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Anthony Hofer

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RELIGION, SANITY, AND THE LAW†

ANTHONY HOFLER*

St. Matthew's Gospel, Chapter 4, verse 4, quotes Jesus as saying that "Man does not live by bread alone, but by every word which proceeds from the mouth of God." Thus, food for the mind is at least as important as food for the body, a fact recognized by the compulsory nature of the provision for education. Recently, in *Barralet v. Attorney General*,¹ the Chancery Division of the High Court of Justice was called upon to determine the limits of the mental nourishment to which English law grants financial favor.² Clearly, the case is also of interest in those legal systems, such as that of the United States, where similar fiscal indulgence exists.

The South Place Ethical Society, the subject of the dispute in *Barralet*, is the descendant of a nonconformist Christian group and derived its name from an address in Finsbury, North London, where the Society acquired a chapel early in the nineteenth century. Although initially Christian in its beliefs, as evidenced by an 1825 trust deed referring to "one God," prayer was abolished from its proceedings in 1869, and by the late nineteenth century, its outlook had become officially agnostic.³ This transformation was reflected in a change in the Society's name from "South Place Religious Society" to "South Place Ethical Society." In 1927 the Finsbury chapel was closed, and shortly thereafter the Society took up occupation of premises which it had built at 25 Red Lion Square, Holborn.⁴ By this time, the 1825 trust deed had been amended to reflect the Society's agnosticism.

The present proceedings arose from the Charity Commissioners' refusal to register the Society as a religious charity under the Charities Act

† This Article is a revised and expanded version of an article originally published in 131 *New L.J.* 761 (1981).

* LL.B., University of Birmingham, England, 1972.

¹ [1980] 3 All E.R. 918 (Ch.).

² See *id.* at 921.

³ *Id.* at 922, 925. Justice Dillon noted that the Society believed that "the great object of human existence is the discovery of truth by . . . intellectual appreciation or reason and not revelation." *Id.* at 922.

⁴ *Id.* at 921.

of 1960 because it did not worship a Supreme Being, and, therefore, did not constitute a religious body for the purposes of the Act.

After taking ten years to prepare its case at great cost, the Society, in the persons of its Treasurer and two other trustees of the amended 1825 deed, issued an originating summons to determine, *inter alia*, whether its objectives, as stated by Rule 2 of its Rules to be "the study and dissemination of ethical principles and the cultivation of a rational religious sentiment," were (1) "for the advancement of religion or otherwise charitable" or (2) "not charitable."⁵ The declaration was opposed by the Inland Revenue Commissioners, which sought to disallow the rates and tax concessions available to registered charities.⁶ The Attorney General became involved in the action because of his interest in ensuring the due application of charitable property.⁷

In *Barralet*, the court held that the South Place Ethical Society, whose objectives included "the study and dissemination of ethical principles,"⁸ did not exist for the advancement of religion, and thus could not be characterized as a charitable institution based upon resort to its purported religious nature.⁹ This finding, however, did not foreclose the association from successfully asserting its charitable status, since it was held further that the Society might properly be deemed charitable under other applicable criteria.¹⁰ Authoring the court's opinion, Justice Dillon explained that although analysis of the Society's objectives disclosed that they were not for the advancement of religion, the awarding of charitable status nonetheless was appropriate since the Society was "beneficial to the community" as determined by analogy to the Charitable Uses Act

⁵ *Id.* Justice Dillon defined ethical principles as "the belief in the excellence of truth, love and beauty, but not [the] belief in anything supernatural." *Id.* at 922. To facilitate the dissemination of these ethical principles, the Society sponsors meetings, lectures, and concerts all of which are open to the public. In addition, the Society publishes a monthly magazine, entitled the *Ethical Record*, also made available to the public. *Id.* Prior to 1930, "the promotion of human welfare in harmony with advancing knowledge" was an additional objective of the Society. *Id.* at 921. Justice Dillon observed that this "plainly non-charitable" objective was dropped with no corresponding change in the Society's activities. *Id.* He stated that in order to determine whether the Society was a charitable organization, a two-step procedure would be required: first, it would be necessary to construe the objectives of the Society as presently set out in its rules, and second, these objectives were to be construed against "the yardstick" of what the law considers charitable. *Id.*

⁶ *Id.* at 922.

⁷ *See id.* The Attorney General declined to either support or oppose the Society in terms of its claim that its objectives could be construed as advancing religion and therefore charitable. He did, however, support the Society's contention that it was a charitable organization on the grounds that its objectives were for the advancement of education or otherwise beneficial to the community. *Id.*

⁸ *Id.* at 921.

⁹ *Id.* at 924.

¹⁰ *Id.* at 926.

and to other cases.¹¹ Furthermore, it was held that the Society was charitable in that its objectives were "for the advancement of education."¹²

With respect to the question whether the Society's objectives were for the advancement of religion, Justice Dillon noted that ethics essentially concern man's relations with man while religion largely concerns man's relation to God.¹³ He also observed that the substitution of ethical or philosophical ideals for the belief in God precluded characterization of the Society's objectives as for the advancement of religion.¹⁴ Adherence to such philosophical ideals, observed Justice Dillon, could not be equated with the belief in an unseen power exercising control over man's destiny.¹⁵ Thus, it was determined that the objectives of the Society did not evince an intention to advance religion.¹⁶

In determining whether the Society's objectives were for the advancement of education, thus qualifying it as charitable, the court first stated that the term education must be construed "very widely."¹⁷ Justice Dillon then stated:

The first part of the objects [of the Society] is the study and dissemination of ethical principles. Dissemination, I think, includes dissemination of the fruits of the study, and I have no doubt that that part of the objects satisfies the criterion of charity as being for the advancement of education.¹⁸

THE IMPORTANCE OF LANGUAGE

Confucius is believed to have been asked what he would do first in order to reform the world, and to have replied, "[i]nsist on the correct definition of words." The ability to use language effectively is widely recognized to be one of the most important skills a lawyer can possess. Words are so important because they are the transmitters of human meaning—manifestations of thought and a means of mutual understanding. Therefore, they are a fundamental means of education and development. Chaos results if there is disagreement over the meaning of words, because in such a case there exists no common code of communication.¹⁹ If we avoid the evaluative implication of the word "reform" by substituting the more neutral word "change" in the question asked of Confucius, we can perceive more clearly the turbulence caused by the crisis of values

¹¹ *Id.* at 926-27.

¹² *Id.* at 928.

¹³ *Id.* at 924.

¹⁴ *Id.*

¹⁵ *Id.* at 924-25.

¹⁶ *Id.* at 924.

¹⁷ *Id.* at 927.

¹⁸ *Id.* at 928.

¹⁹ See Snyder, *The Corruption of Language*, 30 *THE FREEMAN* 537, 537-38 (1980).

experienced in Western society during the past 15 years. The nature of education is such that this particular area of human activity has suffered more than most from the confusion. "Most topics in education," wrote John Wilson in *Philosophy and Practical Education*,²⁰ "have been so inflated with hot air that, like balloons, they have broken any moorings they once had to terra firma."²¹

Justice Dillon's incisive discussion in *Barralet* is a particularly welcome return to sanity. Notably, the meaning of "religion" received great attention in his discussion. Justice Dillon said that, "[i]n a free country . . . it is natural that the court should desire not to discriminate between beliefs deeply and sincerely held But I do not see that the warrants extending the meaning of the word 'religion' so as to embrace all other beliefs and philosophies."²² This has been done in the United States, where the Supreme Court in *United States v. Seeger*²³ observed that "[a] sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption [from military service on the grounds of religion] comes within the statutory definition."²⁴ Such a view prompted Justice Dillon to comment that "parallels, by definition, never meet,"²⁵ and might well prompt the further comment that in this context they do not even travel in the same direction. Indeed, religion directs mankind towards a definite objective beyond the confines of Earth. Agnosticism, however, takes mankind in a complete terrestrial circle.

Apart from highlighting the intrinsic desirability of the correct use of words, the *Barralet* case is timely in English law, as well as being of persuasive value in American courts. It is timely in light of an official study currently in progress in England concerning the relationship between religion and the law. Provisional proposals have been made in this area by the Law Commission, a statutory body charged with monitoring and reforming the law. The Law Commission's Working Paper No. 79²⁶ is part of its program of revising and restating substantive criminal offenses in modern statutory form with a view towards eventual codification. After

²⁰ J. WILSON, *PHILOSOPHY AND PRACTICAL EDUCATION* (1977).

²¹ *Id.* at 62.

²² *Barralet v. Attorney General*, [1980] 3 All E.R. 918, 924 (Ch.).

²³ 380 U.S. 163 (1965).

²⁴ *Id.* at 176. Justice Douglas, in a concurring opinion, stated that he would similarly allow the exemption from military service to one who has "a sincere belief, which in his life fills the same place as a belief in God fills in the life of an orthodox religionist . . ." *Id.* at 192-93 (Douglas, J., concurring). See also *Washington Ethical Soc'y v. District of Columbia*, 249 F.2d 127, 129 (D.C. Cir. 1957); Lindsey, *Can California Control 'Sham' Religious Sects? And Should It?*, N.Y. Times, July 20, 1980, § 4, at 22, col. 1.

²⁵ *Barralet v. Attorney General*, [1980] 3 All E.R. at 924.

²⁶ Law Commission, Working Paper No. 79 (1979).

assessing the responses to its proposals, the Commission will complete a final Report with recommendations, and will draft legislative measures. Interest in the definition of religion and the scope of protection accorded religion in England has been heightened recently by the conviction, for blasphemous libel, of the editor and publishers of a magazine for homosexuals, which published an illustrated poem purporting to depict Jesus Christ as a practicing homosexual.²⁷ A similar controversy erupted in 1976, when a Danish filmmaker announced his intention to produce a film in Britain about Christ's supposed sexual activities. Currently, English law forbids scurrilous attacks on Christ or the Christian religion; non-Christian outlooks are not protected. This may be surprising to some, in light of what frequently is described as England's multifaith society. There is, however, an even sharper contrast here between the English common law offense of blasphemy, evolved by the judiciary in favor of the doctrines of the established Church, and the first amendment to the American Constitution, expressly prohibiting the enactment of any law respecting an establishment of religion.²⁸

An additional question of import concerns whether England's race-relations legislation²⁹ should be extended to forbid discrimination on the basis of religion, in keeping with various internationally agreed statements of moral principle.³⁰ The present law forbids discrimination and inflammatory propaganda directed against racial groups, which are statutorily identified by reference to "colour, race, nationality or ethnic or national origins. . . ."³¹ Whether the protection against discrimination respecting race also should be applied to discrimination based on religion recently has been brought into sharp focus by the decision of Judge Gosling, at Birmingham County Court in 1980,³² that the exclusion of a Sikh boy from a school because he wore a turban constituted religious and not racial discrimination. This matter received the attention of Professor Sir Norman Anderson, formerly Director of the University of London's Institute of Advanced Legal Studies. In the 1978 Hamlyn Lectures³³ respecting the theme of "Liberty, Law & Justice," he observed that at the com-

²⁷ *Regina v. Lemon*, [1979] Q.B. 10, 12, 30 (C.A.), *aff'd*, 1979 A.C. 617 (H.L.).

²⁸ U.S. CONST. amend. I.

²⁹ Race Relations Act, 1976, ch. 74.

³⁰ United Nations Declaration on the Elimination of All Forms of Racial Discrimination, G.A. Res. 1904, 18 U.N. GAOR, Supp. (No. 15) at 36, U.N. Doc. A/5515 (1963); *see, e.g.*, International Bill of Human Rights—A Universal Declaration of Human Rights, G.A. Res. 217, U.N. Doc. A/810, at 74 (1948); Convention for the Protection of Human Rights and Fundamental Freedoms and Its Five Protocols, in COUNCIL OF EUROPE, EUROPEAN CONVENTION ON HUMAN RIGHTS—COLLECTED TEXTS § 1, art. 14, at 106 (11th ed. 1976).

³¹ Race Relations Act, 1976, ch. 74(I)(3)(1).

³² *Express and Star*, Dec. 11, 1980, at 12.

³³ Address by Professor Anderson, *The Hamlyn Lectures* (1980).

mittee stage of the 1968 Race Relations Bill's passage through Parliament the present British Lord Chancellor, Lord Hailsham, attempted to incorporate into the Bill the Universal Declaration of Human Rights' definition of the class of persons protected against discrimination.³⁴ This specified religion as one of the impermissible grounds for discrimination.³⁵ Professor Anderson observed that "a still more relevant option" for England would have been the almost identical definition in the European Convention for the Protection of Human Rights, but suggested that despite the absence from current legislation of any explicit reference to religion, the provisions regarding indirect discrimination on racial grounds would probably cover any unreasonable discrimination on the basis of religion.³⁶ This may or may not be so, but it is arguable that the matter should not be left in such an uncertain state.

With regard to these issues, the Law Commission's Working Paper 79 constitutes disappointing reading for those persons who believe that positive law should encourage what is right by forbidding what is wrong, at least if the terms "right" and "wrong" are interpreted from the starting point that values depend on the precepts of natural law.³⁷ For example, the Commissioners had recommended that blasphemy and blasphemous libel be abolished as criminal offenses because of the insuperable difficulties of definition and the absence of significant social problems in this area which require the intervention of the criminal law.³⁸ The latter point was advanced by the Commissioners to justify an additional position that there exists no need to extend the race relations legislation in order to render criminal discrimination and inflammatory propaganda directed against religious beliefs.³⁹

Strange reasoning and somewhat disturbing implications are inherent in these arguments. The intrinsic respectability or reprehensibility of certain conduct, it is submitted, is not logically measured by its prevalence. Indeed, the latter may be of only marginal relevance to the propriety of legal intervention. The logic of the Commissioners' argument was that it was justifiable to await the growth of racist conduct, with all the social tensions thereby produced, before laws should be enacted to suppress it.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Cf. Pope Leo XIII, *Encyclical on Human Liberty*, reprinted in 1 POPE LEO XIII, SOCIAL WELLSPRINGS 115-39 (1940) (Man's judgment decides what is right and wrong as an exercise of his reason—reason being the basis of natural law in that it implements those rules of life suggested by reason and prudence.) Pope Leo XIII defined human laws as those which "command men to follow after what is right and to shun what is wrong, adding at the same time a suitable sanction." 1 POPE LEO XIII, SOCIAL WELLSPRINGS, *supra*, at 120.

³⁸ Law Commission, Working Paper No. 79 (1979).

³⁹ *Id.*

Even once the folly of such thinking is realized, however, the questions of definition must be tackled, and here the definition of "religion" which formed the basis of the court's decision in *Barralet* is surely the answer. The Commissioners were aware of this case, but summarily dismissed it as having "suggested no definitions which would be helpful in the present context."⁴⁰ This raising of hands in helplessness, asserting the impossibility of formulating a satisfactory definition, encourages the clouding of issues through the corruption of words. Once this occurs, we encounter a situation of conceptual agnosticism in which no one truly understands what anyone else is talking about, thereby rendering right indistinguishable from wrong. The social edifice is then in a state of collapse and ready for rebuilding according to the image and likeness of an earthly model of life which we find unacceptable and which we might have avoided by keeping our heads, raising our voices, and refusing to let the merchants of confusion have their way. Intellectuals bear a great responsibility for the present poor state of our existing social edifice. Indeed, many have participated or acquiesced in the demolition or weakening of its supports. As Professor James Hitchcock has recently observed:

[I]t is impossible to rebuild a structure while debris is still falling around one's ears. Only when the debris has been cleared can solid rebuilding take place. Many sincere people who look to scholars for guidance remain confused as long as they are not sure what in fact is debris and what is the authentic cornerstone. So long as dissenters occupy so much of public attention it will be necessary to devote a good deal of effort to denying dissenting claims.⁴¹

In the meantime, the court's decision in *Barralet* should please everyone—devotees of terminological purity because of the definition of "religion," and the South Place Ethical Society because suitable drafting and pleading avoided the financial price of apostasy.

⁴⁰ *Id.*

⁴¹ Letter from President James Hitchcock, Fellowship of Catholic Scholars Newsletter, Vol. 4, No. 3, at 1 (June 1981).

