

BEYOND THE SCIENTOLOGY CASE

**TOWARDS A BETTER DEFINITION OF WHAT CONSTITUTES A RELIGION
FOR LEGAL PURPOSES IN AUSTRALIA HAVING REGARD TO
SALIENT JUDICIAL AUTHORITIES FROM THE UNITED STATES OF AMERICA
AS WELL AS IMPORTANT NON-JUDICIAL AUTHORITIES**

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CERTIFICATE OF ORIGINALITY

I certify that this thesis has not already been submitted for any other degree or diploma in any other university or other institute of higher learning, is not being submitted as part of candidature for any such degree or diploma, and does not contain any material which has been accepted as part of the requirements for any such degree or diploma.

I also certify that the thesis does not contain any material previously published or written by another person except where due acknowledgment is made in the text.

I also certify that the thesis has been written by me and that, to the best of my knowledge and belief, any help I have received in preparing the thesis, and all sources used, have been acknowledged in the thesis.

Ian Ellis-Jones
Certified on 4 October 2006
Recertified on 21 March 2007

PREFACE

The official short working title of this dissertation is “A Better Definition of ‘Religion’ for Legal Purposes in Australia”.

The thesis will establish that there are a number of problems with the present judicial formulation of what constitutes a “religion” for legal purposes in Australia and seeks to arrive at a better definition that, in a non-discriminatory and intercultural manner, avoids the difficulties inherent in the present Australian legal “definition” of a religion which fails to recognize the existence of beliefs systems based on or otherwise embracing religious naturalism. Particular attention is paid to the belief system of Unitarianism¹ in its more modern forms.

It has been said that “words are only pictures of ideas on paper”.² Unfortunately, words have their inherent limitations, and, as Professor John Anderson constantly said, nothing can be meaningfully defined by reference to the relations it has with other things.³ In addition, as Sir John Latham pointed out in *Adelaide Company of Jehovah's Witnesses Incorporated v The Commonwealth*⁴ “[i]t would be difficult, if not impossible, to devise a definition of religion which would satisfy the adherents of all the many and various religions which exist, or have existed, in the world.”⁵ It would be just as difficult or impossible to devise a definition of religion which would satisfy the adherents of religions which are yet to come into existence.

The author takes the position that, despite the enormity of the task involved, some sort of judicial definition is necessary, and, in light of the fact that the characteristics of the various religions differ so widely, the thesis canvasses and critically analyzes a number of different types of definitions with a view to assessing their acceptability *realistically*, as John

¹ Also known, in some jurisdictions (eg the USA), as Unitarian Universalism. Unitarianism/Unitarian Universalism is a non-creedal liberal religion having its historical roots in the Jewish and Christian traditions. Members of Unitarian or Unitarian Universalist churches have a variety of religious beliefs, eg Jewish, Christian, Buddhist, naturist, humanist, wiccan, agnostic, atheist.

² *Fell v Fell* (1922) 31 CLR 268 at 276 per Isaacs J, citing Wilmut CJ in *Dodson v Grew* (1767) Wilm 272 at 278, 97 ER 106 at 108.

³ See, eg, “Realism and Some of its Critics”, in Anderson (1962:42).

⁴ (1943) 67 CLR 116.

⁵ (1943) 67 CLR 116 at 123.

Anderson would want, “irrespective of varying opinions in the community as to the truth of particular religious doctrines, as to the goodness of conduct prescribed by a particular religion, or as to the propriety of any particular religious observance”.⁶

By way of special note, full points in contractions and between the letters of acronyms and abbreviations consisting of initial capitals, together with any superadded punctuation marks (eg full points commas), have been omitted from all textual material including quotations, case extracts and all other excerpted material. Some other very minor stylistic word changes to excerpted material have been made by way of interpolation either to assist in reading or for consistency’s sake. Unnecessary capitalization has been avoided as far as practicable. For the most part, original spellings (in particular, American spellings) have been retained due to the sizeable amount of source material from the United States of America. This has resulted in some inconsistency of expression. Subject to the foregoing, the citation approaches contained in the *Australian Guide to Legal Citation*⁷ have been followed.

The law is stated as at 21 March 2007.

Ian Ellis-Jones
21 March 2007

⁶ *Adelaide Company of Jehovah's Witnesses Incorporated v The Commonwealth* (1943) 67 CLR 116 at 123 per Latham CJ.

⁷ *Australian Guide to Legal Citation* (Melbourne, Melbourne University Law Review Association, 1998).

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ABSTRACT

The aim of this thesis is to formulate a better definition of religion for legal purposes than the formulation arrived at by the High Court of Australia in the 1983 decision of *Church of the New Faith v Commissioner of Pay-roll Tax (Vic)*. In that case, known in Australia as the *Scientology* (or *Church of the New Faith*) case, two of five justices of the High Court of Australia considered belief in a supernatural Being, Thing or Principle to be an *essential* prerequisite for a belief system being a religion. Two other justices stated that if such belief were absent it was *unlikely* that one had a religion.

There are major problems with the High Court's formulation in the *Scientology* case. First, it does not accommodate a number of important belief systems that are generally regarded as being religious belief systems, even though they do not involve any notion of the supernatural in the sense in which that word is ordinarily understood. Secondly, the Court provided little or no guidance as to how one determines whether a particular belief system involves a supernatural view of reality. The guidance that was given is ill-conceived in any event. Thirdly, it is philosophically impossible to postulate a meaningful distinction between the "natural" and the supposedly "supernatural" in a way that would enable the courts and other decision makers to meaningfully apply the "test" enunciated by the Court.

The thesis combines a phenomenological approach and the philosophical realism of the late Professor John Anderson with a view to eliciting those things that permit appreciation or recognition of a thing being "religious".

Ultimately, religion is seen to comprise an amalgam of faith-based ideas, beliefs, practices and activities (which include doctrine, dogma, teachings or principles to be accepted on faith and on authority, a set of sanctioned ideals and values in terms of expected ethical standards and behavior and moral obligations, and various experientially based forms, ceremonies, usages and techniques perceived to be of spiritual or transformative power) based upon faith in a Power, Presence, Being or Principle and which are directed towards a celebration of that which is perceived to be not only ultimate but also divine, holy or sacred, manifest in and supported by a body of persons (consisting of one or more faith-

based communities) established to give practical expression to those ideas, beliefs, practices and activities.

The new definition is tested against 3 very different belief systems, Taoism (Daoism), Marxism and Freemasonry.