Cults and Religious Privileges in England and Australia: Can the Wheat be Separated from the Chaff? [1]

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Abstract

This paper explores whether it is feasible in Australia to establish an adjudicative tribunal whereby harmful or deviant religious groups might be disqualified from receiving fiscal privileges provided to religions generally. The difficult question of the legal definition of religion, which generally includes groups pejoratively characterised as cults, is examined. Alternative approaches of entity disqualification by definition or an inclusive definition with subsequent policy disqualifications are discussed. It is concluded that religion is a term best utilized, if at all, as a tool of broad *prima facie* classification only, to which transparent public policy parameters might then be applied in different legislative contexts. Charity law is presented as an example of a legal context in which public policy criteria are applied to questions of entitlement. The gate keeping functions of the Charity Commission for England and Wales are presented as a model for a prospective adjudicative tribunal in the Australian Commonwealth. Community protections found in the UK Charities Act 1993 and Article 9 (2) of the European Convention on Human Rights and Fundamental Freedoms 1950 are noted with approval. The potential impediment of s. 116 of the Australian Constitution Act 1900, which entrenches notions of free exercise and non-establishment, is also examined. It is

concluded that interpretations of s. 116 requiring a non-discriminatory/neutral aid approach, or a strict separation of church and state, will be unlikely to prevail. Therefore it would be feasible, although not without some risk of judicial intervention, for the Commonwealth to establish a definitions tribunal dealing *inter alia* with religious applicants for Commonwealth fiscal dispensations. However, the existence of s. 116 would make it unlikely for State governments, which are unaffected by the section, to submit cooperatively to a Commonwealth definitions entitlement tribunal dealing with third sector entities which include by definition religious groups

The defining word religion and associated terms such as denomination or worship are commonly used in public policy contexts in the United Kingdom and Australia. The word religion appears in the Australian constitution, where it invokes free exercise and non-establishment provisions,[2] and it is found often in ordinary statutes. The word religion may relate to individuals or groups and may be used to attract legal protections or confer privileges, fiscal and otherwise. Public policy contexts involving religion include, *inter alia*, rating exemptions for places of worship, marriage celebration, exemptions from military conscription, denominational schools accreditation, employment and anti-discrimination law exemptions, deductible donations, religious charitable trusts, exemptions from fundraising legislation, taxation exemptions and official prayers.

While the concept of religious freedom may be invoked to protect individuals or possibly groups against actions which might infringe upon that freedom, this paper is focused on fiscal privileges provided to religious groups or institutions defined by law. For example, under the law of charity, which developed by precedent under the common law, advancement of religion is a charitable purpose, provided this advancement is non-profit and for the public benefit,[3] which includes being non-political.[4]

Consequently, non-profit, non-political groups which advance religion for the public benefit qualify for privileges afforded by governments in the UK and Australia to charitable organisations, including tax-exempt status. In addition, religious groups which may not qualify as religious charities may nevertheless benefit from concessions granted to religious institutions as a separate category. Therefore, in the UK, places of worship are exempt from local rates even if the religious institution involved is not a religious charity. In Australia, religious institutions are granted tax exempt status along with religious charities, although the range of benefits extended to religious institutions is less extensive than those provided to religious charities.[6]

The Elusive Definition of Religion

Despite the importance of fiscal privileges afforded to religious groups, the definition of the term religion itself is elusive; some say impossible to define with any certainty.[7] It may, depending on the prevailing view, include moral or beneficial, immoral or harmful and amoral groups. Furthermore, the definition might well include equivalent belief systems and/or non-belief. There is no universally accepted judicial or statutory definition of religion.

The Western tendency is to incorporate a concept of supernatural into the definition. It seems to be accepted as a rule of thumb among legal academic commentators that the UK legal definition involves a deity or deities and worship (with the anomalous inclusion of certain strands of Buddhism). The Australian definition generally applied involves supernatural belief along with canons of conduct giving effect to that belief,[8] 'though canons of conduct which offend against the ordinary laws are outside the area of immunity, privilege or right conferred on grounds of religion'.[9] In the US, equivalent belief systems playing the same role as religious beliefs have been granted legal religious status. However, in India, religion has been defined as encompassing systems of belief conducive to spiritual well being.[10]

Legal definitions thus encompass both substantive and functional definitions advanced by sociologists.[11] The landmark Indian case also lends support to the proposition that a religion must 'lay down a code of ethical rules for its

followers to accept'.[12] It is arguable that the second limb of the Australian test likewise requires ethical canons of conduct, although it is likely that the generally accepted Australian position, at least at the Commonwealth level, posits an ethically neutral definition of the word religion *per se*.

Although some scholars seek to differentiate between groups pejoratively characterised as cults and those designated religion,[13] there is no statutory or common law definition of the word cult in the United Kingdom or Australia. Hence, because most groups described as cults would also seem to fit the extant versions of the legal definition of religion,[14] they would, on the face of it, be entitled to those protections and privileges afforded to religions generally.[15]

Public Policy Flexibility Under the Law of Charity

However, at least in the field of charity law, the requirements that an entity qualifying *prima facie* as a religion must also advance (or promote) religion and must do so in the public interest, means that some religious groups may not be entitled to receive fiscal benefits provided to religious charities. In addition, also in the field of charity law, some religious groups may fall foul of judicially determined public policy disqualifications, based on overlapping notions of public morality and harmful conduct.

The process for admitting entities to charitable status does allow some judicial discretion (or quasi-judicial in the case of the Charity Commissioners for England and Wales), to separate the wheat from the chaff. There is discretion to enable the adjudicators to entitle what are considered to be publicly beneficial groups and to disqualify (or disentitle) immoral, harmful or non-beneficial groups.

Definitional Disqualification in Non-Charity Law and Charity Law Contexts

With respect to privileges provided to groups superficially qualifying as religions but not entitled to charitable status, the situation is more obscure. The judiciary have resorted to a form of definitional disqualification to exclude groups which might seem to fit the definition but which are probably disapproved of. Hence, in the UK, where the definition of religion is 'belief in a supreme being and an expression of

the belief through worship', it might or might not be conceded that a group believes in a deity, but even if it does, the form of worship adopted might not pass muster. The group is not by definition a religion if it fails to pass through either or both of these hoops.

In *Ex parte Segerdal* (1970)[16] Scientology failed the definitional requirement to obtain registration of its chapel at Saint Hill Manor as a place of meeting for religious worship. While the court did not reveal any overt hostility to Scientology, one suspects that nice distinctions were made to disqualify a group disapproved of. It is interesting that one judge noted; 'without feeling that I am really able to understand the subject-matter of this appeal, I have formed, for what it may be worth, a possibly irrational, possibly ill-founded, but very definite opinion'.[17]

Definitional disqualification is also to be found in charity law cases. For example, in 1999 Scientology failed to convince the Charity Commissioners that the practices of auditing and training constituted the 'reverence and veneration for a supreme being ... necessary to constitute worship in English charity law'.[18] Although the Commissioners examined additional questions, including public benefit, they did so only for 'completeness', the application having already failed by definition.

Where there is no explicit requirement that the group involved must benefit the public, or where the judiciary have not explicitly invoked public policy parameters, as in *Segerdal*, the extent to which such parameters might be invoked (or indeed have been invoked) to disqualify an applicant group is inscrutable. However, exhibiting a more open approach in their 1999 Charity Commission decision, the Commissioners published reasons why they would have rebutted the presumption of public benefit normally allowed religious organisations, even if they had not found that Scientology failed the 'worship' test, being the second prong of the English definition of religion. The reasons advanced included the newness of the 'religion', which provided little basis on which to form a judgement about public benefit, public concern expressed through unsolicited objections to registration, adverse press coverage and some unfavourable expressions of judicial concern.[19] These reasons indicated a willingness by the Charity Commissioners to introduce broad

public policy considerations into the adjudicative process, along with a welcome propensity to transparency.

It seems therefore that there are alternative approaches to the disqualification of questionable groups from privileges generally afforded to religious organisations, definitional disqualification or prima facie inclusiveness and subsequent disqualification on transparent grounds of public policy. In a case like *Segerdal*, where Scientology failed the definitional tests laid out in England, the former clearly applied. In so doing the judges exhibited a very British reserve in not revealing underlying public policy concerns.

A further way to implement a form of definitional disqualification, but based on explicit public policy considerations, would be to require the existence of mandatory ethical values to qualify as a legally recognised religion for the purpose of fiscal entitlements.[20] Indeed, it is arguable that the propagation of ethics is an implicit requirement in the public benefit criteria of charity law and the underlying rationale for privileging religious charities.[21] It might be considered that the public benefit standard is appropriate for any group wishing to access fiscal privileges.[22] Otherwise, it might still be acceptable to public policy makers to privilege groups (generally non-profit but not necessarily so), that do not benefit the wider public, but provide solace and wellbeing within a limited circle of believers. Here an internal ethic acceptable to the state would be required. In either case, the existence of allegations of harm could be weighed to determine whether the substance and extent of the allegations merited group disqualification from fiscal privileges.

An examination of the New Zealand *Centrepoint Trust* case (1985),[23] which involved a successful application for exemption from stamp duty as a charitable trust by a group living in community and following the precepts of a spiritual leader, provides some support for an approach requiring minimum mandatory ethics. There High Court Justice Tomkins unpicked a distinction between religious classification *per se* and subsequent qualification as a religious charity. It seems that Tomkins J. recognised the need for at least some minimum acceptable internal ethic before the *prima facie* status of a religious group could be achieved.[24] Once this was shown, a wider ethical code

relating to the community was necessary to achieve charitable status. The case also provides support for the view that a distinction might be made between matters of transient morality and what constitutes harm. While Tomkins J. dismissed submissions that a *laissez faire* attitude towards sex by the religious group involved was harmful to the children, he did so on the basis that no adverse evidence from qualified persons had been presented.[25] While demonstrating a liberal attitude arguably consistent with contemporary mores, he nevertheless left the gate open to evidenced concerns not necessarily amounting to strict illegality.

An Inclusive Prima Facie Approach and Public Policy Disqualifications

As noted above, the other way to disqualify questionable groups from privileges generally available to religious organisations is to apply a very broad (or inclusive) definition of religion as a *prima facie* qualification only, and then apply public policy parameters to sort the good from the bad. By this I mean the beneficial from the harmful and the non-beneficial. The concepts of benefit and harm may also have some overlap with the concepts of moral and immoral according to contemporary standards. The courts have long refrained from making choices between what groups may qualify as religions on the basis of doctrine or belief – but the courts can and have made choices between groups based on questions of morality and/or harm.

This can be observed even in the leading precedent of *Thornton v Howe* (1862), which is generally used in the UK to support the proposition that 'any genuinely theistic sect, no matter how small or obscure or eccentric', will qualify as a religion.[26] In that case Romilly MR pointed out that a bequest to a sect which inculcated doctrines 'adverse to the very foundations of all religion, and ... are subversive of all morality', would render the bequest void, presumably due to lack of public benefit or alternative grounds of public policy.[27] It should also be noted that by applying an inclusive, liberal definition of religion to the eccentric sect involved in that case, Romilly MR ensured that the bequest was 'brought within the clutches of the Mortmain and Charitable Uses Act 1736,[28] so that it was held to be invalid' in any event.[29]

Hence a wide definition of religion was used in that case to the detriment of the religion.[30]

The Convenience of an Ethically Neutral, Inclusive Prima Facie Classification

A cursory examination of the quite different contexts in which the word religion is utilized as a protective or privileging definition, reveals that the word is used with quite different emphasis in different contexts. Therefore, in the context of military conscription it seems that it is the sincerity of the conscientious objector that is the relevant issue. In such cases the relative merits of the 'religious' philosophy believed in is not in issue. Hence the US courts have seen fit to widen the definition of religion in such cases[31] to encompass equivalent secular belief systems which take the same place in the mind of the adherent as more obviously religious philosophies. In marriage celebration legislation a very broad definition of religion might also be appropriate, so that all tastes might be accommodated with no harm done.[32] However, in cases involving fiscal privileges to religious groups, the state might well wish to be less inclusive in its largess and to direct taxpayers' funds to groups clearly performing a community service. Hence the requirement in charity law that privileged religious groups be non-profit and provide a public benefit.

The use of the word religion in quite different contexts suggests that any quest for a single definition of religion is not only tantalizing, but probably wrong-headed. The word religion seems best used, if at all, as a *prima facie* classification only, to which appropriate public policy parameters can then be applied. If this approach is recognized an ethically neutral, inclusive definition might well be applied for initial classification purposes. With this approach it should not be thought outrageous for groups with a neo-Nazi ideology, or Satan worshippers or whatever to be classified as religious. Unsavoury groups could easily be disqualified from receiving state aid on properly outlined public policy criteria, and yet under appropriate circumstances sincere adherents, even of questionable groups, might benefit from the protections afforded by the legal concept of free exercise. In addition, a particular ideological approach not superficially thought to be religious, would be caught by a non-establishment clause.

Potential Impediment of S. 116 of the Australian Constitution Act 1900

In Australia, the only real difficulty in applying a widely inclusive *prima facie* definition to the word religion, subject then to public policy parameters, lies in the possibility of judicial interference under a constitutionally entrenched provision. This possibility arises under s. 116 of the Australian constitution referred to in endnote 1 herein. Commonwealth legislation, for example a hypothetical Bill to establish a third sector definitions and entitlements tribunal, would be potentially subject to overruling judicial interpretations if religious groups were covered by the legislation, either directly or indirectly, as for example under the definition of charity.

The Australian Constitution Act 1900 is a demarcation document. It was not conceived as a Bill of Rights. Section 116, which is couched in terms of fundamental rights and protections, does not apply at all to the Australian States. It sits uncomfortably in a pragmatic document concerned with the division of power between the Commonwealth and the States. Thus far the High Court has adopted a minimalist interpretation of the section, although there is academic support for the view that the section requires a non-discriminatory or neutral aid approach to government grants to religion and another view, that it requires a strict separation of church and state.

My recent examination of the cases relating to s. 116 suggests that the hitherto pragmatic approach of the court, in reading down the implications of the section and treating it as somewhat of an anomaly, will most probably continue.[33] It is unlikely that an argument for equal treatment of all religions with respect to state aid, under either the non-establishment or free exercise provisions, will prevail. Even if the Court were to impose some notion of equal aid, in my view this would be unlikely to override a scheme of equal offer subject to soundly based public policy disqualification. However, even the potential for this to happen would make it difficult for a Commonwealth government to convince the State governments, unencumbered as they are by s. 116, to submit to any third sector adjudicative tribunal, which includes by definition religious groups.

Model English and European Community Protection Provisions Which Might be Adapted for the Disqualification of Nonconforming Entities

Nevertheless, it seems feasible to suggest the establishment of an adjudicative tribunal in Australia to determine the entitlements, applicable under Commonwealth legislation, of third sector entities including religious bodies. A great deal can be learnt from the approach of the Charity Commission for England and Wales, which along with its initial gate keeping function has powers to investigate misconduct within registered charities and can suspend, remove and replace office bearers. Charities can also be removed from the register if they are deemed by the Commissioners to be no longer fulfilling a charitable purpose. Grounds for disqualification can be established if an organisation causes such harm that it violates public policy.

It is not inconceivable, albeit improbable, that a charity in England and Wales could be removed from the register if a pattern of cover-up of sexual abuse was found to be the policy of a charity, or if abuse occurred as a result of the negligence of the charity, rather than as an isolated case of individual misconduct. In at least two cases, involving a school[34] and a children's trust[35], where decisions have been published by the Commission, sexual abuse and its effect on the proper functioning of the charities was one of the issues considered in inquiries under s. 8 of the Charities Act 1993. Removal would be on the basis that the charity was no longer fulfilling a charitable purpose, although it does seem to be the policy of the Commission to facilitate the continuation of charities wherever possible, making this scenario implausible under the present approach.

Provisions similar to the s. 18 'misconduct or mismanagement' provisions of the UK Charities Act 1993[36] might be applied in Australia to the behaviour, not only of individuals employed by third sector entities seeking fiscal entitlements, but to the conduct of the entity itself.[37] It is interesting to note that the Church of Scientology of Toronto, as an entity, was convicted in 1992 in Canada for 'criminal breaches of trust involving espionage activities' within government offices. The Church itself was fined $250,000.00 and individual officers of the Church were fined a total of $9,000.00. Justice Southey of the Ontario Court's

General Division found that 'illegal activities ... had been carried out at the direction of senior Scientology officers', even though the Church had attempted to place the blame on individuals.[38] The same sort of determination might be made with respect to third sector entities accessing fiscal privileges, which might be disqualified on the basis of corporate responsibility for the actions of oligarchs in the running of the organisation. Indeed, conduct not amounting to strict illegality, but nevertheless deemed to be harmful misconduct, might form the basis for non-entitlement or disqualification.

In addition to these grounds for disqualification, a clear statement setting out the public policy grounds for disqualification of an entity should be incorporated into any prospective legislation establishing a third sector entitlements tribunal in Australia. These might include grounds of public safety, the protection of public order, the protection of health or morals and the protection of the rights and freedoms of others. All these community protections have found authoritative exposition in Article 9 (2) of the European Convention on Human Rights and Fundamental Freedoms 1950,[39] as legitimate exceptions to the Article 9 (1) freedom of religion. Indeed, special provisions might be included to allow disqualification of organisations that encourage, for example, inappropriate punishment of children, or deliberately isolate them, to their detriment, from normal social contact, whether this be strictly illegal or not.

Conclusion

Freedom of religion might be a cherished principle, and rightly invoked to protect minority groups or individuals from persecution. But that doesn't mean the community should subsidize, in blanket fashion, the harmful practices of some groups qualifying for fiscal privilege on the basis alone of irrational[40] supernatural belief. The common law of charity, developed by precedent over centuries, provides us with a common sense and equitable method of separating the wheat from the chaff. It is important that the public policy discretions applied under the common law are not lost through the misapplication of constitutional guarantees applied to the nebulous concept of religion.

Sources and Endnotes

Centrepoint Community Growth Trust v Commissioner of Inland Revenue (1985) 1 NZLR 673

Charities Act 1993 (C. 10) 1993

Charity Commission, Section 8 Inquiry into Kinloss School (London, Charity Commission for England and Wales, 2002)

———, Section 8 Inquiry into the Mark Mcmanus and Alexina Kelbie Children's Trust (London, Charity Commission for England and Wales, 2003)

Charity Commission Decision: Church of Scientology Application for Registration as a Charity (1999) <http:www.charity-commission.gov.uk/> Accessed 29 November 2001, 49 pages) Charity Commission for England and Wales

Chesterman, Michael. Charities, Trusts and Social Welfare. London: Weidenfeld & Nicolson, 1979.

Church of the New Faith v Commissioner of Pay-Roll Tax (Victoria) (1983) 154 CLR 120

Claridge, Thomas. 'Church of Scientology Fined $250,000 for Breaches of Trust.' Globe and Mail, 12 September 1992.

The Commissioner Hindu Religious Endowments Madras v Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1954) SCR 1005

Commissioners of Income Tax v Pemsel (1891) AC 531

Commonwealth of Australia Constitution Act 1900

Dal Pont, Gino E. Charity Law in Australia and New Zealand. Melbourne: Oxford University Press, 2000.

European Convention on Human Rights and Fundamental Freedoms 1950

Kent, Stephen. 'Lawyer Massimo Introvigne Whines About My Professional Fees' 2004 [Accessed 5 April 2004]. Available from <http://www.arts.ualberta.ca/~skent/Linkedfiles/massimo_court.htm>.

Kimball, Charles. When Religion Becomes Evil. San Francisco: HarperCollins, 2002.

Langone, Michael D. "The Two "Camps" of Cultic Studies: Time for a Dialogue." Cultic Studies Review 1, no. 1 (2001).

Lifton, Robert Jay. Destroying the World to Save It: Aum Shinrikyo, Apocalyptic Violence, and the New Global Terrorism. New York: Metropolitan Books, 1999.

MacFarlane, Peter, and Simon Fisher. Churches, Clergy and the Law. Sydney: The Federation Press, 1996.

Mutch, Stephen. 'Cults, Religion and Public Policy.' Submitted PhD thesis, unpublished, UNSW, 2004.

Pannam, Clifford L. "Travelling Section 116 with a U.S. Road Map." Melbourne University Law Review 4, no. 1 (1963): 41-90.

Quint, Francesca, and Thomas Spring. "Religion, Charity Law and Human Rights." The Charity Law and Practice Review 5, no. 3 (1999): 153-86.

Regina v. Registrar General, Ex Parte Segerdal and Another (1970) 3 WLR 479

Robertson, Geoffrey. Crimes against Humanity - the Struggle for Global Justice. 2nd ed. London: Penguin Books, 2000.

Sadurski, Wojciech. "On Legal Definitions of 'Religion'." ALJ 63 (1989): 834-43.

Sheppard, Hon Ian, Report of the Inquiry into the Definition of Charities and Related Organisations (Canberra, The Treasury, Commonwealth of Australia: Available online at <http://www.cdi.gov.au/html>, 2001)

Sorensen, H R, and A K Thompson. 'The Advancement of Religion Is Still a Valid Charitable Object in 2001.' Paper presented at the Charity Law in the Pacific Rim Conference, Brisbane, August 2002.

Thornton v Howe (1862) 31 Beav 14

United States v Seeger (1965) 380 US 163; 13 L. ed. 2nd 733

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[1] This article is based on a paper delivered at the AFF (American Family Foundation) conference in Edmonton, Alberta, Canada, June 11, 2004.

[2] Section 116 of the Australian constitution states, 'the Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth', Commonwealth of Australia Constitution Act 1900

[3] ' "Charity", in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads', *Commissioners of Income Tax v Pemsel* (1891) AC 531. 583 Per Lord Macnaghten.

[4] Political purposes are deemed to be non-charitable because it would be difficult to determine whether a campaign to change government policy would be for the public benefit, and court determinations would infringe on the sphere of government. However, political purposes ancillary to the main charitable purpose are acceptable, Gino E Dal Pont, *Charity Law in Australia and New Zealand* (Melbourne: Oxford University Press, 2000) 203-7.

[5] Religious charities qualify for the full range of benefits available under various Commonwealth statutes, including income tax exemption, refund of imputation credits, fringe benefits tax (FBT) rebate, goods and services tax (GST), charity/gift deductible entity concessions and GST religious organization concessions. However, those organizations that qualify only as a religious institution are limited to income tax exemption, the FBT rebate and GST religious organization concessions, Hon Ian Sheppard, *Report of the Inquiry into the Definition of Charities and Related Organisations* (Canberra, The Treasury, Commonwealth of Australia: Available online at <http://www.cdi.gov.au/html>, 2001). 311.

[6] 'Some writers concluded ... that the quest for a definition of religion (any definition) is misconceived and that religious systems, as we know them, have nothing in common that distinguishes them from all other belief systems: hence "religion" cannot be defined at all', Wojciech Sadurski, 'On Legal Definitions of 'Religion'', *ALJ* 63 (1989): 840.

[7] This test is derived from the joint judgement of Mason ACJ & Brennan J in *Church of the New Faith v Commissioner of Pay-Roll Tax (Victoria)* (1983) 154 CLR 120 and has been applied administratively by the Australian Taxation Office. However, it is arguable that an even more inclusive test might be derived from the joint judgement of Wilson & Deane JJ and that of Murphy J.

[8] Ibid. 136 Per Mason CJ & Brennan J.

[9] Francesca Quint and Thomas Spring, 'Religion, Charity Law and Human Rights', *The Charity Law and Practice Review* 5, no. 3 (1999): 177-84.

[10] See Stephen Kent, 'Lawyer Massimo Introvigne Whines About My Professional Fees' (2004 [Accessed 5 April 2004]); available from <http://www.arts.ualberta.ca/~skent/Linkedfiles/massimo_court.htm>.

[11] *The Commissioner Hindu Religious Endowments Madras v Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1954) SCR 1005. 1024 Per Mukherjea J.

[12] For example, psychologist Robert Lifton confines 'the use of cult to groups that display three characteristics: totalistic or thought-reform-like practices, a shift from worship of spiritual principles to worship of the guru or leader, and a combination of spiritual quest from below and exploitation, usually economic or sexual, from above', Robert Jay Lifton, *Destroying the World to Save It: Aum Shinrikyo, Apocalyptic Violence, and the New Global Terrorism* (New York: Metropolitan Books, 1999) 11.

[13] This assessment corresponds with the observation that among 'lay activists and professionals concerned about people caught up in cultic groups ... there was ... a consensus that whatever "cult" referred to, the term embraced nonreligious as well as religious groups, although a large majority were religious', Michael D Langone, 'The Two "Camps" of Cultic Studies: Time for a Dialogue', *Cultic Studies Review* 1, no. 1 (2001): 2 of 16.

[14] This view is endorsed by the distinguished jurist Geoffrey Robertson QC, who notes that the definition derived from *Church of the New Faith* 'includes nonsense like scientology, and that in theory "cults" enjoy the same international law protection as the great faiths, subject always to the State's duty to curtail such of their activities as may damage the general welfare', Geoffrey Robertson, *Crimes against Humanity - the Struggle for Global Justice*, 2nd ed. (London: Penguin Books, 2000) 110.

[15] *Regina v. Registrar General, Ex Parte Segerdal and Another* (1970) 3 WLR 479

[16] Ibid. 486 Per Winn LJ.

[17] *Charity Commission Decision: Church of Scientology Application for Registration as a Charity* (1999) <http:www.charity-commission.gov.uk/> Accessed 29 November 2001, 49 pages) Charity Commission for England and Wales. 1

[18] Ibid. 41

[19] The most obvious being 'the clear biblical imperative found in Leviticus 19:18, "You shall love your neighbour as yourself"', a sentiment derived from the Jewish bible, Charles Kimball, *When Religion Becomes Evil* (San Francisco: HarperCollins, 2002) 131. Similar philanthropic injunctions are also to be found in the Koran.

[20] H R Sorensen and A K Thompson, 'The Advancement of Religion Is Still a Valid Charitable Object in 2001' (paper presented at the Centre of Philanthropy and Nonprofit Studies, QUT Charity Law in the Pacific Rim Conference, Brisbane, August 2002).

[21] It has been recommended in Australia that the category of religious institution be removed, Sheppard, *Inquiry into the Definition of Charities* 262-3.Recommendation 22.

[22] *Centrepoint Community Growth Trust v Commissioner of Inland Revenue* (1985) 1 NZLR 673

[23] This seemed to boil down, in the absence of evidence of harm, to a minimal requirement that members accepted 'total honesty in their relationships with each other and their commitment to Mr. Potter and his teachings', Ibid. 698 Per Tompkins J.

[24] Ibid. 687

[25] Michael Chesterman, *Charities, Trusts and Social Welfare* (London: Weidenfeld & Nicolson, 1979) 35.

[26] *Thornton v Howe* (1862) 31 Beav 14. 20

[27] An Act designed to prohibit testamentary bequests of land to religious charities, which it was feared was contributing to the break-up of landed estates, rendering them commercially unviable.

[28] Chesterman, *Charities, Trusts* 35.

[29] Later, after the introduction of taxation laws and charitable exemptions thereto, the wide definition of religion emanating from *Thornton v Howe* ultimately worked to the benefit of those groups which claimed religious status. See *Pemsel (1891)*

[30] See for example *United States v Seeger* (1965) 380 US 163; 13 L. ed. 2nd 733

[31] Although it is possible that public policy makers might wish to retain discretion to disqualify some groups. A religious group with a neo-Nazi philosophy might be a case in point.

[32] Stephen Mutch, 'Cults, Religion and Public Policy' (Submitted PhD thesis, unpublished UNSW, 2004) 411 Ch V 3 - Section 116 of the Australian Constitution and the Definition of Religion.

[33] Charity Commission, *Section 8 Inquiry into Kinloss School* (London, Charity Commission for England and Wales, 2002).

[34] Charity Commission, *Section 8 Inquiry into the Mark Mcmanus and Alexina Kelbie Children's Trust* (London, Charity Commission for England and Wales, 2003).

[35] Charities Act 1993 (C. 10) 1993

[36] A transparent mechanism for entity registration and receiving and investigating complaints would also need to be implemented.

[37] Thomas Claridge, 'Church of Scientology Fined $250,000 for Breaches of Trust', *Globe and Mail*, 12 September 1992.

[38] European Convention on Human Rights and Fundamental Freedoms 1950, 213 UNTS 221

[39] In the sense that religion 'involves a striving to understand the meaning of life by reference to some irrational cohesive power. Irrational, because man's reason cannot comprehend it', Clifford L Pannam, 'Travelling Section 116 with a U.S. Road Map', *Melbourne University Law Review* 4, no. 1 (1963): 62.

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