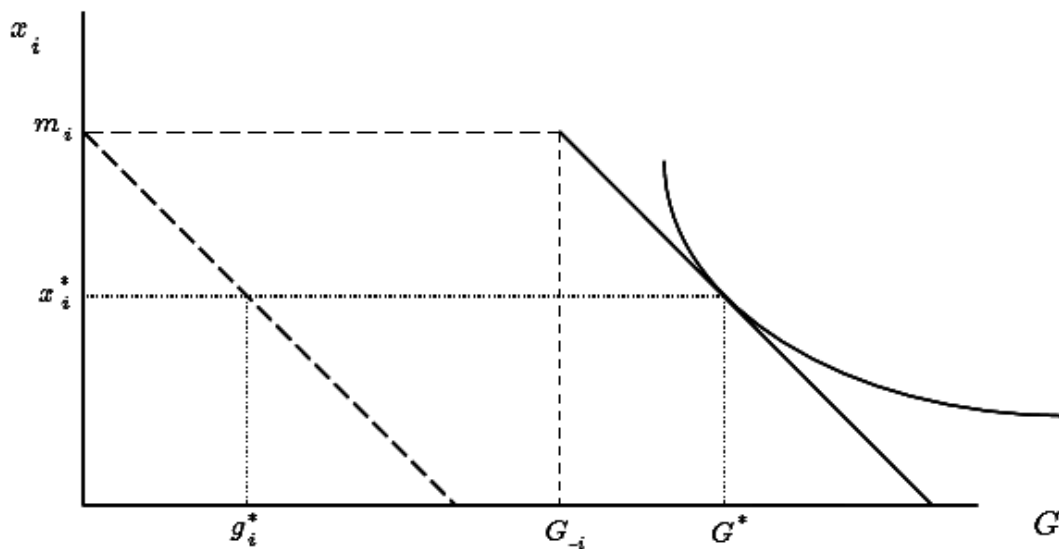


Exhibit 8: Nash equilibrium in the private provision of public goods (Andreoni, 2006, p. 12)

Applying the classic Samuelson model of 1954 implicates Pareto inefficient supply of G . This explains the need for government financing of public good provision. Government will contribute a required amount to achieve a Pareto efficient level of public good, G (Andreoni, 2006). However, as is described in the next subsection, extension of this model to government contributions implies a complete crowding out of private “altruistic” donations.

3.2 Crowding out and non-giver taxation

The assumption is now extended so that the government contributions to public good provision is allowed as a supplement to private donations in the model.

It is assumed that a lump sum tax, t_i , is a financing source of government contributions, and can be thought of as an obligatory private donation to charity. Each individual's total donation accumulates to a sum of voluntary and involuntary donation, $y_i = g_i + t_i$. All these total individual donations then sum up to an aggregate amount, which is defined as $Y = \sum_{i=1}^n y_j$.

Again, each individual takes other people's donations, $Y_{-i} = \sum_{i \neq 1}^n y_j = Y - y_i$ as given (Andreoni, 2006). Individual's extended maximization problem looks as follows:

$$\max_{x_i, Y} u(x_i, Y) \quad (2.4)$$

$$s. t. x_i + Y = m_i + Y_{-i} \quad (2.4.1)$$

$$Y \geq Y_{-i} + t_i \quad (2.4.2)$$

Solving this problem yields new optimal individual donation function:

$$g_i' = g_i^* - t_i = \max\{f_i(m_i + G_{-i}) - G_{-i}, 0\} - t_i \quad (2.5)$$

From (2.5) one can conclude that to maintain same level of utility as in (2.2), an individual will reduce her or his optimal donation from g_i^* to g_i' by the amount paid as a lump sum tax. As long as the tax amount is smaller than optimal voluntary donation, it will be neutral for the total amount of money donated to the public good. Lump sum taxation has changed the source of financing, but not the total supply. In other words, it has crowded out voluntary private donation. Exhibit 9 illustrates the crowding out.

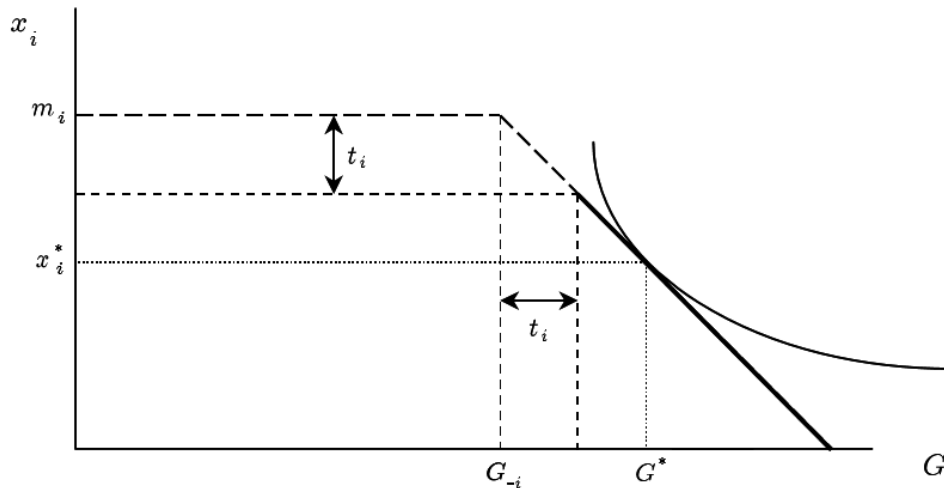


Exhibit 9: Complete crowding out (Andreoni, 2006, p. 15)

The complete crowding out illustrated above assumes that all people prefer to donate, and are indifferent between voluntary g_i and involuntary t_i . In the real world, some people will prefer never to donate, or to donate any amount smaller than the mandatory amount t_i . In this situation, when tax amount is greater than optimal donation $t_i > g_i^*$, the tax becomes non-neutral or distortionary and the total amount of public good increases (Andreoni, 2006).

It is important to note that lump sum taxes are not feasible in the real world, but for mathematical simplicity it illustrates the point quite eloquently. If the government instead introduced an increase in income tax to the same extent as the proposed lump sum tax, the result would be the same: As long as the tax amount from the increased income tax is smaller than the optimal voluntary donation, it will not affect the total amount of money donated to the public good, just the financing. Each individual's total donation will still be the sum of voluntary and involuntary donations, $y_i = g_i + t_i$, and total supply will increase only when the increase in tax exceeds the optimal voluntary donation before tax. The main difference is that the income tax works indirectly through a reduction of general disposable income, while the lump sum tax works directly (Andreoni, 2006).

Though the tax is distortionary for some people, it is approximately neutral when the model is applied for the large number of givers. The first assumption is that a large number of individuals donates to charity. The second assumption is that the government tax individuals who does not donate an amount τ , which is then donated to the public good. As shown above, the total supply of public good increases when this happens. But by how much?

Solving the equation for the new equilibrium gives:

$$G + \tau \equiv t_i (m_i + G_{-i} + \tau)$$

Implicitly differentiate with respect to τ gives:

$$\frac{\partial G}{\partial \tau} + 1 = f_i' \left(\frac{\partial G_{-i}}{\partial \tau} + 1 \right) = f_i' \left(\frac{\partial G}{\partial \tau} - \frac{\partial g_i}{\partial \tau} + 1 \right)$$

Then, solving the equation with respect to $\frac{\partial g_i}{\partial \tau}$, and summed across all givers to find $\frac{\partial G}{\partial \tau}$ gives:

$$\frac{\partial G}{\partial \tau} = \frac{-\sum_{i=1}^k \frac{1-f_i'}{f_i'}}{1 + \sum_{i=1}^k \frac{1-f_i'}{f_i'}} > -1$$

This is as predicted by the theory above. If the numerator and denominator then is divided by the number of givers k and let k increase to infinity, adding an assumption that $0 < f_i' \leq \theta < 1$, it follows that:

$$\lim_{n \rightarrow \infty} \frac{\partial G}{\partial \tau} = -1$$

This shows that when the number of givers is large, even non-neutral taxes become approximately neutral (Andreoni, 2006).

Another implication is that the assumption of different income levels and identical utility functions implies a drop in the number of givers as the population in an economy rises, leading to the only givers being the very richest. To show this, assume that the population has identical preferences but different incomes. If one draws a probability distribution function for income and draws a population of potential givers, then for any population n and equilibrium G all givers will satisfy the following equation:

$$G = f(m_i + G_{-i})$$

If f is inverted, it gives that:

$$f^{-1}(G) = m_i + G_{-i} = m_i + G - g_i$$

Rearranged, it gives:

$$g_i = m_i - f^{-1}(G) + G = m_i - m^*(G)$$

It follows from this expression that for each equilibrium G there is a critical level of income m^* . Thus, only individuals with an income greater than m^* will give to charity. As $m^*(G) \equiv f^{-1}(G) - G$, then $\frac{\partial m^*(G)}{\partial G} > 0$ from normal goods. How, then, does m^* change as the population n changes (Andreoni, 2006)?

Drawing a random person from the probability density function of income, one can analyze how the income level changes when the population changes. If the person drawn has an income lower than m^* , this will have no effect on G , but increase the proportion in the population of non-givers. If the person drawn has an income higher than m^* , this person will be a giver. Does this decrease the total giving? No, it does not. If the number of givers increase, and they give less in total, then the original set of givers could have increased their utility by giving less in the first place. It follows that total giving will rise, and m^* will increase, leading to an equilibrium where a smaller fraction of the population has an income higher than m^* . Thus, a smaller fraction of the population will donate to charity. As the population n converges on infinity, it follows that only the richest individuals in the economy will be givers (Andreoni, 2006).

These implications are inconsistent with real life observations of charitable behavior. Indeed, people of different income brackets tend to donate, not only the rich, and though government grants may crowd out some private donations, they do not do so completely. Such poor prediction ability of the privately provided public goods model highlights the need for further research and development of explanations (Andreoni, 2006).

3.3 Warm glow giving

3.3.1 Warm glow model

The model described in chapters 3.1 and 3.2 does not explain observed charitable behavior. The point of failure lies in one of the basic assumptions: This model assumes that people are indifferent between their own donations and any other third-party donation. Such a form of *pure altruism* is in disagreement with the real world. To accommodate a more realistic interpretation of real-world motivations, the *warm glow giving model* is introduced. Here, the basic assumption is *impure altruism*; people prefer their own donations over any other third-party donation.

People are emotional and moral creatures, and may experience a warm feeling from their acts of charity. The desire to feel good may work as a motivation for charitable giving, and better explains why most people donate to charity even when their contributions have no measurable impact on the supply of a public good (Andreoni, 2006).

In the warm glow giving model, a private donation also takes on the characteristics of a private good, as it yields excludable positive benefits in a form of warm glow feeling to an individual. Private donation g is included to the utility function of the giver. The giver's utility function now consists of the giver's donation g , privately provided public good G and composite private good x . That is, a giver strictly prefers to donate to feel a warm glow.

Warm glow giving model notation is the same as in (2.3). A giver's maximization problem is presented as following:

$$\begin{aligned} \max_{x_i, g_i} u(x_i, G, g_i) & \quad (2.6) \\ \text{s. t. } x_i + g_i & = m_i \end{aligned}$$

For simplicity, it is again assumed that others' donations are taken as given, $G_{-i} = \sum_{j \neq i}^n g_j = G - g_i$. Then problem (2.6) is rewritten so that G level is maximized rather than g_i :

$$\begin{aligned} \max_{x_i, G} u(x_i, G, G - G_{-i}) & \quad (2.7) \\ \text{s. t. } x_i + G & = m_i + G_{-i} \end{aligned}$$

The solution to (2.7) yields an optimal donation function g^* , which depends on “social income”, denoted as $m_i + G_{-i}$, and new term for warm glow in gifts function denoted as G_{-i} :

$$g_i^* = f_i(m_i + G_{-i}, G_{-i}) - G_{-i}$$

It is assumed that private donation g and privately provided public good G are normal goods. This normality implies that the derivative of the first term f_i in donation function g^* with respect to social income, $f'(s)$, is positive and does not exceed 1, $0 < f_i^s < 1$. The derivative of the first term f_i with respect to warm glow term, $f(w) = G_{-i}$, is also positive, $f_i^w > 0$ (Andreoni, 2006). The derivative of total donation function g^* with respect to warm glow G_{-i} shows that without $f'(w)$ warm glow effect, increase in G_{-i} implies decrease in g_i , under assumptions of $f'(s) > 0$ and $f'(s) < 1$, and $f'(w) > 0$:

$$\frac{\partial g_i}{\partial G_{-i}} = f_i^s + f_i^w - 1 = -(1 - f_i^s) + f_i^w$$

In other words, when others increase their donations, people tend to decrease their own donations, thus treating donations as perfect substitutes. $-(1 - f_i^s)$ shows negative relationship between g_i and G_{-i} . Adding positive warm glow term $f_i^w > 0$ dampers the negative effect of $-(1 - f_i^s)$. Hence, increased donations from other people and sources such as taxes, does not crowd out people’s donations completely.

To show this implication, a government lump sum tax is included into utility function $u(x_i, G + t, G - G_{-i})$. Following same procedure as above yields an optimal donation function of $g_i^* = f_i(m_i + G_{-i}, G_{-i} + t) - (G_{-i} + t)$. Derivation of this function with respect to tax yields $\frac{\partial g_i}{\partial t} = f_i^w - 1$, and it is clear that a complete crowding out ($\frac{\partial g_i}{\partial t} = -1$) occurs only in a case when $f_i^w = 1$, which is complete crowding out. In case of warm glow motives $f_i^w > 1$, crowding out will be incomplete (Andreoni, 2006). In this sense, it shows that warm glow gives more realistic explanation to charitable giving.

3.3.2 Status motives

The warm glow model’s inclusion of private donation as a private good in the utility function explains the self-benefit gain of the charitable behavior. Such self-benefit can also arise from

status and prestige considerations rather than only a warm feeling, which a giver receives through the act of donating described above. When donations are made public, many people are motivated to donate to receive wealth recognition, or be publicly perceived as good and generous. Thus, self-benefit of charitable giving may be differentiated between *intrinsic benefit*, when a giver is indifferent about the donation's publicity and is only after positive internal vibes, and *prestige benefit*, when giver is interested in donation's publicity and the following external prestige (Harbaugh, 1998a). In contrast to conspicuous luxury consumption as means of wealth demonstration, charitable giving is also viewed as positive in a society, and brings positive externalities in form of a good reputation. One seldom hears about anonymous large donations (Konrad & Glazer, 1996). Indeed, charitable foundations are often named after the large donors or founders and serve as long lasting memorials for them.

Harbaugh (1998b) empirically demonstrated the prestige motive analyzing data on the publicly made donations to the prestigious law school. The school initially reported all amounts of donations, but later switched to reporting amounts in categories: \$100, \$250, \$500, \$1,000. Categories reporting implies that those who donate, for example, amounts between \$500 and \$999 would be announced as patrons. Examining donation sizes before and after the change to category reporting showed the increased proportion of amounts that are exactly the minimum to fall within a certain category. Proportion of donation amounts that do not fall in the categories has decreased. These results support hypotheses of the prestige motive.

3.4 Model comparison: Public good & warm glow

In summary, this chapter has outlined two main theoretical frameworks that explain charitable giving: the privately provided public good model and the warm glow model. The privately provided public good model assumes that people have only altruistic motivations when donating, which means that they are concerned only with the total amount of public goods, irrespective of the source of provision. In other words, people derive utility only from the increasing total supply of public goods, $u(x_i, G)$, and are indifferent between whether they themselves or any other third party contributes the donation. Such an altruistic motivation assumption leads to implausible theoretical results when including tax as a source of government donations. The result is that taxes completely crowds out private donations, which contradicts empirical observations. Hence, the model lacks good predictive ability.

The warm glow model, in addition to the altruistic motivation, includes the self-benefit motivation. This means that people also gain utility from the warm glow they receive when donating, $u(x_i, G, g_i)$. Warm glow, g_i , may represent the intrinsic good feeling about oneself, or the external benefit of wanting to be viewed as good by the public. In this model, people are no longer indifferent between their own donations and others' donations. They prefer own donations rather than others'. Third party provision of public goods, represented by the inclusion of taxes in the utility, results in incomplete crowding out. Incomplete crowding out is more intuitive and in line with empirical observations. Consequently, the warm glow model is to be preferred when analyzing charitable behavior.

4. Norwegian charities

4.1 What is a Norwegian charity?

Primarily associated with membership, participation, volunteering and democratic structures, the term *voluntary organization* is most widely used in Norway for what is called *charity* in England or *nonprofit organization* in the US. Analogously, *voluntary sector* is the preferred Norwegian term to describe the *nonprofit sector*. To begin with, Norwegian *voluntary sector* used to mainly characterize idealized, voluntary, and democratically organized associations. Foundations are not membership based and hence have usually been kept outside the sector. It was first at the end of 20th century that foundations, political parties, business and professional unions, employer organizations, and economic cooperatives were increasingly considered as part of the Norwegian voluntary sector. This brought understanding of the Norwegian voluntary sector closer to the internationally accepted JHCNP *nonprofit sector* definition described in chapter 3. Today, an organization with only paid professional employees can also be called a voluntary organization. The main point is that it has a public purpose and is not distributing its profits (Sivesind, et al., 2002).

4.1.1 Historical background

The first institutionalized charitable activities in Norway, as in the rest of Europe, can be traced to the Middle Ages at the time when Norway was converted to Christianity. Defined as one of the greatest of virtues and a duty, charity was encouraged by the church both voluntarily and through compulsory tithing (Kluge, 1979). At these times, the oldest foundations and legacies in the form of hospitals, houses for the poor and the elderly came to existence, usually owned by or directly connected to the church (NOU 1998: 7, 1996). Trondheim hospital is considered to be the oldest existing Norwegian foundation established to service the poor by Archbishop Jon. The hospital was formally established in 1277, but is said to have roots to the 12th century Maria hospital. Another Norwegian foundation that has existed since the Middle Ages is Oslo Cathedral School, established initially for educating priests in 1152 (Lorentzen, 2004). After the Reformation in 1537, Norway was converted to Protestantism. The Church was nationalized and its properties, together with its charitable institutions, came under the governance of the King. Yet, local priests continued their charitable work, but now on behalf

of King and state. Lutheran ideas intensified state responsibility for the well-being of the citizens (Tønnesen, 2017). Around 1814, the *Poor Commissions*⁷ were established, and the Poverty Law introduced in 1845 (Ehrhardt, 2016). This and later poverty laws were the beginning of the extensive public involvement in welfare provision in Norway.

In the middle of 1800s the broad national movements occurred. People mobilized around moral, religious, social and cultural issues. This rise of civic spirit can be linked to the process of industrialization and modernization. Better transportation and other communication services accelerated the spirit of associations (Lorentzen & Selle, 2000). Associations that were established provided various social services, which was welcomed by public authorities. Although up until World War II, the governmental financial support and control was limited, associations did not see themselves as belonging to the separate sector in opposition to public authorities, as it happened in UK and US. This can be explained by the lack of a strong middle class, which could have advanced collective identity of such private initiatives (Sivesind, et al., 2002).

In the period after World War II, the Labor movement got to power, and the social democratic welfare model was developed (Sivesind, et al., 2002). Consequently, philanthropic ideas were stigmatized (Lorentzen & Selle, 2000). Many welfare services initiated by voluntary associations were more and more integrated with government-provided services, and over time were completely taken over by public providers. This especially relates to welfare health and social policy services (Sivesind, et al., 2002). Voluntary associations in welfare services have instead taken the role of *interest* and *pressure* groups, and started to advocate the needs of welfare services before government (Lorentzen & Selle, 2000). Associations in the areas of sports and culture have retained their autonomy, although the government created public finance support system for them (Lorentzen & Selle, 2000).

As the state took responsibility over provision of welfare services, new voluntary organizations of the 1960s were mainly established in the field of culture, sports and leisure (Sivesind, et al., 2002). By the 1998, around 60% of all memberships in voluntary associations

⁷ *Fattigkommisjonen* in Norwegian.

were within area of sports, leisure, culture and environmental issues (Lorentzen & Selle, 2000).

By the 1980s, the golden age of collectivism, solidarity and redistribution of wealth by the state had come to an end. As the social democracy had improved the living standards for the majority of the population in Norway, this was seen a necessary precondition for the triumph of neoliberal thinking, thus paving the way for more differentiated needs and services, which undermined the collective welfare solutions. As a following, it can be argued that the early success of the social democratic model throughout the 1960s and 1970s laid the ground for its subsequent demise (Lorentzen, 2004).

The neo-liberal era, which started around the first years of the 1980s, represented a change in the views of the civil actors in the charitable sector. Especially, this affected actors such as cooperatives, foundations, self-help groups, voluntary associations and others. In theory, this nonprofit approach focused mainly on the economy of the civil actors, such as associations and foundations. In the Nordic countries, the neo-liberal impulses of the early 1980s sparked a debate on the role and importance of ownership. Hence, the foundation was seen as an important agent to the process of deregulation, by untying the bonds between the state and its activities. Paradoxically, this resulted in an increase in the number of what might be labeled as a government foundation meant to act independently of the state, but still remained dependent on public funding (Lorentzen, 2004).

4.1.2 Voluntary organization

In Norway, there is no direct legal definition for the *voluntary organization*. There is, however, since late 2008, implemented the *Law on the Register of Non-Profit Organizations*⁸ (the Law on RNO) which can be used to determine whether organization meet the requirements to be registered as a voluntary organization (NOU 2006: 15, 2006). Thus, the indirect legal definition for the registered voluntary organization can be tracked from the eligibility criteria defined by this law.

⁸ *Frivillighetsregisterloven* in Norwegian.

Voluntary activity requirement

The basic requirement for a voluntary organization to be officially registered is to operate on a voluntary basis, or in other words nonprofit basis, cf. paragraph 3. Voluntary and nonprofit is primarily understood as non-commercial and non-distributive. Nonetheless, grant-giving foundations and joint stock companies are eligible for a registered voluntary organization status if they make distributions only to voluntary activities. Voluntary activities organized by public authorities, or activities that relate to the cooperatives covered by the Law on cooperatives, disqualify from registration as voluntary organization, cf. paragraph 3 (Frivillighetsregisterloven, 2007).

Organizational structure requirement

A registered voluntary organization should be organized in such a way that it can be considered an independent legal entity. This is to make sure that it can be lawfully imposed rights and duties (NOU 2006: 15, 2006). Paragraph 4 of the Law on RNO stipulates following eligible registration units:

- voluntary associations
- non-commercial foundations that do not distribute funds, or that only distribute funds to non-profit activities
- commercial foundations that only distribute funds to non-profit activities
- limited liability companies that only distribute funds to non-profit activities (Frivillighetsregisterloven, 2007)

Throughout the history associations and foundations have been the most common structures for Norwegian voluntary organizations to choose for their main nonprofit activities. The limited liability company structure has, however, been also utilized, but usually for the commercial activities that would finance main nonprofit activities. Examples, are cafeterias, books sale, sale of diverse services organized as a company with profits going to non-profit activities (NOU 2006: 15, 2006).

Organizations with the possibility to distribute resources to physical persons are prohibited to be registered (Frivillighetsregisterloven, 2007). Applying the RNO eligibility criteria, a Norwegian voluntary organization can be defined as an association, foundation or limited liability company, engaged in voluntary work on the nonprofit and nonpublic basis, and distributing funds exclusively to nonprofit activities. Today, there are 43,942 registered

voluntary organizations in Norway (Brønnøysundregistrene, 2017b). Of these, 42,959 are organized as associations, 760 as foundations, and 223 as companies (Brønnøysundregistrene, 2017a).

Deviating from the registered voluntary organizations and consider an international accepted JHCNP nonprofit sector definition, the number of organizations constituting Norwegian voluntary sector more than doubles. In 1997, the number of voluntary organizations was found to be 112,500 (Sivesind, et al., 2002). In 2016, Arnesen et al. (2016) came up with an estimated 105,700 voluntary organizations in Norway.

4.2 Regulation

The voluntary sector is under the administration of the Ministry of Culture in Norway. Despite this, it is more usual for organizations to have contact with the ministries responsible for their field of operations (Sivesind, 2016). For instance, an international organization like Unicef Norway is mainly in contact with the Foreign Ministry, and an organization like Nature and Youth are mainly in contact with the Norwegian Environment Agency.

The Register of Non-Profit Organizations (RNO) was established to simplify the interactions between the voluntary sector and the government. This was done to strengthen the legitimacy of the organized voluntary activity in Norway. As mentioned above, the RNO is open solely to noncommercial foundations, voluntary associations and limited liability companies that exclusively distribute money to nonprofit activities. It is optional for organizations to register in the RNO, but the number of organizations who register is steadily increasing. This may be because registration in the RNO unlocks several significant goods, such as compensation for Value Added Tax (VAT), eligibility for *the Grass Root Share*⁹ from Norsk Tipping and many other benefits (Sivesind, 2016).

⁹ The Grass Root Share is a system implemented by the monopolist of the Norwegian betting sector, Norsk Tipping (literally translated *Norwegian Betting*). Each player can attribute her/his Grass Root Share to an organization registered in the RNO. Norsk Tipping then gives 5% of all the money the player plays for to that organization (Norsk Tipping, 2017).

Furthermore, *The Norwegian Gaming and Foundation Authority*¹⁰ have their own central register for foundations. The sub-division, *The Norwegian Foundations Authority*¹¹ (hence called The Foundations Authority) are responsible to check whether Norway's foundation's activities are in line with *The Foundation Act*¹². The Norwegian Gaming and Foundations Authority also administer and control lotteries in Norway, and voluntary associations must be granted an exemption from the law to arrange lotteries, and are also obliged to submit their accounts to the authorities (Sivesind, 2016).

In addition, Norway has a register for fundraising organizations established by the fundraising organizations themselves. This is called *The Fundraising Control*¹³, and it is tasked with maintaining the register prescribed by *The Law of Registration of Fundraising*¹⁴ (Sivesind, 2016).

Inspired by agreements made in Denmark, Sweden and the UK, the Norwegian government signed an agreement with the health and social services-providing voluntary organizations in Norway. The main goal of this agreement was to ensure high quality in the services provided by the voluntary organizations, and securing a productive dialogue between the organizations and the authorities. In addition, the agreement sought to secure the autonomy, distinctiveness and predictability for the voluntary organizations (Wiepking & Handy, 2016). The background for the agreement was the increased use of quasi-markets to allocate contracts and regulate welfare service provisions. Due to this agreement, several voluntary service providers have lost their government contracts. Many voluntary institutions, some with a long-spanning history, have been forced to close down in the aftermath, and many feared that the welfare services provided by the voluntary sector would decrease as a result of the agreement. According to Gulbrandsen & Sivesind (2013) however, employment data show that in the growing employment in the welfare sector in the period of 1997 to 2010, the nonprofit sector has managed to retain an employment share of between 7% and 8%.

¹⁰ *Lotteri- og Stiftelsestilsynet* in Norwegian.

¹¹ *Stiftelsestilsynet* in Norwegian.

¹² *Stiftelsesloven* in Norwegian.

¹³ *Innsamlingskontrollen* in Norwegian.

¹⁴ *Lov om registrering av innsamling* in Norwegian.

4.3 Social democratic model

As cited in Sivesind (2016), Anheier & Salamon (2006), Salamon & Anheier (1998) and Salamon et al. (2004) concludes that Norway is a social democracy in the traditional model. This means that the state implements significant welfare costs, but is also a provider of a significant amount of welfare goods. Thus, welfare provision only constitutes a small focus in the nonprofit sector. In Norway, activities such as sports, culture and other leisure activities take up a majority of the nonprofit sector, giving the state less incentives to control and regulate charitable organizations.

Salamon & Anheier presents a Social Origins Theory with a view of the public sector described as “an integral part of a social system whose role and scale are a by-product of a complex set of historical forces” (Salamon & Anheier, 1998, p.245). As shown above, the theory classifies countries into one of four typologies with different systems of nonprofit. The underlying assumption is that the sheer size and composition of the nonprofit sector in a country cannot be explained by one factor. This is a contrast to the economic theory for nonprofit organizations (Sivesind, 2016). The model goes on to show a system of complex relationships between the different societal classes and external powers, and social institutions such as the state and church. Because of evolvement during industrialization, countries today cluster into four types: democratic, corporatist, statist and liberal models, depending on the size of the nonprofit sector and government welfare spending. In the classic social democracy, as mentioned above, the welfare costs are extensive and welfare provision only constitutes a minor part of the nonprofit sector (Sivesind, 2016).

The public welfare costs are extensive in Norway, as is typical for the Scandinavian and Nordic countries. In 2012, social expenditures accounted for 22% of GDP, and the nonprofit organizations’ share of paid employment in the welfare field was approximately 7%, compared to the 13% in Denmark and 20-25% in corporatist countries like Germany, France and Austria (Sivesind & Selle, 2009). Norway also shows low level of volunteering in welfare services, and a diametrically opposite high level of volunteering in expressive organizations. The mentioned characteristics are consistent with the social democratic model (Sivesind, 2016).

According to Salamon & Anheier (1998), in a social democracy the public sector gradually absorbs church-related welfare services to ensure unitary standards and equal access for all. The result of this is little to no room for charities in the welfare field, and hence little necessity

for the state to fund such organizations. They therefore expect that “the voluntary sector would be financed more heavily by charitable contributions” (Salamon & Anheier, 1998, p.230).

Comparative analysis does not support this prediction. The Norwegian voluntary sector has a gift share of income of 7.5%, which is fairly average for 15 Western European and liberal countries (including UK, USA and Australia). Furthermore, the gift share of income falls to approximately 3% when focusing specifically on the welfare field. This is among the lowest of the measured countries, which is even more contrary to Anheier and Salamon’s expectations (Sivesind, 2016).

Anheier & Salamon (2006) admits that this contradiction to their expectations is an anomaly. Still, they claim that “however, once the value of volunteer time is considered, the prediction holds for social democratic countries as well” (Anheier & Salamon, 2006, p.108). This seems not to hold true, as of the hours spent volunteering in Norway, only 15% are spent in organizations operating in the welfare field. In addition, most of the volunteering does not contribute to neither funding nor welfare services – a majority of Norwegian volunteering hours takes place in support, advocacy and member-based activities (Sivesind, 2016).

Contrary to the assumptions of Anheier & Salamon, government transfers and payments, as well as user charges, are the main source of income for Norwegian charities. Voluntary organizations are typically skeptical of financing government operations by spending money generated through donations or volunteering – those resources are generally reserved for areas where the government does not operate (for instance, donations may go to establishing a new football field, but not to cover the operating costs of one). Donations and volunteering are thus shown to not be significant alternatives to the Norwegian public welfare funding, which contrasts the expectation one should have based on the Salamon & Anheier model. However, volunteering is still a highly significant source of labor in Norway, and plays a major part in income generating activities, particularly in recreation, sports and culture (Sivesind, 2016).

4.4 Associations

Association is the most common organizational structure to organize voluntary activities. 98% of the RNO-registered voluntary organizations is organized as associations (Brønnøysundregistrene, 2017a). Legally federations, clubs and teams are associations. However, the definition of the association is not clearly defined in the Norwegian law. Whether it is an association must be determined from the general law practice on associations, law theory and law tradition. The basic requirement is that a number of people, or legal entities, are engaged in activities with a common uniting purpose. While these is not unconditional requirements, Norwegian association law practice expects that association has members who pay membership fee, that it has statutes, a board, an annual general meeting, and that its activities are of certain duration and level. If members have no duty to pay a membership fee, and there is no board, and no adopted statutes, then it points more to an ad hoc-organized activity and not an association. For example, petitions, organized demonstrations, sewing groups and randomly organized clubs at work are not considered associations in the legal understanding. Having decision-making members is what differs an association from the foundation. What is similar is that an association, like a foundation and unlike a company, is self-owning. This means that it is not possible for members, or any other parties, to gain profits and capital shares of the association. Companies are not self-owning, they have owners, who through their ownership are entitled to the companies' returns and profits. This is a crucial distinguishing characteristic between an association and a company (NOU 2006: 15, 2006).

Traditionally associations can be categorized as commercial and noncommercial. Noncommercial associations, often called idealistic associations, are considered voluntary organizations; it is the voluntary category of associations which is allowed to be registered as voluntary organization in RNO. Commercial associations, as name suggests, are engaged in business activities.

4.5 Foundations

Many voluntary activities are organized as foundations, although this type of organizational structure is less democratic than an association. Foundations may have members, but in contrast to associations they cannot take part in decisions on critical issues. It is the board that makes decisions based on the statutes of the foundations. The board cannot change statutes or deviate from them. This makes foundations less influenced by the changing environment, and less dynamic than associations (Dugstad & Lorentzen, 2010).

Stiftelse is, as previously mentioned, the Norwegian word for a foundation. The Norwegian Foundations Authority, defines a foundation as “an asset that by a legal disposition is placed at the independent disposal for a specific purpose of any kind” (Stiftelsestilsynet, 2017a).

There are 6,880 foundations in Norway (Stiftelsesregisteret, 2017). The purpose of many of the small foundations from the 1800s is local and outdated, as many of the needs of the 19th century have all but evaporated. Foundations in modern times have more strategic purposes; they own significantly more capital, and aim towards global innovative solutions for social problems. With this, philanthropic foundations exceed charity in its traditional form. They want to see results behind the donations and solve the very causes of social problems – not merely react on them, but eradicate their origins.

In comparison to the UK and the US, Norway has a somewhat bleak history of philanthropy (Lorentzen, 2004). This can be explained by the lower number of wealthy individuals and less class differences within the society, as well as an extensive welfare state which has covered most of the social needs (Lorentzen, 2004).

4.6 Legislation

The Foundations Act of 15 June 2001 is a legislation that governs Norwegian foundations today. Entering into force on 1 January 2005, the law replaced the Foundations Act of 23 May 1980. The intention was to improve public control, prevent abuse and make the law on foundations more user-friendly (NOU 1998: 7, 1996). In conjunction with the 2001 legislation, a centralized supervisory body for foundations, The Foundations Authority, was established. Administered by the Norwegian Gaming and Foundations Authority, it took over the

responsibility of conducting supervision of foundations from the *County Governor*¹⁵. In addition, The Foundations Authority became responsible of keeping a central register of all foundations¹⁶, cf. paragraph 7 and 8 (NOU 1998: 7, 1996). Among other amendments were also the repeal of the public and private classification of foundations, introduction of new capital requirements and a formal requirement for a disposition as a legal basis for foundations (Kluge Advokatfirma, 2011).

Since the current law entered into force in 2005, the landscape of Norwegian foundations has experienced overturning change. The proportion of large business foundations with capital exceeding NOK 1 million has significantly increased, leading to a necessity of further modernization of the law. A new law suggestion was developed and sent to governmental hearing in 2016. It will eventually replace the Foundations Act of 15 June 2001. The suggested new law implies significant simplifications with respect to the rules of restructuring a foundation, and will repeal the public benefit and business classification of foundations. This means that business foundations will no longer be a separate category (NOU 2016: 21, 2016). The main changes are summarized in exhibit 10.

Draft of new Law on foundations Of 21 Oktober 2016	Law on foundations Of 15 June 2001, NR. 59.	Law on foundations Of 23 May 1980, NR. 11
1. Classification: a) Dissolving the separation of for-profit and nonprofit foundations.	1. Classification: a) Dissolving the separation of public and private foundations. b) Main distinction: For-profit and nonprofit foundations, cf. § 1 (1).	1. Classification: a) Main difference: Public and private foundations, cf. § 1 and § 14. b) Sub-classification: For-profit and nonprofit foundations, cf. § 24.
2. Memorandum: The memorandum can now be formed electronically, and no longer requires an opening balance sheet.	2. Memorandum, cf. § 9: The legal disposition that forms the basis of the foundation.	2. Memorandum: No formal requirements for the legal disposition that forms the basis of the foundation.
3. Independence requirement: No definition in the law, but the central condition is further sought through simple rules:	3. Independence requirement: No definition in the law, but the central condition is to a larger degree than before sought through simple rules, specially:	3. Independence requirement: No definition in the law, but it is certain that the old law is based on an independence criterion.

¹⁵ *Fylkesmann* in Norwegian.

¹⁶ This register is called *Stiftelsesregisteret* in Norwegian, and is the official registry of foundations in Norway.

<p>a) § 2 - the definition of a foundation.</p> <p>b) § 3 (1) - restrictions to the access to the foundation's capital from the creator.</p> <p>c) § 3 (2) - restrictions to the access of the foundation's capital from other persons who have provided capital.</p> <p>d) § 24 from the previous law is not continued; the foundation's base capital is no longer tied.</p> <p>e) § 59 (b) - restrictions in access to grants from the foundation to person who has given the capital that is included in the foundation's base capital.</p> <p>f) § 61 - ban on the foundation providing loans or security to the person who has given the capital that is included in the foundation's base capital.</p>	<p>a) § 2 - the definition of a foundation.</p> <p>b) § 19 (2) - restrictions in access to grants from the foundation to creator, including closely related persons.</p> <p>c) § 20 - ban on the foundation providing loans or security to the creator including closely related person, board member, observer, persons in the organization mentioned in § 36 and General Manager.</p> <p>d) § 27 - the person who has given the capital that is included as the foundation's base capital and his or her closely related persons, may not be the only Members of the Board, cf. § 27 (3). Said persons may not be the Chairman of the Board if the board has only two members, cf. § 27 (4). The Foundations Authority may exempt from the restrictions. In addition, the general independence requirement limits the access of the abovementioned persons to the Foundation's governing bodies.</p> <p>e) § 29 - in relation to the County Governor's competence under the old law, the Foundations Authority has extended access to appoint and dismiss board members.</p> <p>f) § 40 - limitation in the amount of remuneration that can be granted to elected representatives and senior executives of the foundation.</p>	<p>a) § 2 - indirect definition of a foundation.</p> <p>b) No provision for distribution.</p> <p>c) § 8 (2) - the foundation cannot provide loans or security in favor of a board member, observer or business manager without the consent of the County Governor.</p> <p>d) No statutory limitation in access to participate in the Board of Directors for the person(s) who has given the capital that is included as the foundations basic capital. The universal independence requirement sets limits.</p> <p>e) § 5 (2) - the County Governor is entitled to appoint a board of directors under certain conditions.</p> <p>f) § 8 (1) - limitation in the extent of remuneration to board member, observer or business executive. Not applicable to persons in</p>
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		other bodies or senior executives.
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Exhibit 10: New, old and proposed Foundations Act - main differences (Kluge Advokatfirma, 2011) (NOU 2016: 21, 2016)

4.6.1 Definition

In paragraph 2, the Foundations Act gives a formal definition of a Norwegian foundation: “By foundation is meant a capital asset made available by testament, endowment or other lawful acts to be used independently for a specific purpose of a nonprofit, humanitarian, cultural, social, educational, financial or other nature. A legal entity that meets the conditions laid down in the first sentence is a foundation pursuant to this Act, regardless of whether it is designated as a legacy, institution, fund or otherwise” (Stiftelsesloven, 2005, § 2).

It follows from this definition that a foundation has its legal basis in a disposition, meaning that an asset must be placed at the independent disposal of the foundation for a specific purpose. Like companies and physical persons, the foundation is a legal entity, which means it can have rights and incur obligations (Kluge Advokatfirma, 2011).

4.6.2 Independence requirement

A core characteristic of a Norwegian foundation is its independence. Based on the independence requirement, the Foundations Act ensures that a foundation stays independent in relation to its founder, beneficiaries or any other legal persons. Foundations, unlike companies, do not have owners, and unlike associations, do not have members. Assets in the foundation are owned by the foundation itself, and no other legal persons in the position of owner can make claims on the economic distributions from the foundation (Kluge Advokatfirma, 2011).

Despite no precise definition in the Foundations Act, the independence requirement is clarified through the following sections of the Foundations Act (Kluge Advokatfirma, 2011). The legal definition of paragraph 2 above stresses that assets should *be used independently for a specific purpose* by a foundation. Paragraph 19 prohibits distributions of the foundation’s funds to its founder, founder’s closely related parties or to companies in which they have a controlling

interest. In addition, these groups cannot benefit from loan giving or security furnishing from the foundation, cf. paragraph 20. Paragraph 27 ensures that founder and founder's related parties are not the only members of the foundation's board. It also establishes a requirement that the foundation must have more than two board members in case the founder or one of the founder's closely related parties is the board chair. Paragraph 29 gives authority to The Foundations Authority to appoint and dismiss board members in certain circumstances. The supervisory body may also reduce remuneration of board members, general manager and other leading employees of a foundation, cf. paragraph 40 (Kluge Advokatfirma, 2011).

4.7 Types of foundations

Before 2005, foundations were legally classified as either private or public. In practice there existed some confusion, because public foundations did not necessarily receive public funding. The main difference was that the public foundations had to be approved by the public authorities, and were subject to stricter regulation and supervision. Moreover, applying for a public classification happened on a voluntary basis. All other foundations were considered private. This classification was abolished with the new law (Lorentzen, 2004).

4.7.1 Public benefit and business foundations

The current law makes a classification between public benefit and business foundations, cf. paragraph 1. Paragraph 4 defines business foundations as:

- a) Foundations that have a purpose to operate business activities.
- b) Foundations that operate business activities.
- c) Foundations that, due to the contract, or ownership of shares or company holdings, have controlling influence over the business outside the foundation itself (Stiftelsesloven, 2005, § 4).

The group of foundations referred to in c) is often called *holding foundations*, and have similarities with the *parent company* defined in the Shareholding Act paragraph 1-3 (NOU

2016: 21, 2016). The law gives two examples to clarify the foundation with the controlling influence over the business outside the foundation itself:

- a) The foundation owns as many shares or holdings in a business operating company, that these shares and holdings represent the majority of votes in the company, or
- b) The foundation has a right to choose or resign the majority of the board members in the business operating company (Stiftelsesloven, 2005, § 4).

Public benefit foundations are implicitly defined as foundations that are not business foundations. In cases of dispute, The Foundations Authority determines whether a foundation is of the business type or the public benefit type. Business foundations will incur obligations over third-parties to a larger extent than other foundations. In this connection, they are subject to the following special rules (Kluge Advokatfirma, 2011):

- All business foundations must register in the *Register of Business Enterprises*¹⁷, cf. paragraph 13 and 23.
- All business foundations shall state their business name in the statutes, cf. paragraph 10.
- Business foundations that are not holding foundations shall have a founding capital of at least NOK 200,000, cf. paragraph 22.
- Business foundations that are not holding foundations with founding capital of NOK 3 million or more must have a general manager, cf. paragraph 34. In these cases, the general manager cannot be elected as board chair (Kluge Advokatfirma, 2011).

4.7.2 Operative and grant-making foundations

In the literature, foundations are often classified as operative or grant-making (Dugstad & Lorentzen, 2010). Foundations that do not give grants are referred to as operative. The opposite applies for grant-making foundations. Both types may fall into public benefit or business

¹⁷ *Foretaksregisteret* in Norwegian.

classifications in the law. Most of operative foundations, however, are engaged in business activities with a nonprofit purpose. Examples are museums, culture centers and hospitals organized as foundations. In practice, operative foundations are more like associations. The grant-making foundations are mainly those which are traditionally consider a foundation. That is, they manage a fortune according to established statutes, and give grants to charitable purposes (Dugstad & Lorentzen, 2010). Many countries have a *payout rule* for grant-giving foundations. In the US, the rule implies that a minimum 5% of foundation's assets must be donated on an annual basis (Andreoni, 2006). In Sweden, a foundation is required to use at least 80% of its income, normalized over a period of at least five years, in order to retain the favorable tax status and treatment offered to Swedish foundations (EFC Secretariat & Giert, 2014). Norway has no such law, and hence no direct regulation on how much a grant-giving foundation needs to actually distribute in grants. The same applies for Denmark (Hansen, 2014).

4.8 Tax treatment of Norwegian charities

Under Norwegian tax legislation, as a rule, all independent taxable legal entities, regardless of their organizational form, are liable to tax on their net taxable income (ordinary income) and wealth. It follows particularly from paragraph 2-2 (1)(h) of the Income and Wealth Tax Act of 26 March 1999 No.14 that foundations domiciled in Norway are tax liable for all their wealth and income (Kluge Advokatfirma, 2011).

Charitable foundations and other undertakings that are not involved in business activities and have not-for-profit purpose are exempted from wealth and income tax in accordance with paragraph 2-32 (1) of the Tax Act. The consideration behind this paragraph is that the legislator wants to favor and promote nonprofit activities in the society (Kluge Advokatfirma, 2011).

Business foundations, per definition, are involved in or own business-related activities, and hence are not applicable for the tax exemption of paragraph 2-32 (1) of the Tax Act. In relation to income tax, business foundations have no differences from a company or any other organization that has a profit for purpose. They are subject to the same income tax rate of 24% (Stortingets skattevedtak for inntektsåret 2017, 2017). Following the exemption method and

paragraph 2-38 (1) of the Tax Act, foundations are exempted from taxes on dividends and capital gains.

4.8.1 Wealth tax

In relation to wealth tax, business foundations, being owners of themselves, are treated as impersonal taxpayers and enjoy lower wealth tax rate than personal taxpayers. Personal taxpayers are subject to a total wealth tax rate of 0.85%. This comprises a wealth tax to the state at a rate of 0.15% and wealth tax to the municipality at a rate of 0.7% (Stortingets skattevedtak for inntektsåret 2017, 2017). Business foundations and other independent taxable entities are exempt from wealth tax to municipalities and are liable to pay wealth tax only to the state at a rate of 0.15 %, according to paragraph 2-36 (2) of the Tax Act.

Companies are exempt from wealth tax under paragraph 2-36 (1)(a), with a consideration to avoid double taxation. They are taxed indirectly through personal taxpayers, owners or shareholders, in the form of wealth tax on their shares. Justification of the exemption from wealth tax to municipality for business foundation comes in paragraph 2-36 (2) of the Tax Act, which states: “Norwegian and foreign enterprises and undertakings that are separate taxable entities, see paragraph 2-2 (1), shall be exempt from tax to municipality and county” (Skatteloven, 1999, § 2-36 (2)).

General consideration behind and purpose of limited tax liability following from paragraph 2-32 of the Tax Act is the so called *protective rule*¹⁸, meaning to support public benefit activities in the society. For business foundation that makes annual public benefit grants, this exemption may be justified with a protective rule. Moreover, a foundation owns itself and all profits goes either directly to public benefit purposes through grants, or indirectly back into the business ensuring stable and strong employment in the society.

¹⁸ *Verneregel* in Norwegian.

4.8.2 Value Added Tax

Registered voluntary organizations in Norway receive compensation from the government for their VAT expenditure. First in 2001, the same year as VAT on services was introduced, voluntary organizations received right to full compensation for this type of VAT. VAT on goods remained untouched for compensation. After continuous lobbying from the voluntary sector, the compensation was extended on all types of VAT in 2010. The government allocates a certain amount of compensation for distribution between organizations. So far in 2017, the government has allocated NOK 1.3 billion (Stiftelsestilsynet, 2017a; Stiftelsestilsynet, 2017b). In case the amount is not enough for full compensation, the percentage cut will be the same for all approved applicant organizations. This compensation program is to be enhanced to make sure that all approved applicant organizations get full VAT compensation (Forskrift om mva for frivillige organisasjoner, 2013).

4.8.3 Competitive advantage of tax treatment

Having preferential tax treatment may represent a competitive advantage for a foundation, especially for a business foundation. Being owned by a foundation as opposed to a private individual means net tax savings, and thus more funds available for the business. A regular business will pay corporate tax at a rate of 24%, regardless of whether it is owned by a private individual or a foundation. The distinction happens when the profits are transferred to the owner of the business. If the profits are transferred to a private individual, it will be subject to dividend tax of 24% (Altinn, 2017). If the profits are transferred to a foundation as an owner, it is not subject to taxation, cf. paragraph 2-38 (1) in the Tax Act (Skatteloven, 1999). Thus, more of the funds are retained within the group, representing somewhat of a competitive advantage.

Regarding the VAT treatment of foundations as opposed to private businesses, the system of VAT compensation to registered voluntary foundations works more as a competitive equalizer. A voluntary foundation will have expenses in which VAT is included, but will rarely have income in which VAT is included. A business will have both expenses and income subject to VAT, which levels out the net VAT payable. Thus, a voluntary foundation would be at a disadvantage if not for the VAT compensation.

Being owned by a foundation, a business will effectively make itself immune to takeovers if the foundation's bylaws are structured in a way that guarantees ownership in perpetuity. This represents a major competitive advantage: A business owned by a foundation will never need to worry about a hostile takeover or being sold for parts.

On the other hand, having a foundation with strict bylaws regarding the governance of the business, can prove a competitive disadvantage. The future is hard to predict, and the bylaws written to secure a certain way of governance at the foundation's inception may not represent the ideal strategy for a business in perpetuity. Thus, the trade-off of the security against takeovers may in trying times be the death of a business, if the bylaws prevents the leadership from taking necessary action to save the business.

Denmark has a longer history of usage of business foundations. Thomsen (2013) studied whether businesses owned by foundations suffered lower productivity and profitability as a result of having private individuals as stockholders. Interestingly, he found the result to be quite the opposite: Businesses owned by foundations was just as profitable, if not slightly more profitable. It can thus be argued that being owned by a foundation is in itself a competitive advantage.

4.9 Tax treatment of charitable contributions

Deduction from taxable income is available for donations made to certain charitable organizations, cf. paragraph 6-50 of the Tax Act. This deduction applies to all taxpayers, both individuals and companies. To be eligible for deduction a donation must be made to an entity pre-approved by the Norwegian tax authorities. There is a list of both approved local and foreign charitable organizations. Donation to each organization must be at a minimum amount of NOK 500. There is also a maximum deduction that can be claimed per year. In 2017, this deduction limit is NOK 30,000. Important to note, that it is not the donor, but approved charitable organization who electronically reports on information about received donations to the tax authorities. In their turn, the tax authorities pre-fill the section for donations on donor's annual tax return scheme (Skatteetaten, 2017a). Exhibit 11 shows the dramatic increase in the deduction limit since its introduction in 2000. From 2010 to 2015 the deduction limit has

almost tripled, and the amount of total deductible donations have increased by 45%. This indicates that tax deductions work as a motivator for donation.

	<i>Total deductible donations (MNOK)</i>	<i>Deduction limit</i>	<i>Corporate income tax rate</i>	<i>Number of approved local charities</i>
2000-2002	n/a	900	28 %	n/a
2003-2004	n/a	6	28 %	n/a
2005-2009	n/a	12	28 %	n/a
2010	2,372	12	28 %	385
2011	2,472	12	28 %	351
2012	2,532	12	28 %	364
2013	2,765	12	28 %	377
2014	3,071	16,8	27 %	402
2015	3,449	20	27 %	419
2016	n/a	25	25 %	532
2017	n/a	30	24 %	557

Exhibit 11: Deductible donations 2000-2017 (Skatteetaten, 2017a)

5. Olav Thon analysis

As previously mentioned, Olav Thon donated his entire fortune to the Olav Thon Foundation in 2013. The foundation took ownership of the Olav Thon Group, and thus all its subsidiary holdings. This raised several questions. What was the motivation behind transferring the fortune and businesses to the foundation, and how can that help understand future transactions of a similar kind? How does transferring funds from the private holdings of Olav Thon to a foundation impact society? What are the consequences of said transfer of funds from a private individual to a foundation, which owns itself?

This chapter seeks to give an interpretation of the motivation, impact and consequences of Olav Thon's donation, as a way of understanding the larger-scale consequences of increased use of foundations in Norway. As the use of foundations is on the rise, analyzing the Olav Thon case can provide valuable insight into the possible future cases of charity through foundations.

5.1 Motivation

It would have been interesting to interview Olav Thon or members of the leadership of the Olav Thon Foundation. However, all requests for interviews, comments and/or collaboration between the writers of this paper and the powers at be around Olav Thon were declined. It can be questioned whether such an interview with Olav Thon, or other wealthy individuals with a history of donating significant sums to foundations or charity, would lead to any valuable insight. As most people tend to want to be perceived as generous and good, probability dictates that the interviewees would state altruism as the main driver for donations, regardless of whether not tax incentives and reputation effects were indeed the real driving force.

The motivation behind the generous act of Olav Thon can be explained by the warm glow giving. The establishment of the foundation and its consequent grants for social good can be thought to give Olav Thon a good feeling about himself and enjoyment of being admired by the public, in addition to the showing a pure desire of making a difference. In a way, charitable donations may be the only socially acceptable way of signaling wealth in the Norwegian society.

According to the warm glow model described in chapter 4, the utility function has three variables: private good x , total public good G and privately provided public good g . Taking into consideration Thon's wealth, age, and lack of heirs, one can assume that the amount of his private good consumption is at a level where his utility function is maximized with respect to private good. Life expectancy is low at the age of 94, and hence one can assume he expects very little private good consumption. In other words, the marginal utility of increased private good consumption is very low. Then, out of the budget constraint, $x + g = m$, there is an excessive level available for donations, which also predicts such generous behavior.

The effect of wealth tax savings may have worked as an additional encouragement, as opposed to a system without the tax savings. Hence, the organizational form foundation may be preferable when a wealthy person has decided to donate. The tax savings leaves more money available for investing, either back into the foundation or to give as charitable grants, which are both activities that benefits the foundation. Available extra cash from saved wealth tax can be directly invested in profitable projects, or used to better the general liquidity of the company. In an absence of profitable projects, the extra cash can be given through grants, which increases the reputation of the foundation. An increased reputation of the Olav Thon Foundation may lead to an increased reputation of the business ventures of the Olav Thon Group. For instance, the charitable activities of the foundation may encourage socially aware consumers to choose to stay at Thon Hotels rather than other hotel chains, thus increasing profits indirectly through charity. Whether this is a wanted side-effect of the tax incentives is up for debate. On one hand, tax incentives that leads to a larger contribution to foundations is positive, as many foundations give to charity and work for the public good. On the other hand, not all foundations follow through on their pledge to give grants: Many foundations tend to distribute significantly less than they save in taxes, as is the case with the Olav Thon Foundation. Here, the tax incentives effectively move funds out of the total public welfare spending, and is thus problematic from a socio-economic perspective.

Another possible explanation for the donation is a wish to secure that the businesses of the Olav Thon Group are run in accordance with the wishes and principles of Olav Thon himself. In businesses that are inherited through generations, it is common that the first generation builds the business, the second generation expands the business, and the third often sells or even destroys the business. This happens because even though the business is inherited in direct family relations, people are individuals, and will always have their own ideas of how to

run a company. It is somewhat inevitable that the direction of the company deviates from what the founder intended. Using a foundation, where no private individual has an ownership, the founder of the business can establish rules for the governance of the company, ensuring that the businesses are run as close as possible to the original principles of the founder.

For Olav Thon, there are no direct heirs. Even though an heir may run a business differently than their parents, it is probable that they will tend to run it closer to the way their parent did than a non-related person would. Thus, it seems a plausible motivation for Olav Thon to transfer his fortune and companies to a foundation to secure that the Olav Thon Group are run as close as possible to his principles, in perpetuity. This motivation will be near-impossible to mitigate or strengthen through legislation, unless the basic principle where no one is able to alter the bylaws of a foundation is changed.

5.2 Impact and consequences

In the Olav Thon case, the immediate economic impact was clear: The Hole municipality, in which Olav Thon himself lives, overnight lost around NOK 70 million in tax revenue, because foundations pay a smaller part of the wealth tax. This represents the crux of the matter; the loss of tax revenue because of charitable giving. Due to the difference in wealth tax, tax revenue will always decrease when funds are moved from private individuals to foundations. As mentioned in chapter four, there is also a lack of legal regulation regarding the distribution of grants. In addition to this, The Foundations Authority, who is responsible for the oversight of foundations, are massively understaffed, much due to the rapid increase in number of foundations in Norway. As of 2017, each employee of The Foundations Authority will have to review almost four foundations a day¹⁹ (Stiftelsestilsynet, 2017b). Given the size and complexity of many Norwegian Foundations, this is an impossible task, leaving a method of overseeing just samples as the only viable option. When the governmental loss of tax revenue

¹⁹ There are 6873 foundations in Norway as of October 2017, and a full-time equivalent (FTE) in Norway is considered 230 days. There are eight FTE's working on the oversight of foundations in the Norwegian Foundations Authority, hence $\frac{6873}{230} \approx 3.74$ (Stiftelsestilsynet, 2017b).

is combined with the lack of regulations and oversight surrounding a necessity of actually giving out the grants, one can argue that there seems to be a flaw in the system. To mitigate such a problem, two changes seems inevitable: (1) Increase the staffing of the Foundations Authority to secure the necessary oversight, and (2) implement legal regulations, like the legislation in the UK and Sweden mentioned in chapter four, to avoid accumulation of capital in the foundations as a result of not distributing grants.

A natural consequence of the tax revenue loss is a reduction in the total public goods provided. If less tax is collected, the government will have less money to spend on providing a public good. If the uncollected tax money then is not spent on public goods by the foundation, the net provision of public goods will decline. For the Olav Thon Foundation, the bylaws state that the foundation should distribute up to NOK 50 million a year. The loss of tax revenue for Hole municipality was NOK 70 million. This means that, at best, the net loss of funds diverted to providing public goods is NOK 20 million – and that is if the Olav Thon Foundation give grants of the full NOK 50 million, which it is not actually obliged to do. Problems like this cannot be mitigated through oversight, because the foundation is abiding its bylaws, and can only be mitigated through a change in the current legislation.

On the positive side, switching the funds from a municipality to the more independent structure of a foundation removes the boundaries naturally set by being a government institution. These can be divided into three main points. First, a foundation is not bound by the physical restrictions that government institutions are bound by. A municipality must (for the most part) spend tax income in its own area, as must a county and a country. This is based on the assumption that tax payers in one municipality are unlikely to accept that their tax money are spent in another municipality²⁰. A foundation, on the other hand, is only bound by its bylaws when it comes to distribution. Hence, a foundation can more freely choose where to put in the effort, and can thus better provide public goods in times of asymmetric economic situations between municipalities/counties/countries than the government can in the same situation. Second, a foundation will most likely be less hierarchical and bureaucratic than a government institution. This permits a foundation to act faster, and to have a less complicated process from suggestion to action. Third, a foundation is less likely than a government institution to spend money to gain political popularity. Elected government officials tend to spend more money in

²⁰ At the very least, such an action would likely result in a political change at the next election.

an election year than in a non-election year (Lorentzen, 2012). Albeit, this is a structural challenge with any democracy, it is no less a troublesome issue. While a foundation may have its reasons to seek political popularity, it is not for elective purposes, giving a foundation the possibility to more consistently seek longer-term development of public goods.

For Olav Thon, who had already decided to donate his fortune in some degree to a charitable cause, giving it to a foundation is preferable. If Thon was to donate personally, he would first have to take dividends from the Olav Thon Group. This dividend would be subject to a dividend tax of 24%. Thus, only 76% of the funds marked for donation would actually go directly to the given cause. By instead donating the shares of the Olav Thon Group to the foundation, the foundation can take dividends without paying taxes; it would be considered a transaction between daughter company and mother company, which is not subject to taxation in Norway, cf. paragraph 2-38 (1) of the Tax Act (Skatteloven, 1999). The Foundation would thus be able to donate the entirety of the funds directly to a charitable cause without any taxation. The implications here is once again that the use of foundations for charity moves funds from the government to the charitable cause.

6. Conclusions

This paper has endeavored to show how the Norwegian legislation on charities and foundations is structured, and to examine how the Norwegian tax and legal system is equipped to handle the increased use of charity through foundations. This has been done by establishing a historic and theoretical background, a legal and taxational framework, and through analyzing a relevant case in the transfer of the Olav Thon Group and much of Olav Thon's private fortune to the Olav Thon Foundation.

In chapter one, a background on Olav Thon and the composition of the Olav Thon Group is given. It shows that Olav Thon has been at the forefront of business in Norway after the second world war, and has built his fortune mostly through real estate. Today, the Olav Thon Group has two main sources of income: Olav Thon Real Estate PLC and Thon Holding, the latter being the parent company of Thon Hotels and several other businesses of varying size and range. Chapter 1 also provides an overview of the philanthropic ventures of Olav Thon, with his first foundation dating back to 1991.

The second chapter provides insight into the history of charity, tracing back from around 2500 BCE all the way to today's levels, where \$335.17 billion was given to charity in the US alone in 2013. Trusts and its commonality in the common law countries like US and UK is explained, as well as the lack of utilization in civil law countries like Norway. Furthermore, the opportunities and boundaries stemming from the different trust types are shown. Here, the charitable trust is highlighted as the exception under British law, as they must have a charitable purpose only, and thus cannot be used as a way of transferring inheritance through generations. The more common organizational form in charity cases, nonprofit, is also explained. Furthermore, the social origin theory is presented as an explanation for why the size, composition and financing varies across different countries. In social democratic countries, with high taxation levels, the extensive public welfare state crowds out private nonprofit service providers. Conversely, the theory predicts that private giving is likely to prevail in socialist countries despite the extensive welfare state.

Chapter 3 examines the underlying motivations behind charitable giving. Here, two theoretical frameworks are outlined: altruistic or privately provided public good model, and the warm glow model. In the privately provided public good model, a giver's altruistic motivations imply a concern only about the total amount of public good provided. An altruistic giver does

not care about who has donated. This means that their charitable donation can be completely crowded out by any other third party. Warm glow givers strongly prefer their own donations as it self-benefits them. They may experience a warm feeling from the act of donation itself, or from the fact that they are perceived as good and generous in the public, or both. Assuming a warm glow-preference results in incomplete crowding out. This result is more plausible, and thus warm glow model is to be preferred when constructing empirical models for charitable giving.

In chapter 4, the paper attempts to give a definition to what a Norwegian charity is. A voluntary organization is what charities mostly are called in Norway. Though a foundation has historically been separated from a voluntary organization, the word has also always been connected to charity in everyday language. In an attempt to give a more or less formal legal definition of Norwegian voluntary organization, the paper uses eligibility criteria defined in the Law on the Register of Non-Profit Organizations. According to this definition, a voluntary organization cannot distribute funds to anything but voluntary nonprofit activities. This means that, although Olav Thon foundation is naturally referred to as a charity, it is not in the legal understanding of voluntary organization or charity.

Further, the legislation and taxation on Norwegian charities is examined. Before 1980, there was no law whatsoever for foundations, and hence no regulation or control over foundations in Norway. With the introduction of the first law in 1980, only public foundations came under mandatory public control. Since public foundations chose this voluntarily, it raised concern over the fact that foundations could choose to be classified as private, thus avoiding stricter public supervision. The law of 2001 had, among others changes, modified this rule, and foundations irrespective of their type, became subject to the same public control and supervision of centralized supervisory body. The draft of the third version of the law, which was released in late 2016, contains important changes to the legislation on foundations. Mainly, it revolves around a dissolving of the separation of forprofit and nonprofit foundations. In addition, the draft proposes a ban on providing loans, security or retrieval of donated capital to any persons who has contributed to the foundations' basic capital.

Chapter 4 also problematized the lack of regulation on distribution of a foundation's surplus. In contrast with the regulation in countries like UK and Sweden, the Norwegian legislation does not contain any rules for distribution of grants. This is a point that should be addressed

in the new law on foundations. In addition, chapter four shows the link between the charitable deduction limit in Norway and the amount of money donated to charity.

The fifth chapter provides an analysis of the current impact and consequences of the increased use of charity through foundations, by way of analyzing the case of the Olav Thon Foundation. Mainly, the Olav Thon case illustrates a need for more oversight and legislation closer to that of the UK and Sweden. Funds given to a foundation represents a reduction in tax income, which is unproblematic, as long as the foundation spends the same amount on providing public goods. When a foundation neglects to do so, as is the case with the Olav Thon Foundation, the net provision of public goods decline.

It seems like the Norwegian society is drifting away from the principles of the social democratic model: The corporate income tax rate is decreasing, and deductibility level for charitable donations is rapidly rising. Thus, a natural shift away from a model where the government is the sole provider of public goods seem inevitable. As this shift, and subsequent use of charity through foundations, is a relatively fresh phenomenon in Norway, there is a severe lack of available literature and research on the subject. The shift calls for more research, as the increased use of charity through foundations will require more sophisticated legislation and taxation systems in the future. This paper contributes to the existing literature by providing a structured framework of both history, relevant economic theoretical models, the tax system concerning charity and the law on foundations, and it is the writers' hope that it can provide grounds for further research on charity and foundations. Whether the extended use of charities in Norway is good or bad is ultimately a philosophical question: Who should be responsible for redistributing wealth in a society – the state or the foundations?

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Appendices

Appendix 1: Charity statistics

Total number of voluntary organizations: more than 105,700 (Arnesen, et al., 2016).

Total number of registered voluntary organizations, as of October 2017: 43,942 (Brønnøysundregistrene, 2017c).

These are divided into the following categories:

Category	Number of organizations
Culture and recreation	31,198
Education and research	582
Health	1,207
Social services	3,404
Nature and environment	932
Housing and local environment	4,619
Political interest	5,784
Legacies and promotion of volunteerism	158
International	1,318
Religious and belief	1,690
Occupation, industry unions	636
Children and youth organizations	5,965
Diversity and inclusion	1,765
Other	102

Exhibit 12: Registered voluntary organizations by category (Brønnøysundregistrene, 2017c)

Number of charities approved for tax deductible donations in 2016: 532 (Stiftelsesregisteret, 2017).

Total number of foundations: 6873 (Stiftelsesregisteret, 2017).

Appendix 2: Biology of warm glow – the reward system of the brain

The warm glow-feeling a person experiences when committing a charitable act can be explained using the reward system of the brain. Understanding the biological foundation of the warm glow-feeling can help establish a deeper understanding of what leads people to commit charitable, apparently entirely unselfish acts.

Scientists James Olds and Peter Milner were the first to discover the idea of a reward system in the brain in 1954. Studying rats, they discovered that the rats would perform various behaviors in order to receive an electrical stimulation to specific areas of the brain. Rats would continue the rewarding acts until exhaustion, despite that the acts had no value to their survival or their species (Wise, 1996). Skinner followed up on this with the Skinner box, where rats once again continuously pressed levers to receive stimulus. This led researchers over the next two decades to establish *dopamine* as one of the main chemical aiding neural signaling in the pleasure centers. It was thus suggested that dopamine was the pleasure chemical of the brain (Olds & Milner, 1954). A comprehensive paper on the reward system of the brain was first published by the late Aryeh Routtenberg in 1978, as an extension of the already established theory of the pleasure centers in the brain. Originally, Routtenberg suggested that the pleasure centers were a part of a larger system of neural pathways that played an important part in memory and learning (Routtenberg, 1978). Further research showed that the pleasure centers in the brain was involved in a far larger number of actions, leading to the theory of *motivational salience*.

Motivational salience describes a cognitive process. It is a form of attention that motivates the behavior of an individual towards or away from an action, and regulates both the intensity, willingness to spend energy and risk-taking a person will accept to attain a particular goal (Puglisi-Allegra & Ventura, 2012). Motivational salience is split up into two main components, based on whether they attract or averse an individual to a particular action. *Aversive salience* is the motivational salience that causes individuals to avoid behavior. *Incentive salience* is the motivational salience that causes individuals to approach behavior. For the purpose of explaining the biology behind warm glow, incentive salience is the relevant component of motivational salience (Koob & Le Moal, 2005).

Incentive salience confers a desire attribute to a rewarding stimulus. It is important to differentiate between “desire” or “wanting”, and “liking” an action. “Liking” is the pleasure that is granted from committing the action, and is a result of dopamine released in the brain. The “wanting” of incentive salience works as a magnet towards the rewarding stimulus, and amplifies the probability of committing the act that results in a dopamine release. Incentive salience is regulated primarily by dopamine neurotransmissions in the mesocorticolimbic projection, but is also modulated by activity in other hedonistic hotspots (Berridge, 2013).

Incentive salience as a part of the reward system of the brain then suggests that unselfish acts is inherently impossible, as a person gets a release of dopamine in the synapse when committing an act of charity. This “hit” of dopamine is what is referred to as a warm glow in the theory presented in chapter 3.3.