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Article 12

Religion and "Benevolence"

RECENT DECISIONS

Religion and "Benevolence"

The Court of Appeals of New York State has recently handed down a decision which should be of high significance to anyone interested in how the oft-times enigmatic subject of religion is regarded by the law.

The defendants in *People* v. *LeGrande,* 309 N.Y. 420, 131 N.E. 2d 712 (1956), were charged with fraudulently obtaining money for a pretended charitable or benevolent purpose in violation of section 934 of the Penal Law. Six defendants, clothed in the garb of an indistinguishable religious order, and armed with a certificate of authority to solicit funds on behalf of the New Day Holy Church of God, a religious corporation properly organized under the Religious Corporations Law, were found to have contributed but $2.50 a day to the pastor of their church, while retaining the balance collected.

The Appellate Division reversed a conviction in the Kings County Court on the basis of insufficient evidence.[1] In reversing the order of the Appellate Division, however, the Court of Appeals touched only lightly upon the question of evidence, and concentrated more upon its significant answer to a defense which was, on the basis of prior litigation under section 934, a novel one.

The defendants maintained that their activities did not rest within the scope of section 934, because these activities were neither "charitable" nor "benevolent," but religious. In the opinion of Judge Van Voorhis:

> It would be a contradiction in terms to hold that the object of the Christian religion, in its broadest connotation, is not "benevolent."

In comparison to the more prevalent concept of religion, this certainly was interpreting religion in its "broadest connotation." Generally, "religion" has been regarded by the courts as a vertical sort of contact between man and his God, rather than as a vehicle for the more horizontal "benevolence," as it is commonly known, between men. It has been treated as being more concerned with ". . . the observance of all ordinances and ceremonies, which are engaged in with the sole and avowed object of honoring God,"[2] than with the humanitarian concept of "love of neighbor." This concept has prevented a group of Christian Scientists from obtaining a charter for a place of public worship, on the ground that their purpose was "not merely to inculcate a creed, or to establish a form of worship, but . . . also for the treatment and cure of disease. . . ."[3]

Antithetical interpretations of the word "benevolence" also exist. One view is that it is found in a form of *good will,* the other that it exists only in *good works.* Under the former view, the tenets of Christianity would naturally designate religion as "benevolent"; but under the latter, the most fervent faith in the dignity of man would not suffice. Thus, the dissemination of theosophical ideas has been held not "benevo-

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1 People v. LeGrande, 285 App. Div. 1156, 140 N.Y.S. 2d 206 (2d Dep't 1955).

2 Chase v. Cheney, 58 Ill. 509, 11 Am. Rep. 95, 103 (1871); *see also* 45 AM. JUR. 723, and the definition of "religion" in BLACK, LAW DICTIONARY 1455 (4th ed. 1951).

3 *Re:* First Church of Christ, Scientist, 205 Pa. 543, 55 Atl. 536 (1903).

lent," within the limited, horizontal meaning.[4] Nor do the normal, benevolent activities of a church group satisfy the term[5] when it is reduced to the level of humanitarianism, unaffected by the existence of a Deity through whom humanitarianism is made worthwhile.

However, in view of the many altruistic activities in which Church agencies are engaged, it would seem that even where the meaning of "benevolence" is restricted to the horizontal level of humanitarianism, religion would still be classified as "benevolent." It is significant that Black's *Law Dictionary* includes *hospitals* within the category of "religious houses."[6] And certainly, when an organization dedicated to the welfare of dumb animals can be determined "benevolent,"[7] religious societies and their more humane activities would seem to come within the term.

The present section 934 is the result of a long and somewhat clouded conflict. Before 1851, its construction would have found little concern with such terms as "charitable" or "benevolent."

Originally in New York, one who contributed to charitable or benevolent purposes was considered as giving at his own risk. The anomalous case of *People v. Clough* (1837)[8] held that the obtaining of charitable donations by the use of false pretenses was not indictable, citing the preamble of the English statute,[9] which said that the purpose of the section was to punish those who committed frauds "... to the great injury of industrious families, and to the manifest prejudice of trade and credit...."

England herself later abandoned that preamble and the limitation that it implied.[10] New York found herself alone among the states of the union in construing the statute so narrowly.[11]

Aggravating the effect of the *Clough* decision, which one authority has called a "blunder,"[12] was the presence of laws making begging illegal, and the absence of licensed charitable soliciting agencies. Thus, an application of the statute to charity frauds would have been viewed as a sanction of foolhardy beneficence, serving only as encouragement to lawbreakers. As Judge Cowen stated in the *Clough* case:

> The exercise of the virtue of charity has practically been left...upon the basis of the mere moral duty...The virtue is sufficiently cold, inquisitive, and scrupulous to be safe without the protection of the criminal law.
>
> The duty of the donor is one of imperfect obligation, and I am not aware that the beggar's duty...is anything more. I should even doubt whether an action for money had and received would lie to recover back a charitable advance made on a false pretense.[13]

However, in 1851, New York achieved by statute what the other states had already

4 New England Theosophical Corp. v. Boston, 172 Mass. 60, 51 N.E. 456 (1898).

5 Methodist Episcopal Church Baraca Club v. City of Madison, 167 Wis. 207, 167 N.W. 258 (1918).

6 BLACK, LAW DICTIONARY 1456 (4th ed. 1951).

7 Pitney v. Bugbee, 98 N.J. 116, 118 Atl. 780 (1922).

8 17 Wend. 351, 31 Am. Dec. 303 (N.Y. 1837).

9 30 Geo. II, c. 24.

10 6&7 Geo. V, c. 50.

11 See Strong v. State, 86 Ind. 208, 44 Am. Rep. 292 (1882); State v. Swan, 55 Wash. 97, 104 Pac. 145 (1909); Commonwealth v. Whitcomb, 107 Mass. 486 (1871).

12 2 BISHOP, CRIMINAL LAW §467 (9th ed. 1923).

13 People v. Clough, 17 Wend. 351, 31 Am. Dec. 303 (N.Y. 1837).

done by sensible construction. Retaining the old statute[14] that it had so narrowly construed, it expressly provided, in a new section, that the use of false pretenses to obtain money "for any alleged charitable or benevolent purpose" constituted a crime.[15]

Thus, it now apears that the spirit of beneficence is protected from injury by section 934. It is not so much the pretense that the statute exists to censure, as it is the *manner* and *form* of the pretense, which is reprehensible because of the respectability of the institution which the malefactor purports to represent.

The liberal construction of "benevolence" by the court in the *LeGrande* decision did not adhere to the rule that penal statutes are to be strictly construed. This liberality of interpretation was unfettered by more stringent construction established in other fields of the law, which had heretofore been influenced by very different statutory motivation, or by policy considerations foreign to those which are germane to the enforcement of a penal law. The meaning of "benevolent" has often been an issue in tax exemption cases, wherein exemptions are not customarily enlarged by construction;[16] and statutes which allow devises to "benevolent" groups to elude the rule against perpetuities[17] are likewise stringently construed as to such terms.

But the most common souce for studying the use of the word "benevolence" is found in the field of charitable trusts. When used with "charity," a "benevolent" devise will be effectuated, but it is then narrowed by context. As one opinion stated:

> Whatever... may be the meaning... of the word "benevolence" by itself, there can be no doubt that when used in connection with "charity"... it is synonymous with it.[18]

In this manner "benevolence" assumes what one judge has called a "latitudinarian meaning."[19] Used so often with "charity," it loses its own distinct meaning. It is no longer a begettor of charity, but merely a symptom of it.

But even in the case of charitable trusts, there are ways in which benevolence may be distinguished.[20] A New York court has held that when there is no disjunctive ("or") or conjunctive ("and") between "charitable" and "benevolent," the latter will be given a different, and more extensive, meaning. In construing section 17 of the Decedent Estate Law, which limits the devising of an estate to "any benevolent, charitable [etc.] . . . society . . ." to one-half of the testator's estate if he dies survived by a wife, the court held that, because there was no conjunctive or disjunctive between the two words, the Odd Fellows could be considered *separately* as a benevolent association.[21]

Upon occasions when the courts have been able to isolate "benevolence," they have attributed to it a much more compre-

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14 Now N. Y. PENAL LAW §932.

15 Laws of New York 1851, c. 144, p. 268.

16 See Methodist Episcopal Church Baraca Club v. City of Madison, 167 Wis. 207, 167 N.W. 258 (1918).

17 See deWolf v. Lawson, 61 Wis. 469, 21 N.W. 615 (1884).

18 Saltonstall v. Sanders, 11 Allen 446, 470 (Mass. 1865); *see also* Suter v. Hilliard, 132 Mass. 412, 42 Am. Rep. 444, 445 (1882); Jones v. Habersham, 107 U.S. 174, 184, 185 (1882) (dictum).

19 Beasley, J., in DeCamp v. Dobbins, 31 N.J. Eq. 694 (1879).

20 See People v. Powers, 147 N.Y. 104, 41 N.E. 432 (1895).

21 *In re* Watkin's Estate, 118 Misc. 645, 194 N.Y. Supp. 342 (Surr. Ct. 1922).

hensive meaning than "charity." The distinction was noted in a New York case:

> . . . beneficence is the doing well, benevolence the wishing or willing well, to others.... Charity, which originally meant the purest love for God and man, is now almost universally applied to some form of alms-giving, and is much more limited in meaning than benevolence.[22]

Benevolence, then, is not measured by its volume, but by its intensity. Unlike charity, it does not sustain orphanages or poorhouses, though it be probably the reason for their existence. Transcending the legal definition of "charity," it is more akin to the charity found enumerated among the theological virtues. Intangible though it may be, New York has recognized its existence in religious activities under the Personal Property Law section 12, where it is provided that gifts to "religious, educational, charitable, or benevolent uses shall not be deemed invalid by reason of indefiniteness or uncertainty . . ." In construing this statute, a case has held that the grouping includes organizations ". . . which evince a general charitable and benevolent purpose for the advancement of the public welfare."[23]

Despite cases holding that fraternal organizations are "benevolent" although not charitable, the criterion for establishing the real meaning of benevolence should be more lofty. Mutual-aid groups have failed to attain that designation.[24] The Court, in the *LeGrande* case, seems to have recognized that benevolence is found on a higher, less tangible level. The distinction made in an earlier New York decision is cited:

> In its popular acceptation a *charitable* corporation is one that freely and voluntarily ministers to the *physical* needs of those pecuniarily unable to secure for themselves, while a *benevolent* corporation is one that ministers to all, and the purpose may be anything that promotes the mental, physical *or spiritual* welfare of man.[25] [Emphasis supplied.]

Having concluded that benevolence is something other than almsgiving, that it exists in deeper, less functionary concepts, and that it is involved with the spiritual, it becomes clear that benevolence is within the domain of religious activity. Indeed, Christian religious principles being what they are, it would seem that even when viewed only as a spiritual or theosophical activity, religion should retain the refined designation of "benevolence."

Having established that religious organizations come within the term "benevolent" as contained in section 934, there was no need for the Court to consider whether religion also fulfills the term "charitable," as contained in that section. Although its definition of "benevolent" succeeded in crystallizing a hitherto cloudy point of law, there is also ample authority to the effect that religious activities are regarded as "charitable."

Ever since the English statute of 43 Eliz., c. 4 (ii), legacies providing for the propagation of Christian doctrine have been held "charitable."[26] Provisions in

22 *In re* Watkin's Estate, *supra note* 21 at 650, 194 N.Y. Supp. at 348, citing FERNALD, ENGLISH SYNONYMS, ANTONYMS, AND PREPOSITIONS 120.

23 *In re* Breckwoldt's Estate, 176 Misc. 549, 551, 27 N.Y.S. 2d 938, 940-41 (Surr. Ct. 1941).

24 See State v. Dunn, 134 N.C. 663, 46 S.E. 949 (1904).

25 Matter of Rockefeller, 177 App. Div. 786, 791, 165 N.Y. Supp. 154, 158 (1st Dep't 1917).

26 See Jackson v. Phillips, 14 Allen 539, 552 (Mass. 1867); Bartlet v. King, 12 Mass. 537 (1837).

New York law, that a bequest of Roman Catholic masses, or Jewish Jahrzeit, characterized as "charitable," afford exceptions to the rule against perpetuities,[27] and that gifts for religious purposes must be limited to one-half of the estate if the testator leaves a wife,[28] further demonstrate religion as "charitable." Masses and Jahrzeit have also been held "charitable" so as to pass to an indefinite beneficiary, under section 12 of the Personal Property Law.[29] The United States Internal Revenue Code explicity states that contributions to corporations ". . . organized and operated exclusively for religious . . . purposes" are deductible as "charitable contributions."[30]

Inclusion of the term "religious" within the term "charitable" might seem somewhat academic since it appears that the importance of the *LeGrande* decision rests in the inclusion of the term with "benevolence." The accomplishment of the latter task alone was sufficient to convict the defendants under section 934.

It is interesting to note that, in the popularized "head-notes" which digest the pertinent points of law preceding the cases in the unofficial reporter, there is no reference to the part that the construction of "benevolence" played in the *LeGrande* decision. The reference being solely to "charity," it is sufficiently unfortunate that the *ratio decidendi* was mistaken; but the inadvertency also reflects a failure to comprehend what one who is interested in the attitude of the law towards religion would immediately perceive.

If the judicial opinion had regarded "benevolence" as akin to charity, or as a variant of humanitarianism, the error would have been meaningless. But the opinion did not state that the "brotherhood of man" was exhaustive of the term "benevolent."

The significance of the *LeGrande* decision inheres in the conclusion that the "fatherhood of God," as propounded in the Christian religion, endows the "brotherhood of man" with the characterization of "benevolent." Thus, legal cognizance is taken of a paradox that the Church has recognized since its beginning; that just as a government exists of laws, and not of men, so may a belief remain benevolent per se, despite the fraudulent uses to which it is dedicated.

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[27] N.Y. PERS. PROP. LAW §13(a).

[28] N.Y. DECED. EST. LAW §17; see *In re* McArdle's Will, 147 Misc. 876, 264 N.Y. Supp. 764 (Surr. Ct. 1933).

[29] *In re* Breckwoldt's Estate, 176 Misc. 549, 27 N.Y.S. 2d 938 (Surr. Ct. 1941).

[30] INT. REV. CODE OF 1954, §170(c).

PRAGMATISM *(continued)*

process of philosophical erosion the unalienable rights of man can be destroyed. They will be destroyed if, largely through the influence of pragmatism, the lawmakers, lawyers and judges of America believe that law is mere will or command, that it represents force, not reason, and that there is no such thing as natural law. If the people come to believe this of the law they will hate the law and the only government possible will be that of a brutal tyranny with a gestapo in every block. For men support the law not because of fear, but because they believe it stands for reason.