

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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CONTENTS

	<i>Page</i>
CERTIFICATE OF ORIGINALITY	iii
PREFACE	iv
ACKNOWLEDGMENTS	vi
TABLE OF CASES	viii
ABSTRACT	xvi
INTRODUCTION	xviii
CHAPTER 1: DEFINITIONS OF RELIGION	1
CHAPTER 2: THE AUSTRALIAN LEGAL POSITION	72
CHAPTER 3: PROBLEMS WITH THE AUSTRALIAN LEGAL POSITION	113
CHAPTER 4: THE UNITED STATES LEGAL POSITION	164
CHAPTER 5: TOWARDS A BETTER DEFINITION OF RELIGION FOR LEGAL PURPOSES	250
BIBLIOGRAPHY	283

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 Wilmot 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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I have also learned much from my friends at the Sydney Unitarian Church (where I am Theologian-in-Residence and Honorary Minister) and I am grateful for the ongoing support I have received from the Church of the Larger Fellowship of the Unitarian Universalist Association the headquarters of which are in Boston, Massachusetts. I am proud to be a member of all of the above bodies and to have served both the Humanist Society of New South Wales and the Council of Australian Humanists (Australian Humanists) as their respective Presidents.

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I acknowledge my debt to my former lecturers in law and other disciplines and to certain others, some of whom I never met but who have inspired me nevertheless, in particular the

late Professor John Anderson of the University of Sydney whose writings and ideas have impacted upon me greatly.

This thesis is dedicated to my late parents, Harry and Phyl, who believed in me and taught me to be honest and always to strive for the best. From them I learned that there can be true religion, faith and moral values without supernaturalism and superstition.

TABLE OF CASES

- Abington School District v Schempp* 374 US 203 (1963) ... 167, 170, 183
- Adelaide Company of Jehovah's Witnesses Incorporated v The Commonwealth* (1943) 67 CLR 116 ... iv, v, 72, 75-84, 94, 98, 109, 168, 281
- Africa v Commonwealth of Pennsylvania* 520 FSupp 967 (EDPenn 1981), affd 662 F2d 1025 (3rd Cir 1981), cert denied 456 US 908 (1982) ... 164, 166, 214, 216-219, 221, 235, 238, 241, 242, 243, 249, 250, 253
- Altman v Bedford Central School District* 45 FSupp2d 368 (SDNY 1999), affd in part, vacated in part, & revd in part on other grounds 245 F3d 245 (2d Cir 2001) ... 214
- Alvarado v City of San Jose* 94 F3d 1223 (9th Cir 1994) ... 88, 89, 187, 214, 235-237
- Arnold v Tennessee Board of Paroles; Evans v Tennessee Board of Paroles* 956 SW2d 478 (Tenn 1997) ... 235
- Arrowsmith v North Sydney Municipal Council* (1955) 20 LGR 267 ... 84-85
- Attorney General (NSW) v Grant* (1976) 135 CLR 587 ... 110
- Attorney General (Qld); ex rel Nye v Cathedral Church of Brisbane* (1977) 136 CLR 353 ... 104
- Attorney-General (Vic); ex rel Black v Commonwealth* (1981) 146 CLR 559 ... 72, 74, 89-92
- Australian Temperance & General Mutual Life Assurance Society Ltd, The v Howe* (1922) 31 CLR 290 ... 91
- Barnette v West Virginia State Board of Education* 47 FSupp 251 (SDWVa 1942), affd *West Virginia State Board of Education v Barnette* 319 US 624, 63 S Ct 1178, 147 ALR 674 (1943) ... 169
- Barralet v Attorney-General* [1980] 1 WLR 1565; (1980) 3 All ER 918 ... 75
- Barrett v Virginia* 689 F2d 498 (4th Cir 1982) ... 240
- Baxter v Langley* (1868) 38 LJMC 1 ... 75
- Berman v United States* 156 F2d 377 (CA 9th Cir 1946) ... 32, 176, 177, 178, 185
- Berry v St Marylebone Borough Council* (1958) Ch 406 ... 75
- Board of Education v Allen* 392 US 236 (1968) ... 233

Board of Trustees of the Kansas East Conference of the United Methodist Church v Cogswell 205 Kan 847, 473 P2d 1 (1970) ... 172-173

Bowman v Secular Society Ltd [1917] AC 406 ... 104

Boyd v Coughlin 914 FSupp 828 (NDNY 1996) ... 234

Braunfeld v Brown 366 US 599 (1961) ... 179

Canterbury Municipal Council v Moslem Alawy Society Ltd (1985) 1 NSWLR 525 ... 73, 78

Cantwell v Connecticut 310 US 296 (1940) ... 175

Christofferson v Church of Scientology 644 P2d 577 (Or App 1982) ... 214

Church of Lukumi Babalu Aye Inc and Ernesto Pichardo v City of Hialeah 508 US 520 (1993) ... 222-223

Church of Scientology Flag Services v City of Clearwater 756 FSupp 1498 (MD Fla 1991),
affd in part, vacated in part, & revd in part on other grounds 2 F3d 1514 (11th Cir 1993)
... 214

Church of the Chosen People v United States 548 FSupp 1247 (DMinn 1982) ... 214

Church of the Holy Trinity v United States 143 US 457 (1892) ... 174, 175

Church of the New Faith v Commissioner of Pay-roll Tax (Vic) (1983) 154 CLR 120 ... xvi,
xviii, xix, xx, xxi, xxiii, 72, 73, 74, 80, 87, 92-111, 112, 113, 114, 158, 159, 163, 214,
251, 268

Citizens for Parental Rights v San Mateo Board of Education 51 Cal App 3d 1 (1975) ...
185

Cole v Flick 758 F2d 124 (3d Cir 1985) ... 245

Combs v Corrections Corporation of America 977 FSupp 799 (WD La 1997) ... 247

Commonwealth of Australia v Tasmania (the Tasmanian Dam Case) (1983) 158 CLR 1 ...
226

Crimmins v Stevedoring Industry Finance (1999) 200 CLR 1 ... 42

Cruz v Beto 405 US 319 (1972) ... 240

Davis v Beason 133 US 333 (1890) ... 80, 91, 107, 109, 164, 170-173, 180, 181, 249, 250,
252

*Decision of the Charity Commissioners for England and Wales Made on 17th November
1999: Application for Registration as a Charity by the Church of Scientology (England*

and Wales) [Online version] viewed 29 January 2007, <<http://www.charity-commission.gov.uk/Library/registration/pdfs/cosfulldoc.pdf>> ... 101

DeHart v Horn 227 F3d 47 (3rd Cir 2000) ... 214, 219, 240-241

Dettmer v Landon 799 F2d 929 (4th Cir 1986) ... 214, 237-240, 246

Dodson v Grew (1767) Wilm 272, 97 ER 106 ... iv

Edwards v Aguillard 482 US 578 (1987) ... 186

Employment Division, Department of Human Resources of Oregon v Smith 494 US 872 (1990) ... 222

Engel v Vitale 370 US 421 (1962) ... 167, 213

Everson v Board of Education 330 US 1 (1947) ... 183

Feasel v Willis 904 FSupp 582 ... 234

Fell v Fell (1922) 31 CLR 268 ... iv

Fellowship of Humanity v County of Alameda 315 P2d 394 (1957) ... 42, 105, 183, 184, 186, 187

Frazer v Illinois Dept of Employment Security 489 US 829 (1989) ... 223

Friedman v Southern California Permanente Medical Group 102 Cal App 4th 39 (Ct App 2002) ... 247-249

Frost & Frost Trucking Co v Railroad Commission 271 US 583 (1926) ... 233

Gallagher v Crown Kosher Supermarket 366 US 617 (1961) ... 179

George v United States 196 F2d 445, 451 (9th Cir 1952) ... 185

Gillette v United States 401 US 437 (1971) ... 107, 177, 199

Girouard v United States 328 US 61 (1946) ... 164, 175

Griffin v Coughlin 673 NE2d 98 (NY 1996), cert denied 117 S Ct 681 (1997) ... 225-235

Grove v Mead School District No 354 753 F2d 1528 (9th Cir 1985) ... 187, 214

Hernandez v Commissioner of Internal Revenue 490 US 680 (1989) ... 196

Illinois; ex rel McCollum v Board of Education 333 US 203 (1948) ... 180

International Society for Krishna Consciousness v Barber 650 F2d 430 (2d Cir 1981) ... 216, 238, 239

Jacobellis v Ohio 378 US 184 (1964) ... 33

Jacobson v Massachusetts 197 US 11, 25 S Ct 358, 3 Ann Cas 765 (1905) ... 175

Jacques v Hilton 569 FSupp 730 (DNJ 1983), affd 738 F2d 422 (3d Cir 1984) ... 214

Jones, Re [1907] SALR 1990 ... 104

Jones v City of Moultrie 196 Ga 526, 27 SE2d 39 ... 169

Jones v Smid No 4-89-CV-20857 1993 WL 719562 (SD Iowa Apr 29 1993) ... 234

Kalka v Hawk 215 F3d 90 (DC Cir 2000) ... 186

Kerr v Farrey 95 F3d 472 (7th Cir 1996) ... 235

Kick v Donne (1917) 33 TLR 325 ... 75

Kruger v Commonwealth of Australia; Bray v Commonwealth of Australia (1997) 190 CLR 1 ... 247

Krygger v Williams (1912) 15 CLR 366 ...75, 177

Late Corp of the Church of Jesus Christ of Latter-Day Saints v United States 136 US 1 (1890) ... 172

Lemon v Kurtzman 403 US 602 (1971) ... 232-233

Love v Reed 216 F3d 682 (8th Cir 2000) ... 214, 241-244

Luckette v Lewis 883 FSupp 471 (D Ariz 1995) ... 223

Maberry v McKune 24 FSupp 2d 1222 (D Kan 1988) ... 238

McDaniel v Paty 435 US 618 (1978) ... 233

McGowan v Maryland 366 US 420 (1961) ... 79, 171, 179

McMasters v State 21 Okl Cr 318, 207 P 566 (1922) ... 172

Malnak v Maharashi Mahesh Yogi 440 F Supp 1284 (DNJ 1977) [*Malnak I*], affd 592 F2d 197 (3d Cir 1979) [*Malnak II*] ... 41, 42, 94, 95, 99, 100, 109, 110, 166, 186, 213-216, 217, 219, 235, 236, 237, 238, 239, 241, 242, 267

Manor Foundation Ltd v Commissioner of Land Tax (NSW) (1983) 83 ATC 4727, (1983) 14 ATR 676 ... 88-89

May v Cooperman 572 F Supp 1561 (DNJ 1983), affd 780 F2d 240 (3d Cir 1985) ... 214

Michigan v Emmanuel Baptist Preschool 434 Mich 380, 455 NW2d 1, 1990 MI 628 ... 195

Missouri Church of Scientology v State Tax Commission of Missouri 560 SW 2d 837 (MO banc 1977) ... 101, 173, 176, 183, 186, 194, 196

Mitchell v Angelone 82 F Supp 2d 485 (ED Va 1999) ... 214

Morrison v Garraghty; Angelone v United States 239 F3d 648 (4th Cir 2001) ... 244-247

Murdock v Pennsylvania 319 US 105, 63 S Ct 870, 146 ALR 81 (1943) ... 180

Murray v Curlett 374 US 203 (1963) ... 166

Needham Pastoral Counseling Center v Board of Appeals of Needham 557 NE2d 43 (Mass App 1990) ... 214

New Century Developments Pty Ltd v Baulkham Hills Shire Council [2003] NSWLEC 154 (30 July 2003) ... 167

New South Wales Stewards' Co Ltd v Strathfield Municipal Council (1944) 15 LGR 139 ... 74, 75

Nikulnikoff v Archbishop, etc, of Russian Orthodox Greek Catholic Church 142 Misc 894, 255 NYS 653 ... 168, 172

Ochs v Thalacker 90 F3d 293 (8th Cir 1996) ... 242

O'Connor v Orange County and the State of California 855 FSupp 303 (D Cal 1994) ... 234, 235

O'Connor v State of California 856 FSupp 303 ... 234

O'Hanlon v Logue [1906] 1 IR 247 ... 77

Old Colony Trust Co v Welch 25 FSupp 45 (1938) ... 104

Peloza v Capistrano Unified School District 37 F3d 517 ... 186

People v Mullins 50 Cal App 61, 123 Cal Rptr 201 (1975) ... 204

People v Umerska 94 Mich App 799, 289 NM 858 (1980) ... 238

Peyote Way Church of God Inc v Thornburgh 922 F2d 1210 (5th Cir 1991) ... 222

Porter, Re [1925] Ch 746 ... 290

Prince v Massachusetts 321 US 158, 64 S Ct 438 (1944) ... 180, 207

Procunier v Martinez 416 US 396 (1974) ... 241

R v Gaming Board for Great Britain; ex parte Benaim and Khaida [1970] 2 QB 417 ... 17

R v North; ex parte Oakey [1927] 1 KB 491 ... 17

R v Peters (1886) 16 QBD 636 ... 91

R v Registrar-General; ex parte Segerdal [1970] 1 QB 430; (1970) 2 QB 697 ... 75, 101, 121

Rauser v Horn 241 F3d 330 (3d Cir 2001) ... 235

Reynolds v United States 98 US 145 (1879) ... 84, 168, 181, 250, 252

Roberts v Ravenwood Church of Wicca 249 Ga 348, 292 SE2d 657 (Ga 1982) ... 238

Romer v Evans 517 US 620 (1996) ... 170, 185

Rupert v Director, US Fish and Wildlife Service 957 F2d 32 (1st Cir 1992) ... 222

Russell v Duke of Norfolk [1949] 1 All ER 109 ... 17

Saint Germain Foundation v County of Siskiyou 212 Cal App 2d 911 (1963) ... 185

Scottish Rite Building Company v Lancaster County 106 Neb 95, 184 NW 574 (1921) ... 280

Sherbert v Verner 374 US 398 (1963) ... 206, 220

Silverman v Campbell 326 SC 208, 486 SE2d 1 (1997) ... 182

Smith v Fair Employment and Housing Commission 12 Cal 4th 1143 (1996) ... 223

Soon Hing v Crowley 113 US 703 (1885) ... 171

South Place Ethical Society, In re; Barralet v Attorney General [1980] 1 WLR 1565 ... 38, 94, 100, 196, 202

Spies v Voinovich 173 F3d 398 (6th Cir 1999) ... 240-241

Stafford v Harrison 766 FSupp 1014 ... 234, 235

State of Hawaii v Andrews 65 Haw 289 (1982) ... 204

State of Hawaii v Blake 5 Haw App 411, 695 P2d 336 (1982) ... 204

State of Hawaii v Fergerstrom 106 Haw 43, 101 P3d 652, 2004 Haw App LEXIS 349, affd 106 Haw 41, 101 P3d 225 (2004), 2004 Haw LEXIS 774 ... 202-204, 205

State of Hawaii v Hanapi 89 Hawaii 177, 970 P2d 485 (1998) ... 204

State of Hawaii v Lee 83 Hawaii 267, 925 P2d 1091 (1996) ... 204

State of Iowa v Amana Society 132 Iowa 304, 109 NW 894 (1906) ... 32, 174

State of Minnesota v Tenerelli 583 NW 2d 1 (Minn App 1998) ... 195

Tarnpolsk, Barclays Bank Ltd, In re v Hyer [1958] 3 All ER 479 ... 100

Theosophical Foundation Pty Ltd v Commissioner of Land Tax (NSW) (1966) 67 SR (NSW) 70 ... 75, 87-88

Theriault v Carlson 495 F2d 390 (5th Cir), cert denied 419 US 1003 (1974) ... xxiii, 274

Thomas v Review Board of the Indiana Employment Security Division 450 US 707 (1981) ... 220, 222-223, 239, 240, 242, 243, 244, 246

Thornton v Howe (1862) 31 Beav 14; 54 ER 1042 ... 77

Torcaso v Watkins 367 US 488 (1961) ... 80, 105, 165, 172, 182-189, 213, 240, 250, 252

Turner v Safley 482 US 78 (1987) ... 233, 241, 242

Two Guys from Harrison-Allentown Inc v McGinley 366 US 582 (1961) ... 179

United Grand Lodge of Ancient Free and Accepted Masons of England v Holborn Borough Council [1957] 1 WLR 1080 ... 280

United States v Ballard 322 US 78 (1944) ... 79, 97, 105, 178-180, 185, 270

United States v DeWitt 95 F3d 1374 (8th Cir 1996) ... 221

United States v Kauten 133 F2d 703 (1943) ... 97, 105, 177-178

United States v Kuch (1968) 288 FSupp 439 ... 96, 104

United States v Macintosh 283 US 605 (1931) ... 10, 164, 175-176, 190, 250, 252

United States v Manzi 276 US 463 (1928) ... 175

United States v Moon 718 F 2d 1210 (2d Cir 1983) ... 12

United States v Meyers 906 FSupp 1495 (DWyo 1995), affd 95 F3d 1475 (10th Cir 1996) ... 163, 214, 224-225

United States v Seeger 380 US 163 (1965) ... 32, 38, 43, 105, 109, 164, 165, 166, 167, 177, 189-197, 198, 199, 200, 201, 202, 206, 207, 208, 214, 215, 238, 246, 249, 250, 252, 255, 269, 273

United States v Warner 595 FSupp 595 (DND 1984) ... 222

Universal Life v United States dkt no 9615122o 12/30/97 (9th Cir 1997) ... 212

Universal Life Church Inc v United States 372 FSupp 770 (ED Cal 1974) ... 212

Universal Life Church Inc v United States 13 Cl Ct 567 (1987), affd 862 F2d 321 (Fed Cir 1988) ... 212

Van Schaick v Church of Scientology 535 FSupp 1125, 1144 (DMass 1982) ... 214

Walz v Tax Commission 397 US 664 (1970) ... 170, 206, 233

Warner v Orange County Department of Probation 827 FSupp 261 (SDNY 1993) ["Warner I"], 870 FSupp 69 (SDNY 1994), affd 95 F3d 202 (2d Cir 1996) ["Warner II"], 115 F3d 1068 (2d Cir 1997) ["Warner III"], 968 FSupp 917 (SDNY 1997) ["Warner IV"] ... 235

Washington Ethical Society v District of Columbia 249 F2d 127 (1957) ... 42, 105, 183, 187-188, 189

Watson (deceased), Re [1973] 3 All ER 678; [1973] 1 WLR 1472 ... 77-78

Watson v Jones 80 US 679 (1872) ... 104

Welsh v United States 398 US 333 (1970) ... 43, 99, 105, 109, 164, 165, 166, 177, 189, 194, 197-202, 204, 206, 207, 208, 214, 250, 252, 255

West Virginia State Board of Education v Barnette 319 US 624 (1943) ... 179, 213

Wiggins v Sargent 753 F2d 663 (8th Cir 1985) ... 214, 221

Wisconsin v Yoder 406 US 205 (1972) ... 164, 165, 205-208, 218, 220

Yadle Investments Pty Ltd v Roads & Traffic Authority (NSW) (1989) 72 LGRA 409 ... 269

Young Life Campaign v Patino 122 Cal App 3d 559 (1981) ... 219-220

Young Men's Christian Association of Melbourne v Federal Commission of Taxation (1926) 37 CLR 351 ... 75

Zorach v Clauson 343 US 306 (1952) ... 180-181

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.

INTRODUCTION

“For want of a better, I use the term *divine*,
though this quality of divinity is not truly supernatural
but *transnatural* – it grows out of ordinary nature, but transcends it.
The divine is what man finds worthy of adoration, that which compels his awe.”
- Sir Julian Huxley, *Essays of a Humanist* (London: Chatto & Windus, 1964), p 223.

Prelude

In the course of determining whether Scientology constituted a “religion” for the purposes of section 116 of the Commonwealth Constitution, two of five justices of the High Court of Australia in the 1983 decision of *Church of the New Faith v Commissioner of Pay-roll Tax (Vic)*¹ considered belief in a supernatural Being, Thing or Principle to be an essential prerequisite for a particular belief system being a religion. Two other justices considered such a belief to be one of the more important indicia of a religion, also stating that if such belief were absent it was unlikely that one had a religion.

The initial decision, made by the Commissioner of Pay-Roll Tax in Victoria, was that Scientology was not a religion. That decision was upheld in the Supreme Court of Victoria and on appeal in the Victorian Full Court. However, the High Court of Australia overturned that decision.

In the course of their joint judgment, Mason ACJ and Brennan J in the High Court said:

The mantle of immunity would soon be in tatters if it were wrapped around beliefs, practices and observances of every kind whenever a group of adherents chose to call them a religion ... A more objective criterion is required ... We therefore hold that, for the purposes of the law, the criteria for religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion.²

¹ (1983) 154 CLR 120. The case is known in Australia as the *Scientology* (or *Church of the New Faith*) case.

² 154 CLR 137.

Wilson and Deane JJ, in a separate joint judgment, noted³ that there was no single characteristic which could be used to identify an organization as constituting a religion and that the most that could be done was to formulate a range of indicia gleaned from past decisions. The indicia of religion as discussed by their Honours were: that the particular collection of ideas and/or practices involved belief in the supernatural, that is, belief that reality extended beyond that which was capable of perception by the senses; that the ideas related to man's nature and place in the universe and his relations to things supernatural; that the ideas were accepted by adherents as requiring or encouraging them to observe particular practices having supernatural significance; and that, however loosely-knit and varying in beliefs and practices adherents might be, they constituted an identifiable group or identifiable groups.

Murphy J, while agreeing with the outcome proposed by the other judges, expressed a much broader view of what constituted a religion. His Honour said that it was not the role of the courts to pass judgment on the validity of the beliefs of the adherents of a religion and ultimately recommended that anything that claimed to be religion and purported to provide a meaning or purpose to life ought to be regarded by the courts as being a religion.

This "definition" of what constitutes a religion has since been applied in many subsequent cases in which a particular court has been called upon to decide whether the belief system and practices of some body of persons constituted a religion for the purposes of some rating or taxing statute.

Thesis hypothesis and associated research question

My thesis hypothesis is as follows:

³ At 154 CLR 174.

HYPOTHESIS

The present legal definition of religion in Australia (as enunciated by the High Court of Australia in the *Scientology* case) is misleading, inadequate and unhelpful in that:

1. The definition does not readily 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.⁴
2. The High Court has provided little or no guidance as to how one determines whether a particular belief system involves a “supernatural” view of reality.⁵
3. 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 High Court in the *Scientology* case.⁶

The work the subject of the thesis investigates the above hypothesis, testing it against a number of prominent belief systems generally regarded as being religious belief systems

⁴ Those belief systems include Buddhism, Confucianism, religious naturalism, religious humanism, much of modern day Judaism, and modern day Unitarianism. The High Court’s insistence on belief in the supernatural would effectively disenfranchise all of the abovementioned belief systems, organizations and communities. It is the author’s thesis that those belief systems, organizations and communities are indeed religions and should be recognized to be so. The thesis will focus especially on the varied beliefs and practices of modern day Unitarianism as well as religious naturalism in order to show how they qualify as religions and why they should be so regarded for legal purposes in Australia.

⁵ What was said by Wilson and Deanne JJ on the matter, namely, that supernaturalism involves a belief that reality extends beyond that which is otherwise capable of sensory perception more properly describes what is called in the psychological sciences parapsychology.

⁶ The author submits that any notion of there being different orders or levels of reality or truth is contrary to the very nature and possibility of discourse and is strictly meaningless and unspeakable. We can have no conception of “unnatural” existence nor any conception of what it might possibly be like, nor would it appear possible to validate supernaturalism empirically or philosophically because it does not have any special empirical traits that would enable us to distinguish it from naturalistic alternatives.

the ultimate aim and endpoint object being the formulation of a more suitable legal definition of religion in substitution for that formulated by the High Court in the *Scientology* case.

The associated research question posed by the above hypothesis is essentially as follows:

RESEARCH QUESTION

What are the distinguishing characteristics of *religious-ness*, that is, that which pertains to religious belief systems and practices ... those things that permit appreciation or recognition of a thing being “religious” or a “religion”?

Motivation and significance of the work

The subject-matter of the thesis, besides being of considerable personal interest to the candidate, is, having regard to its theoretical underpinning, non-trivial, relevant and of considerable public policy importance in that:

1. The subject-matter of religion is demonstrably of great importance to large sections of the public.
2. To date, the High Court of Australia has not propounded a definitive test in relation to what is a religion. It did not actually do so in the *Scientology* case and has not otherwise done so either before or since that case.
3. Many statutes, in particular rating and taxing statutes, provide rating and taxing exemptions and concessions to religious bodies. Rating and taxation concessions granted to such bodies result in a greater rating/tax burden being placed on others.
4. The legal definition of religion also has important implications in the law of

trusts (in particular, the law relating to charitable trusts for the advancement of religion).

5. The legal definition of religion and, more particularly, what is a “church” or “religious denomination”, has important implications as regards what is sometimes referred to as “clergy and communicant privilege” and what is otherwise referred to as “religious confession” within the meaning of s 127 of the *Evidence Act 1995* (Cth).
6. The legal definition of religion also has important Constitutional implications in the context of s 116 of the Commonwealth Constitution. The right of religious freedom underpins our system of democracy and our way of life.

Deliverables

The aim of this thesis is to formulate and propose a more suitable legal definition of “religion” in substitution for that formulated by the High Court of Australia having regard to salient judicial authorities from the United States of America as well as non-judicial authorities, the endpoint object of the research being a definition of religion for legal purposes that is “acceptable” having regard to the working principles and evaluative criteria set out below.

Working principles and evaluative criteria

To be acceptable for legal purposes the definition must satisfy the following working principles and evaluative criteria (which have been chosen having regard to certain constitutional constraints, important ideals of government, and various public policy considerations referred to below):

1. The definition must satisfy the following “constitutional” principles: the principle of preservation of religious freedom, and the principle of preservation of religious equality.
2. The definition must be intercultural, non-discriminatory and capable of being

used univocally in its application to different religions. In other words, the definition must avoid narrowness in that it must “not overlook or dismiss features that are characteristic of religious traditions” (Livingston 1993:7).⁷

3. The definition must avoid the problems that would almost certainly ensue if an overly wide interpretation of the matter (cf the approach taken by Murphy J in the *Scientology* case⁸) were to be adopted. Thus, the definition must avoid vagueness in that it must be clear and distinctive enough to provide a clear demarcation between what is and what is not “religious”.
4. The definition should not extend to “so-called religions which tend to mock established institutions and are obviously shams and absurdities and whose members are patently devoid of religious sincerity”.⁹ Although the categories of religion are not closed, and it is not the role of the courts to pass judgment on the validity or otherwise of religious beliefs, religious protection and the other benefits of official recognition of religious status should not be accorded or extended to pseudo-religions.
5. The definition ought not to be “reductive”, that is, it must be more than an explanation of the social or psychological functions which it supposedly performs.
6. The definition must do more than simply provide a “causal explanation” (Livingston 1993:8) of why human beings, or at least some of them, are “religious”.
7. The definition must be neutral in its content and operation, that is, it must not be “prejudicial” (Livingston 1993:8) in the sense that its content and thrust must not reflect any anti-religion bias on the part of the draftsman nor otherwise contain any such content.

⁷ For example, creedal religions and non-creedal religions, theological religions and cosmological religions, naturalistic religions and supernaturalistic religions, and so forth.

⁸ Murphy J expressed a much broader view of what constituted a religion, stating that anything that claimed to be religion and purported to provide a meaning or purpose to life ought to be regarded by the courts as being a religion.

⁹ *Theriault v Carlson* 495 F2d 390, 395 (5th Cir), cert denied 419 US 1003 (1974).

I have also proceeded on the basis that whilst a court of law should be *slow* to categorize as a religion any belief system and set of practices that does not claim to be one,¹⁰ an objective test is necessary and must otherwise be applied as a matter of working principle and philosophical belief. Thus, self-identification as a religion or not as a religion ought not to be determinative of the matter.

Approach, methodology and justification

My approach with respect to investigating the hypothesis involves the following:

- (a) in-depth research into the etymological meaning and derivation of the word “religion” in the fields of both sociology and comparative religion, and scrutiny and evaluation of a number of different types of definitions of religions,
- (b) scrutiny and review of leading high-level judicial authorities in Australia, the United Kingdom and, especially, the United States of America¹¹ on the subject of the definition of religion for legal purposes,
- (c) the carrying out of a literature review (especially journal articles and other scholarly papers) on proposals that have already been suggested as a definition of religion for legal purposes,

applying the following methodology:

¹⁰ In some jurisdictions (eg the United States of America) various bodies, such as Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) - organizations which do not claim to be religious bodies and which see themselves as not being religious - have been declared in various seminal judicial decisions to be such by high-level courts, with most unfortunate consequences. (It is now the case in the United States of America that mandated AA and NA participation constitutes an unconstitutional violation of the "establishment" clause of the First Amendment, as well as the "free exercise of religion" clause of the First Amendment.) It is perhaps only a matter of time before similar cases come before Australian courts.

¹¹ Religion has always been important to most Americans, and the topic of religion has been often before the courts - more so than in any other country. Hence, I have decided to focus especially on US judicial authorities and other writings on the subject.

METHODOLOGY

Definitions of religion may take several forms including but not limited to substantive definitions, functional definitions, comparative definitions, and analytical definitions. The thesis explores examples of all of these types of definitions (critically analyzing their respective strengths and weaknesses) and combines a phenomenological approach (which seeks to explain religion from an internal point of view rather than delimit religion by reference to some specified predetermined function or essence) and the philosophical methodology of the late Professor John Anderson¹² (ie a thoroughgoing objective and “realistic” approach) with a view to eliciting the distinguishing characteristics of *religiousness* (that is, that which pertains to religious belief systems and practices), in other words, those things that permit appreciation or recognition of a thing being “religious”.¹³ Based on my research those things include such tangible matters as *creed* (a unity of thinking), *code* (a unity of functioning) and *cult* (a unity of worship) as well as more intangible matters such as *immanence*, *transcendence*, *ultimacy* and *intimacy*.

In order to ensure that the definition ultimately arrived at will satisfy the adopted working principles and evaluative criteria, it is expected that the definition will contain one or more referential elements (that is, those distinguishing characteristics that permit recognition or appreciation of a thing being a religion) that are sufficiently specific to distinguish between what is religious and what is not.

¹² John Anderson (1893-1962) was Challis Professor of Philosophy at the University of Sydney from 1927-58. He variously described himself as a realist, a determinist, a materialist, and (in a “practical” sense) an empiricist. Anderson’s central thesis or doctrine was that there is “a single way of being; that, namely, which is conveyed when we say that a proposition is true”. This one way of being consists of objects or facts, that is, ordinary things, “occurrences in space and time”. Every question is a simple issue of truth or falsity, there being no different degrees or kinds of truth. See his article “Empiricism”, in Anderson (1962).

¹³ There is already precedent for the adoption of an Andersonian approach in the law. For example, in Administrative Law no attempt is made to define fairness *per se*; the law simply prescribes what is required by way of a fair hearing in order to accord fairness.

I am not aware of such a combined approach having been used in the past in this topic area. The phenomenological approach to the study of religion (focusing on the external manifestations of religion and religious experience as they appear in our experience), is not new, but the combined application of a phenomenological approach and the “Australian realism” of John Anderson is, on my understanding, novel. My justification for using the above methodology is as follows:

JUSTIFICATION

The justification for using such a combined approach is to ensure that whilst an objectivist approach is taken (as opposed to attempting to construct a definition of religion in the abstract by reference to some *a priori* pre-determined function or essence) the subjective factor in religion is not altogether disregarded bearing in mind its highly personal and even idiosyncratic subject-matter. Insofar as religion is concerned, one can only speak meaningfully in terms of the conditions necessary for the *occurrence* of religious things, just as one can only speak in terms of the conditions necessary for the occurrence of red things, good things, fair things and beautiful things. One can only speak meaningfully about the *characteristics of things recognized as religious* (as opposed to the conditions or criteria for religion itself).

Having regard to the endpoint object of the research, any definition of religion must necessarily exclude all belief systems and practices that lack the distinguishing characteristics of *religious-ness*, for religion, objectively assessed, involves more than just a cosmology and more than essentially political, sociological or philosophical views or a merely personal code of morality. Many things may provide a person with meaning or purpose to life (eg vocational and avocational pursuits) but ought not to be regarded by the courts as being a religion for public policy reasons and otherwise.

The work investigates the hypothesis and tests it against a number of prominent belief systems generally regarded as being religious, including Buddhism, Confucianism, religious naturalism, religious humanism, much of modern day Judaism, modern day

Unitarianism and Unitarian Universalism, and New Thought.

The thesis considers what alternative definitions are available and canvasses a considerable number of judicial authorities, particularly those from the United States of America where the courts have not always (and increasingly have not) required belief in a supernatural Being, Thing or Principle to be a necessary prerequisite for a particular belief system being a religion, as well as various non-judicial authorities, in particular, material on modern day Unitarianism and religious naturalism.

In the course of the United States analysis, consideration is given to a number of important religious developments beginning in the latter years of the 19th century that arguably led to a growing acceptance by judicial decision-makers of “new” ideas about God. Those developments included the growth of religious liberalism and the New Thought movement, certain liberal interfaith activities and events, the promulgation of the various ideas of process theology, predicate theology, and, years later, “Death of God” theology, and the rise of secular humanism, all of which will be considered with a view to eliciting what insights they may offer.

As already mentioned, 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 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.

CHAPTER 1

DEFINITIONS OF RELIGION

“We have learned more about ‘the religions,’ but this has made us perhaps less ...
aware of what it is that we ... mean by ‘religion.’”
- Wilfred Cantwell Smith, 1962.

Preview

1. The derivation of the English word "religion" is extremely complex and by no means clear, and there are many different and conflicting definitions of religion.
2. However, etymologically speaking, religion ordinarily involves, at one or more levels, the following notions (among others):
 - “binding together” or “binding back”, whether to one’s ultimate “source” or to other people with an attendant and consequential sense of awe, reverence, “fear”, devotion, veneration and respect
 - “return” or “recovery” with an attendant and consequential sense of value and importance.
3. Religion also involves practices and activities to give effect to the foregoing including but not limited to repetitious rites and the reproduction of formulas and expressions.
4. Definitions of religion may take a number of different types or forms, including substantive definitions, functional definitions, comparative definitions, and analytical definitions. Some definitions of religion may be multifaceted (eg both substantive and functional, or both functional and comparative).
5. Substantive definitions usually fail because no single definition ordinarily suffices to encompass the multifarious sets of traditions, practices, and ideas which constitute the different religions.

6. Functional definitions ordinarily have their limitations as well as it is self-evidently the case that it is not uncommon for a religion to serve more than one function, or different functions for different people, and for different religions to serve quite different and varied functions.
7. Insofar as comparative definitions are concerned, attempts to arrive at some common definition of religion by isolating the supposed common characteristics or indicia of the recognized religions run into a number of difficulties, and arguably there is in fact no single characteristic or set of characteristics belonging to all those, and only those, things which are ordinarily referred to as religions.
8. Analytical definitions, which seek to gain a definition of religion by analyzing the common manifestations of recognized religions, generally run into the same kinds of difficulties as those that tend to be encountered when one attempts to isolate the supposed common characteristics or indicia of religions.
9. Finally, there is the phenomenological approach to the religion. The phenomenologist seeks to explain religion from an internal point of view rather than delimit religion by reference to some specified predetermined function or essence. According to one such approach (see Smart 1992:10-21), religion has the following dimensions: the ritual or practical dimension, the doctrinal or philosophical dimension, the mythical or narrative dimension, the experiential or emotional dimension, the ethical or legal dimension, the organizational or social dimension, and the material or artistic dimension.

The etymological meaning and derivation of the word “religion”

The derivation of the English word "religion" is not entirely clear¹ but the word is derived from the Middle English word *religioun* which comes from the Old French word *religion*.²

¹ “Concerning the etymology of [*religio*], various opinions were prevalent among the ancients.” *Lewis and Short Latin Dictionary*, viewed December 16 2004, <<http://www.perseus.tufts.edu/cgi-bin/ptext?doc=Perseus%3Atext%3A1999.04.0059%3Aentry%3D%2340976>>. The word *religio* refers to “what attaches or retains, moral bond, anxiety of self-consciousness, scruple”: see “What is religion?” (Online). *Religio* also refers to “supernatural constraint, sanction, religious practice”. “Initially used for Christianity, the use of the word religion gradually extended to all the forms of social demonstration in connection with sacred.” See “What is religion?” (Online).

According to Julia Cybele Lansberry (2003:Online) the Latin word *religio*³ (a word used to refer to “respect, devotion or superstition”⁴ as well as “supernatural constraint, sanction, religious practice”⁵) has affinities with three separate Latin verbs:

- *religare*, to restrain, bind, bind back, bind up, bind fast together, tie back (especially to oneself again), from *ligare*, to tie, close a deal, cement an alliance, unite in harmony
- *relegare*, to banish, from *legare*, to depute, commission, send as an emissary, bequeath, entrust
- *relegere*, to gather, collect again, review, re-read, re-examine carefully, from *legere*, to read, recite, or choose.⁶

Birnbaum (1964:588) has this to say about the matter:

The term [religion] is usually derived from the Latin verb, *religere*: the conscientious fulfillment of duty, awe of higher powers, deep reflection. The related noun *religio* refers to both the object of such inner preoccupation, and the goal of the activity associated with it. Another, later, Latin verb has been cited as a source of the term: *religare*, implying a close and lasting relationship to the supernatural. The scriptures of the various religions hardly contain general terms for religion.

However, Cicero derived religion, not from *religere*, *religio* or *religare*, but from *relegere* [root “leg-”] (to treat carefully, referring to re-reading):

Those who carefully took in hand all things pertaining to the gods were called *religiosi*, from *relegere*.⁷

² *Merriam-Webster Online Dictionary*, viewed November 30 2004, <<http://www.m-w.com/cgi-bin/netdict?Religion>>. See also “Various Definitions of the Word ‘Religion’ (None Are Totally Satisfying)” (Online).

³ In poetry also *relligio*, to lengthen the first syllable. Bouquet (1942:15) has correctly noted that “from very early times scholars have been divided as to its basic meaning”.

⁴ JRV Marchant and JF Charles, eds, *Cassell's Latin Dictionary*, London: Cassell and Co, p 478.

⁵ *Merriam-Webster Online Dictionary*, viewed November 30 2004, <<http://www.m-w.com/cgi-bin/netdict?Religion>>.

⁶ Julia Cybele Lansberry, “De Religione Romana”, viewed December 21 2004, <<http://www.aztriad.com/religio1.html>>. Confirmatory support for the etymology of all three (viz *ligare*, *legare*, and *legere*, cf *re*: back) can be found in *Merriam-Webster Online*: see the entries for the English words “rely”, viewed December 21 2004, <<http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=rely>>, and “legate”, viewed December 21 2004, <<http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=legate>>, “legible”, viewed December 21 2004, <<http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=legate>>, respectively.

⁷ *De natura deorum*, II, xxviii, 72. According to Lewis and Short this is “an etymology favored by the verse cited ap Gell 4, 9, 1, *religentem esse oportet, religiosum nefas*”. *Lewis and Short Latin Dictionary*, viewed December 16 2004, <<http://www.perseus.tufts.edu/cgi-bin/ptext?doc=Perseus%3Atext%3A1999.04.0059%3Aentry%3D%2340976>>.

Fowler (1998) has written in relation to *relegere*:

Some have suggested that "religion" may be derived from the Latin word *relegere*, which refers to re-reading. There is no doubt that "religion" is often associated with repetitious rites of liturgy and litany, and the reproduction of creedal formulas and expressions. ...

However, Fowler goes on to note:

... Most etymologists, however, regard the English word "religion" to be derived from the Latin word *religare* which is closely aligned with the root word *religo*. [John Ayto, *Dictionary of Word Origins*, New York: Arcade Pub, 1990, p 438.] The prefix *re-* means "back" or "again," and the word *ligare* refers to "binding, tying or attaching." Other English words such as "ligature," referring to "something that is used to bind," and "ligament" which "binds things together," evidence the same root in the Latin word *ligare*. The Latin word *religare*, from which our English word "religion" is most likely derived, meant "to tie back" or "to bind up."

Support for that view comes from Servius,⁸ as well as Lactantius, who derived religion from *religare* [root "lig-"] (to bind, in the sense of bind back or together):⁹

We are tied to God and bound to Him [*religati*] by the bond of piety, and it is from this, and not, as Cicero holds, from careful consideration [*relegendo*], that religion has received its name.¹⁰

Bouquet (1942:15), after citing Cicero (root "leg-") and Servius (root "lig-"), states:

Subsequently it seems to have carried both meanings, for St Augustine the Great uses it in both senses. It is, however, most likely that the earlier one (whether or not we dislike it) was the original, since it is the exact counterpart of a Greek word (*paratērēsis*) which means "the scrupulous observation of omens and the performance of ritual". ...

Be that as it may, St Augustine appears also to have derived religion from *religere* (which refers to, among other things, recovering):¹¹

⁸ *Ad Verg A*, 8, 349. See *Lewis and Short Latin Dictionary*, viewed December 16 2004, <<http://www.perseus.tufts.edu/cgi-bin/ptext?doc=Perseus%3Atext%3A1999.04.0059%3Aentry%3D%2340976>>.

⁹ *Religare* also means to restrain, tie back: see *Merriam-Webster Online Dictionary*, viewed November 30 2004, <<http://www.m-w.com/cgi-bin/netdict?Religion>>. "The root word in Latin, however, has nothing to do with organizations and systems; those are the structures which have developed from some religious experience and which often as not lose the true meaning of the word religion in becoming too concretized and rigid. The Latin word 'religare,' from which 'religion' is derived, simply means 'to bind back.' Thus, the religious function in the truest sense of the word is that which binds us back to the original wholeness from which we came." Bonnie McC Carson, "What Is Religion?" (Online).

¹⁰ *Divine Institutes*, IV, xxviii. For this derivation Lactantius cites the expression of Lucretius (1, 931: 4, 7): *religionum nodis animos exsolvere*. See *Lewis and Short Latin Dictionary*, viewed December 16 2004, <<http://www.perseus.tufts.edu/cgi-bin/ptext?doc=Perseus%3Atext%3A1999.04.0059%3Aentry%3D%2340976>>. Tertullianus also saw the origin of the word in *religare*.

¹¹ Yinger (1970:10) writes that the word *religere* also means to rehearse, to execute painstakingly, suggesting "both group identity and ritual".

having lost God through neglect [*negligentes*], we recover Him [*religentes*] and are drawn to Him.¹²

Later, however, St Augustine abandoned that view in favour of the derivation previously given by Servius and Lactantius (viz *religare*).¹³ In *On the True Religion* St Augustine says:

Religion binds us [*religat*] to the one Almighty God.¹⁴

Theosophist H P Blavatsky acknowledges both the derivations *relegere* and *religare*:

... whether this term be derived from the Latin word *relegere*, "to gather, or be united" in speech or in thought, from *religens*, "revering the gods," or, from *religare*, "to be bound fast together."¹⁵

St Thomas lists the derivations *relegere*, *religare* and *religere* without favour.¹⁶

According to *The Catholic Encyclopedia* the correct one "seems to be that offered by Lactantius [viz *religare*]"¹⁷:

Religion in its simplest form implies the notion of being bound to God; the same notion is uppermost in the word religion in its most specific sense, as applied to the life of poverty, chastity, and obedience to which individuals voluntarily bind themselves by vows more or less solemn. Hence those who are thus bound are known as religious.¹⁸

De Purucker (1996:148) favours the root derivation *religio*:

It is usual among modern Europeans to derive the word religion from the Latin verb meaning "to bind back" -- *religare*. But there is another derivation ... from a Latin root meaning "to select," "to choose" ... [Derived] from the Latin *religio*, [religion] means a careful selection of fundamental beliefs and motives by the higher or spiritual intellect, a faculty of intuitional judgment and understanding, and a consequent abiding by that selection, resulting in a

¹² *City of God*, X, iii.

¹³ See *Retractions*, I, xiii. The *Collins English Dictionary* states that "religion" derives one of its meanings from the root words *re* and *ligare*, meaning "to bind or tie back to oneself again": Hayward (1995:17).

¹⁴ *On the True Religion*. Larue (2003:Online) writes: "The idea may reflect a concept prominent in biblical literature. Israel was said to be in a 'covenant' (*berith*) relationship with its God (Yahweh). In a sense, the nation was 'covenanted' or 'bonded' to the deity."

¹⁵ *Lucifer*, January/February 1891.

¹⁶ See *Summa*, II-II, Q lxxxii, a 1.

¹⁷ Religion: I Derivation, Analysis, and Definition, *The Catholic Encyclopedia*, viewed December 1 2004, <<http://www.newadvent.org/cathen/12738a.htm>>. "Modern etymologists mostly agree with this later view, assuming as root *lig*, to bind" *Lewis and Short Latin Dictionary*, viewed December 16 2004, <<http://www.perseus.tufts.edu/cgi-bin/ptext?doc=Perseus%3Atext%3A1999.04.0059%3Aentry%3D%2340976>>.

¹⁸ Religion: I Derivation, Analysis, and Definition, *The Catholic Encyclopedia*, viewed December 1 2004, <<http://www.newadvent.org/cathen/12738a.htm>>.

course of life and conduct in all respects following the convictions that have been arrived at. This is the religious spirit.¹⁹

Fowler (1998) has written this about the word *religio*:

Religio was a recognition that men are often tied or bound to God in reverence or devotion. It can also convey the meaning of being bound or tied to a set of rules and regulations, to rituals of devotion, to a creedal belief-system, or to a cause, ideology, or routine.²⁰

Thomas Paine (2004:Online) had earlier favoured the related cognate word *religio*:

The word *religion* is a word of forced application when used with respect to the worship of God. The root of the word is the Latin verb *ligo*, comes *religo*, to tie or bind over again, to make more fast - from *religo*, comes the substantive *religio*, which, with the addition of *n* makes the English substantive *religion*.

The French use the word properly: when a woman enters a convent she is called a *novitiate*, that is, she is tied or bound by that oath to the performance of it. We use the word in the same kind of sense when we say we will religiously perform the promise that we make.

But the word, without referring to its etymology, has, in the manner it is used, no definite meaning, because it does not designate what religion a man is of. There is the religion of the Chinese, of the Tartars, of the Brahmins, of the Persians, of the Jews, of the Turks, etc.²¹

Birnbaum (1964:588) has astutely observed that:

The complex etymology of the term is not fortuitous: the complexity and diversity of human religions, as well as the profound and ambivalent feelings they arouse, have produced a heterogeneous set of scientific definitions of the phenomenon. Usually, and perhaps inevitably, these definitions include evaluative assumptions: many emphasize unduly one aspect of religious systems. ...

¹⁹ *Webster's New Twentieth Century Dictionary of the English Language Unabridged* (Cleveland and New York, The World Publishing Company, 1950), after noting the French *religion*, also cites the Latin *religio* (-onis), stating: "... from *religare*, to bind back; *re*, and *ligare*, to bind, to bind together. Others derive *religio* from *relegere*, to gather, to collect, making the primary meaning a collection, and then more specifically a collection of religious formulas". The *Concise Oxford Dictionary*, 3rd ed (Oxford, 1934) agrees ("L *religio* perh[aps] connected w[ith] *re(ligare)* bind"). What does seem clear is that *religio* itself comes from something else, either *religare* or *relegere*.

²⁰ According to Lewis and Short *religio* has the following meanings (among others): "I. Reverence for God (the gods), the fear of God, connected with a careful pondering of divine things; piety, religion, both pure inward piety and that which is manifested in religious rites and ceremonies; hence the rites and ceremonies, as well as the entire system of religion and worship, the *res divinae* or *sacrae*, were frequently called *religio* or *religiones* (cf our use of the word religion) ... II. Transf. A. Subject, conscientiousness, scrupulousness arising from religion, religious scruples, scruples of conscience, religious awe, etc (cf sanctimonia) ... 2. In gen., a strict scrupulousness, anxiety, punctiliousness, conscientiousness, exactness, etc. ... B. Object. 1. Abstr, the holiness, sacredness, sanctity inhering in any religious object (a deity, temple, utensils, etc; cf *sanctitas*) ... 2. Concr, an object of religious veneration, a sacred place or thing ... (b). A system of religious belief, a religion (late Lat) ..." *Lewis and Short Latin Dictionary*, viewed December 16 2004, <<http://www.perseus.tufts.edu/cgi-bin/ptext?doc=Perseus%3Atext%3A1999.04.0059%3Aentry%3D%2340976>>.

²¹ The word *religo* means "to tie or fasten" (see J R V Marchant and J F Charles (eds), *Cassell's Latin Dictionary*, London: Cassell and Co, p 478) refers to regulation and control, "good faith", "rite" and "ritual" as well as having other meanings. Noah Webster, in his *American Dictionary of the English Language*, was also of the view that the English word "religion" was derived from "*Religo*, to bind anew".

Baker's Dictionary of Theology (Harrison 1960:441) makes the point:

The etymology of the term does not help, both because it is uncertain and because neither *religare* nor *religere* throws much light on the present meaning of religion.

Nevertheless, when one tentatively considers the meanings of the various suggested derivations (*viz.*, *relegare*, *relegere*, *religare*, *religere*, *religio*, and *religo*) there appear to be some common elements or at least similar themes:

1. Religion involves, at one or more levels, the notion of “binding together” or “binding back”, whether to oneself, one’s ultimate “source” or to other people as some sort of response to life, with a sense of awe, reverence, “fear”, devotion, veneration and respect, whereby meaning is gained.
2. Religion involves, at one or more levels, the notion of “return” or “recovery” or “re-encounter” (whether to one’s own self, or some condition or way of life) with an attendant and consequential sense of value and importance.
3. Religion involves the selection and systematization of fundamental beliefs and motives and a consequent abiding by that selection with some degree of regulation and control (eg in the form of codes of conduct) as well as conscientiousness and scrupulousness arising from the religion and inherent as well in its practice.
4. Religion involves the notion of ties in the sense of the fulfillment of duties and commitment.
5. Religion also involves practices and activities to give effect to the foregoing including but not limited to repetitious rites and the reproduction of formulas and expressions.
6. Religion involves notions of holiness, sacredness and sanctity (including but not limited to sacred places or things and objects of veneration) and often involves supernaturalism or superstition.

Thus, Birnbaum (1964:588) has concisely written:

... Religions are systems of *belief*, *practice*, and *organization* which shape an *ethic* manifest in the behaviour of their adherents.

Types of definitions of “religion”

“The definitions of religion are legion,” writes Weatherhead (1951:412). For example, Leuba ([1912] 1969) in an appendix to his work *A Psychological Study of Religion* lists more than 50 different definitions of religion. Hutchinson (1981:3-4) has written of the difficulties inherent in seeking to define what is meant by religion:

Formal definitions of religion are as numerous, as various, and often as mutually conflicting as there are students of religion. Often such definitions illustrate the oriental parable of the blind men describing the elephant, each taking hold of part of the beast and defining the whole in terms of this part. Like the elephant, religion is a large and complex phenomenon. In this connection, some historians of religion question or reject the word religion as a distortion of the form of experience it seeks to communicate. Several of the world's major languages lack any word that can be adequately translated as "religion." The common noun religion imputes a unity or homogeneity of experience that many observers believe does not exist.

Be that as it may, definitions of religion may take a number of different types or forms, among them:

- substantive definitions
- functional definitions
- comparative definitions
- analytical definitions.²²

Some definitions of religion may be multifaceted (eg both substantive and functional, or both functional and comparative).²³

²² There are other types of definitions, including what are known as “valuative definitions”. Such a definition seeks to define religion in terms of value. Its weaknesses are obvious.

²³ One such definition is the oft-cited “the search for significance in ways related to the sacred”, a hybrid substantive-functional definition developed by Pargament (1997:32). Demerath (2000) opines that defining religion “substantively” but the sacred (the primary focus of attention of religion) “functionally” is the way to go. Baird ([1971] 1991:6) uses slightly different terminology, distinguishing *lexical* definitions (ie more-or-less dictionary definitions), *real* definitions (ie empirical or inductive definitions), and *functional* (or stipulative) definitions. However, even a most cursory perusal of a few standard dictionaries makes it abundantly clear that even *lexical* definitions take many different forms (eg substantive, functional, analytical). *Stipulative* definitions are, by their very nature, self-servingly arbitrary. In short, Baird’s dichotomy is quite problematic.

Substantive definitions

A substantive definition²⁴ is concerned with the supposed *substance* or *content* of religion or any particular religion or religious value. The focus, as the world's leading exponent of functional definitions, J Milton Yinger,²⁵ points out (Yinger 1957:7), is on "essence", that is, on what religion or any particular religion actually *is* and *what* is actually believed in religion or any particular religion. The primary emphasis tends to be on what are considered to be the intrinsic traits which religion or religious experiences have for their followers.

Even Yinger (1957:7) concedes that substantive definitions of religion have some value:

Substantive definitions can be of great value, particularly for those who are concerned with religions as historical and cultural facts, not with religion as pan-human phenomenon. They are of greater value in the study of stable societies, where distinctive and coherent religious systems are more likely to develop, than they are in the study of changing societies; for in the latter, religion itself also changes, continually complicating any effort to define what it is, but suggesting efforts to study what it does.

As mentioned above, a substantive definition tends to look at religion in terms of the implications it has for its particular followers. As Yinger acknowledges (1957:5-6), that is an approach which finds favor with the adherents of any particular religion:

A devotee of a particular faith is likely to believe that a definition *ought* to describe the "true quality" of religion. He is not happy with the concept that a definition is a heuristic device, a tool of analysis, useful for one purpose, but of no value for another. He knows what religion *is* (it is belief in and activities towards the supernatural, for example) and is impatient with a definition that may seem to be a subtle evasion of an obvious fact. A related difficulty stems from the fact that some people divide the phenomena of the world into sharply distinct categories, mistaking their labels for things and events for the things themselves. The scientist is more likely to look upon the world as a flowing continuum. He considers his definitions to be arbitrary dividing marks among phenomena that cannot be sharply distinguished. Thus religion-nonreligion is a continuum; we must recognize that there are some patterns that are marginally religious, according to any criteria that one may select. [Original emphasis]

²⁴ Sometimes also referred to as either a "formal definition" or a "content-based definition". A formal definition usually consists of three parts: (i) the term itself, (ii) the class or description of objects of which the term is a member, and (iii) the characteristics that distinguish the term from other members of the same class or description. A content-based definition, ordinarily, merely describes the characteristics of the term.

²⁵ Born in 1916 John Milton Yinger was the son of a minister of religion and a writer. He received his PhD from the University of Wisconsin, Madison, in 1942 and was the president of the American Sociological Association in 1976-7. He was later Emeritus Professor of Sociology at Oberlin College. He became the world's leading exponent of the "functional" definition of religion.

Most early attempts at substantive definitions of religion focused on belief in the supernatural. Thus, the anthropologist E B Tylor (1871) used the term religion to refer to “belief in spiritual beings”, a definition which is often cited as the first substantive definition of religion (Blasi 2005), and one that, as Yinger (1957:6) concedes, “has the advantage of being clear-cut and reasonably easy to apply”. Bouquet (1942:15-16) has written:

For most Europeans, at any rate, “religion” has come to mean a fixed relationship between the human self and some non-human entity, the Sacred, the Supernatural, the Self-Existent, the Absolute, or simply, “God”. ...

In the United States Supreme Court case of *United States v Macintosh*²⁶ Chief Justice Hughes, using a very similar and simple definitional approach, saw the “essence of religion” as “belief in a relation to God involving duties superior to those arising from any human relation”.²⁷ Professor Edward (1926:18) similarly describes the religious experience as “*an experience of God and of our relationship with Him*” [original emphasis]. However, to link religion solely or primarily with the concept of God is, as Teshima (1995:Online) points out, misleading and objectionable:

Religion is, first of all, a matter of man rather than of God. It does not consist in a mere knowledge of God. Theosophy is curiosity. Religion is reality. It is the reality of a man who is in need of perfection. Although perfection is attained through binding oneself with the Absolute, it is a prerequisite for such attainment to have knowledge of one’s spiritual defects, and religion attains its goal with resolving the problem of perfection of man.

Put simply, the fundamental question posed by religion, probably *all* religion, is not whether there is a god, or, if there is such a god, what is the nature of that god, but rather whether life make sense, whether there is a purpose to our living.²⁸ Felix Adler, who in 1876 founded the first Ethical Society in New York City, writes (Adler 1913:107-108):

Religion is concerned with the foreign relations of mankind, that is to say, with our relations to the whole of outside nature. The mission of religion is to convince us that the foreign power is friendly. The non-ethical religions have represented the eternal outside power as manifesting its friendliness by warding off unhappiness and ministering to the temporal well-

²⁶ 283 US 605 (1931).

²⁷ 283 US 605, 633-4 (1931) (Hughes CJ dissenting). This theistic approach was later rejected by the United States Supreme Court in *Torcaso v Watkins* 367 US 488 (1961) in which the court (per Black J) acknowledged that there were also non-theistic religions. See 367 US 488, 495, n 11.

²⁸ Heschel in his various books (see eg Heschel 1962, 1966) takes the view that the critical problem is not the problem of God but the problem of man. See also Martin (1979) who expresses the view that the real concern of religion is not whether God exists but rather whether our lives have meaning and purpose. Religion, probably *all* religion, asserts that “life is worth living” (to use the catchphrase of Catholic archbishop Fulton J Sheen).

being of man. Ethical religion restricts itself to affirming that the eternal power assures the fulfillment of our moral aims. The non-ethical religions have based the belief that there is a higher power on the testimony of supernatural revelations. Ethical religion bases its belief solely upon the testimony of conscience, which declares that progress ought to be achieved, hence inferring that it will be.

The emphasis on ethics is not misplaced, although there can be ethics without religion. *Webster's New World Dictionary* has defined religion as being

any specific system of belief and worship, often involving a code of ethics and a philosophy.²⁹

Professor William James ([1902] 1958:42) did not attempt to develop an exhaustive general definition of religion,³⁰ but saw religion as “a man’s total reaction upon life”, consisting of

*the feelings, acts, and experiences of individual men in their solitude, so far as they apprehend themselves to stand in relation to whatever they may consider the divine.*³¹

Indeed, James ([1902] 1958:380-381) went so far as to assert that one could not meaningfully study religion without focusing on *feelings* and *conduct*:

When we survey the whole field of religion, we find a greater variety in the thoughts that have prevailed there; but the feelings on the one hand and the conduct on the other are almost always the same, for the Stoic, Christian, and Buddhist saints are practically indistinguishable in their lives. The theories which Religion generates, being thus variable, are secondary; and if you wish to grasp her essence, you must look to the feelings and the conduct as being the more constant elements.

²⁹ *Webster's New World Dictionary* (Third College Edition), as cited in “Various Definitions of the Word ‘Religion’ (None Are Totally Satisfying)” (Online). However, there would appear to be at least some sort of apposite distinction between religion and philosophy. The *Random House Dictionary of English Language*, 1967 ed, p 112 makes that clear, includes the following definition of religion: “Concern over what exists beyond the visible world, *differentiated from philosophy in that it operates through faith or intuition rather than reason*, and generally includes the idea of the existence of a single being, a group of beings, an eternal principle, or a transcendent spiritual entity that has created the world, that governs it, that controls its destiny, or that intervenes occasionally in the natural course of its history, as well as the idea that the ritual, prayer, spiritual exercises, certain principles of everyday conduct, etc are expedient, due, or spiritually rewarding, or arise naturally out of an inner needs as a human response to the belief in such a being, principle, etc.” [*Emphasis added*]

³⁰ James, in fact, identified two different types of religion: firstly, what is generally referred to as institutional religion (in James’ words, “an external art, the art of winning the favour of the gods”), and secondly, “the more personal branch”, which James defined as “the inner dispositions of man himself which form the centre of interest, his conscience, his deserts, his helplessness, his incompleteness”.

³¹ James ([1902] 1958:395) also wrote: “Religion, in fact, for the great majority of our own race, *means* immortality and nothing else.” [Original emphasis] In his *Varieties*, actually a collection of lectures delivered in Edinburgh, James applied both his radical empiricism and his pragmatism to the study of religion and, in particular, to what James saw as being the reality of the “religious experience”. Many, including the present author, consider *The Varieties of Religious Experience* to be the best book ever written on the subject of religion.

Despite the obvious limitations of James' definition, viz religion is a *social* and *organizational* phenomenon as well, and is concerned with more than affect, James' definition was suggested for adoption by Judge Cardamone in *United States v Moon*.³² Not unhelpfully, James ([1902] 1958:44, 47) construed the "divine" quite broadly:

... [W]e must interpret the term "divine" very broadly, as denoting any object that is *godlike*, whether it be a concrete deity or not.

The divine shall mean for us only such a primal reality as the individual feel impelled to respond to solemnly and gravely, and neither by a curse nor a jest.³³

James ([1902] 1958:58) also wrote:

Were one asked to characterize the life of religion in the broadest and most general terms possible, one might say that it consists of the belief that there is an unseen order, and that our supreme good lies in harmoniously adjusting ourselves thereto.

James ([1897] 1956:51) did, however, see the essence of religion as pertaining to the supernatural,³⁴ the unseen, the invisible:

Religion has meant many things in human history: but when from now onward I use the word I mean to use it in the supernaturalist sense, as declaring that the so-called order of nature, which constitutes this world's experience, is only one portion of the total universe, and that there stretches beyond this visible world an unseen world of which we now know nothing positive, but in its relation to which the true significance of our present mundane life consists. A man's religious faith ... means for me essentially his faith in the existence of an unseen order of some kind in which the riddles of the natural order may be found explained.

Further, most religions offer the hope and contain means of deliverance or salvation of one kind or another. Referring particularly to what he saw as the "completest religions"³⁵ Professor James wrote ([1902] 1958:139):

They are essentially religions of deliverance: the man must die to an unreal life before he can be born into the real life.

³² 718 F 2d 1210 (2d Cir 1983). This case was an unsuccessful constitutional challenge by the Rev Sun Myung Moon against his conviction for filing false tax returns.

³³ Huxley (1964:222) has pointed out that "the term *divine* did not originally imply the existence of gods: on the contrary, gods were constructed to interpret man's experiences of this quality".

³⁴ Nevertheless, James ([1902] 1958:389) typically held a very pragmatic view about the so-called supernatural: "that which produces effects within another reality must be termed a reality itself, so I feel as if we had no philosophic excuse for calling the unseen or mystical world unreal".

³⁵ "The completest religions would therefore seem to be those in which the pessimistic elements are best developed. Buddhism, of course, and Christianity are the best known to us of these."

As to the nature and character of the religious experience itself, James ([1902] 1958:395) wrote:

The only thing that it unequivocally testifies to is that we can experience union with *something* larger than ourselves and in that union find our greatest peace.³⁶

Dewey (1934:27)³⁷ offers this definition of what is “religious”.³⁸

Any activity pursued in behalf of an ideal end against obstacles and in spite of threats of personal loss because of conviction of its general and enduring value is religious in quality.

The controversial Presbyterian theologian Samuel Angus (1933b:16) describes religion in similar existential terms:

Religion is rooted in the emotional life, *but in the emotional life of a being who thinks, wills and evolves*, restlessly striving toward some ideal state or good. We must also make due room for the *three phases* which ever appear in varying proportions, institutionalism or cult; intellectualism or the justification to reason; mysticism, seated in the feelings and will and emphatically experimental.

... Religion is the attitude, conscious or unconscious, of our entire personality towards the problems and needs of life, with the values, ideals, and principles basal thereto and resultant therefrom. ...

Religion is thus a unifying experience which co-ordinates the perplexing multiplicities of life, of renunciation and enjoyment; a faith that releases the potent capacities of our being. It is the harmony and integration of a complete rationality, whereby a many determines to face life and the world with the full equipment of his richly endowed nature, refusing to concede to one capacity the right of way over the others, especially to those two most jealous rivals, emotionalism and intellectualism. [Original emphasis]

The problem with any and all such definitions is fairly obvious, in that

³⁶ The founders of Alcoholics Anonymous were great admirers of the writings of William James, particularly his *Varieties*. The fellowship's concept of a “higher power” (see Step 2 of The Twelve Steps: “a Power greater than ourselves”) probably has its origins in James's references to “something larger than ourselves”.

³⁷ Although technically an atheist, Dewey (who was the first president of the American Humanist Association) sometimes used religious terminology in his writings. For example, he used the word “God” to denote what he referred to as “a unification of ideal values” even though he recognized that such an idea was “essentially imaginative in origin”: see Dewey (1934:42-3). (Similarly, Edward Scribner Ames, of Chicago's Department of Philosophy, defined religion as “the consciousness of the highest social values”: see Ames (1909, 1928).

³⁸ Dewey made an important distinction between “religion” on the one hand and “religious” on the other. The former referred to “traditional-type” religion with its elements of transcendence and/or supernaturalism. The latter, however, for Dewey referred to nothing more than projected ideals of human behaviour or conduct, provided they amounted to a “commitment of deep significance”.

... no single definition will suffice to encompass the varied sets of traditions, practices, and ideas which constitute different religions.³⁹

One oft-cited attempt at identifying the distinguishing characteristics of religious belief systems and practices is found in *The Encyclopedia of Philosophy*.⁴⁰ In the article on religion Alston (1967:141-2) lists what he considers to be the distinguishing characteristics - or, at least, the more important characteristics - of religion, rather than simply a supposed definition of religion. The list contains the following nine "religion-making characteristics":

- Belief in supernatural beings (gods).
- A distinction between sacred and profane objects.
- Ritual acts focused on sacred objects.
- A moral code believed to be sanctioned by the gods.
- Characteristically religious feelings (awe, sense of mystery, sense of guilt, adoration), which tend to be aroused in the presence of sacred objects and during the practice of ritual, and which are connected in idea with the gods.
- Prayer and other forms of communication with the supernatural.
- A world view, or a general picture of the world as a whole and the place of the individual therein. This picture contains some specification of an over-all purpose or point of the world and an indication of how the individual fits into it.
- A more or less total organization of one's life based on the world view.
- A social group bound together by the above.

One immediate and obvious problem with the list is its abject failure to acknowledge not only non-theistic religion but also naturalistic religion generally. In addition, the list is bureaucratically unwieldy and clumsy, to say the least. Adler (1990:45) does not attempt to give "an exhaustive enumeration of the properties or characteristics that help us to identify the various religions" but seeks only to identify the "traits" that he believes are common to most if not all religions. First, all religions involve some form of worship, with "a separation of the sacred or holy from the secular and the profane" (Adler 1990:45). Secondly, the institutions of organized religion ordinarily involve "a separation of a priesthood from a laity" (Adler 1990:45).⁴¹ Thirdly, there is in every religion "something like a code of religious laws, precepts, or prescriptions" (Adler 1990:46), including but not limited to moral precepts, that describe and delineate a way of life and conduct that *ought* to be followed and needs to be followed in order to achieve "salvation" or something

³⁹ *Barnes & Noble (Cambridge) Encyclopedia* (1990), as cited in "Various Definitions of the Word 'Religion' (None Are Totally Satisfying)" (Online).

⁴⁰ *The Encyclopedia of Philosophy*, 8 vols (New York: Macmillan, 1967).

⁴¹ Adler acknowledges that the terms used to name these two groups of persons vary from religion to religion.

similar. Finally, religion, according to Adler (1990:46), obliges its adherents to affirm “as true” some set of dogmatically declared beliefs.⁴²

However, the subjective and existential factor in religion and in religious experience itself cannot be ignored in any definition or description of religion. Edward (1926:13-18) aptly points out that

religion is a concern which dwells in the deep places of man’s being. It cannot be exhausted by any intellectual statement. It cannot be equated with morals or moral sanctions. It is vitally related to the intellectual and moral life, but it cannot be substituted by either, or both together, nor can it be completely expressed in their terms.

Martin (1979),⁴³ an expert on spirituality in the field of addictive disease and its treatment, sees a *religion*, viewed objectively, as comprising or otherwise consisting of a group of people who make the *spiritual* (ie non-physical) life *specific* so that they can live it *in community*, all functioning under the same *creed*, *code* and *cult*. In other words, religion involves a unity of thinking (in the sense that all members believe the same *creed*, that is, the same truths about God, however defined, themselves, and their relationship with that God), a unity of functioning (in the sense that all members function according to a single moral or ethical *code*), and a unity of worship, that is, *cult*). Thus, for Martin religion has three essential ingredients - creed, code, and cult.

In a similar fashion, Wach (1958) asserts that every religion is characterized by the following three forms of expression:

- the theoretical – a system of belief
- the practical – a system of worship, and
- the sociological – a system of social relationships.

Thus, *The Macquarie Dictionary* offers the following three-part definition of religion:

[Religion is] the quest for the values of the ideal life, involving three phases, the ideal, the

⁴² Adler makes the point that what is declared to be “orthodox” may not be explicitly declared to be such but may be implied by the code of conduct promulgated by the particular religion.

⁴³ Fr Joe Martin, whose books and tapes (especially his series of “Chalk Talks”) are widely disseminated in rehabilitation centers and AA groups throughout the world, co-founded Ashley Inc (now known as “Fr Martin’s Ashley”), a non-profit rehabilitation center in Havre de Grace MD. He taught for many years at St Joseph’s College, Mountain View CA, and St Charles College, Catonsville MD. He retired from active ministry in 2003.

practices for attaining the values of the ideal, and the theology or worldview relating the quest to the enviroing universe.⁴⁴

The writings and teachings of the late Professor John Anderson make it clear that the *real* task is to delineate the conditions for something being *religious*. Anderson would argue that just as no questions can arise about what is required for redness neither can there be any meaningful discussion as to the conditions or criteria for goodness, fairness, beauty or religiousness (*religious-ness*).⁴⁵ One can only speak in terms of the conditions necessary - that is, logically necessary and sufficient - for the *occurrence* of red things, just as one can only speak in terms of the conditions necessary for the occurrence of good things, fair things, beautiful things, religious things, or whatever. In other words, one can only speak meaningfully about the characteristics of things recognized as good, fair, beautiful, religious, and so forth. In Anderson's view, it is a relativist mistake - that is, purporting to define something by reference to its relations to other things - to enquire as to the conditions for redness, goodness, fairness, beauty or religion itself (eg beauty is that which is found by reasonable persons to be pleasing to them). There must be no confusing or amalgamating qualities with relations. The eminent spiritual philosopher Krishnamurti agreed, stating (1970b:33):

Is it a matter of education, conditioning, that says, "This is beautiful and that is not"? Is it a matter of custom and habit and style that says: "This is squalor, but that is order and the flowering of the good"? If it is all a matter of conditioning then it is the product of culture and tradition, and therefore not beauty. If beauty is the outcome or the essence of experience, then to the man from the West and from the East, beauty is dependent upon education and tradition. Is love, like beauty, of the East or of the West, of Christianity or Hinduism, or the monopoly of the State or of an ideology? Obviously it is not any of this.

According to Anderson, one can speak meaningfully only in terms of what are the conditions for something being red, being good, being fair, being beautiful, being religious, and so forth. However, that is not to be taken to be a question about the conditions of redness, goodness, fairness, beauty or religion itself. For example, in the context of the rules of natural justice, the features of a fair hearing - that is, those things that must be done in order for there to be fairness - are not what constitute a thing's fairness. They simply permit appreciation or recognition of its fairness. In short, the word "fair" simply

⁴⁴ *The Macquarie Dictionary*, rev ed (Sydney: Macquarie Library, 1985), p 1436.

⁴⁵ The *Concise Macquarie Dictionary* offers, relevantly, the following definition of the word "religious": **religious** ... *adj.* 1. of, pertaining to, or connected with religion. 2. imbued with or exhibiting religion ... - **religiousness**, *n.*

refers or directs us to fair things, to a fair hearing. How do we know that it does that? Our very use of the word “fairness” implies that there is something (an idea, an impression, an experience) that tells us whether we’re applying the word properly or not.

What “makes” - and the word is used advisedly - a hearing fair? What are the features that distinguish fair hearings from unfair hearings? What do all and only fair hearings have in common? The giving of notice is the bare minimum requirement of a fair hearing.⁴⁶ Further, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting their case, and that includes being given an opportunity to correct or contradict any relevant statement prejudicial to their view. These are the basic conditions necessary for the occurrence of fairness.⁴⁷

Applying this mode of thinking and methodology to the realm of religion, one would need to identify the distinguishing characteristics of *religious-ness*, that is, that which pertains to religious belief systems and practices - *those things that permit appreciation or recognition of a thing being “religious”*.⁴⁸ Some help comes from what Anderson (1982:265) has written concerning the conditions necessary for the recognition or appreciation of beautiful things:

In all art, then, we find some kind of arrangement; in literature, an arrangement of situations among human beings; in music an arrangement of sounds in time; in painting and sculpture an arrangement of masses in space. But all these arrangements must go to make a single work if it is to be beautiful; it must not be simply a collection of bits and pieces. It must be built round some theme forming what I have called the structure of the work. In the case of literature and music this theme is often enunciated quite early in the work by a significant phrase of words or of notes; in the plastic arts by a significant shape, or mass by focusing on which we get the structure which has been built up around it.

Anderson (1982:260) writes:

... In [James] Joyce’s *A Portrait of the Artist as a Young Man* Stephen Dedalus elucidates the aesthetic doctrine of Aquinas that three things are required for beauty, “wholeness, harmony, and radiance” (*integritas, consonantia, claritas*). Dedalus finds these principles, indeed, to be involved in all disinterested perception, all recognition of things as they are in

⁴⁶ See *R v North; ex parte Oakey* [1927] 1 KB 491.

⁴⁷ See *Russell v Duke of Norfolk* [1949] 1 All ER 109; *R v Gaming Board for Great Britain; ex parte Benaim and Khaida* [1970] 2 QB 417.

⁴⁸ Not everyone agrees with this objectivist approach. For example, Ganzevoort (2004:Online) writes: “Whether or not something ‘is’ religious does not depend on some objective quality of the phenomenon, but on the discourse one is involved in.”

themselves independently of our purposes. We perceive the object as *one* thing, as a thing, and as the thing that it is.⁴⁹

Wholeness, harmony and radiance. Anderson is at pains to point out that these three things do not *constitute* a thing's beauty. They do, however, permit the apprehension or recognition of a thing's beauty. But what is it about a particular thing that permits its aesthetic apprehension? Anderson speaks in terms of the extent to which the presentation allows the appreciator to separate the essential from the inessential. In Anderson's (1982:266) words:

... Inessentials necessarily appear, but in art the question would always seem to be how far the work allows the appreciator to separate the essential from the inessential - how well the theme (X) stands out or is worked out; how well it is illumined

Thus, bearing in mind the need for some sort of overall structure and coherence, the challenge, applying the Andersonian methodology, would appear to be to elucidate those things that permit recognition of a thing's *religious-ness*. In that regard, one academic who has attempted to focus on those very important things that permit appreciation or recognition of a thing being a religion is Donald A Crosby, a professor emeritus of philosophy at Colorado State University. In his book *A Religion of Nature* (2002) Crosby identifies six functions or categories of a religious object (the latter traditionally being some image of a person, thing or principle considered sacred or holy to adherents of the religion) or a thing's *religious-ness*:

- *Uniqueness* – a religious object must be unique in the sense that it plays a very special, indeed extraordinary (ie extra-ordinary) role in an adherent's life, often in objective contradiction or at least contradistinction to other aspects of the person's life. This object of religious activity is in some way altogether different or set apart from the more mundane and everyday aspects and components of one's life.
- *Primacy* – microcosmically, the religious object must have primacy, and be of primacy, in a person's life in the sense that it is of ultimate importance or is the so-called and oft-cited "ultimate concern" of that person; macrocosmically, the religious object ordinarily manifests in a primal way, as, for example, the life force or "livingness" of all life, or its essential source, origin, essence, nature or embodiment.

⁴⁹ See Joyce ([1916] 1960:211ff) for Stephen Dedalus/Joyce's elaboration of his view on aesthetics.

- *Pervasiveness* – the religious object is all-pervasive in the life of an adherent to which all other things are subordinate and subservient. Its pervasiveness is such that it integrates all other aspects or features of a person’s living into a resultant wholeness and unity, although the phenomenon of cognitive dissonance may still be prevalent in the lives of some.
- *Rightness* – the religious object has a certain “rightness” about it, in the sense that it has a controlling influence over a person’s fundamental sense of values and, in particular, the sense of value about life itself. The religious object provides a focal point and benchmark for determining what is right conduct. Ordinarily, the continued existence of the religious object is sufficient evidence, at least for the adherent, that life is fundamentally good, or that good will ultimately triumph despite any appearances to the contrary.
- *Permanence* – the object of a religion has permanence either in temporal duration or in enduring importance, providing a never-ending and essentially timeless source of power, strength and comfort to face life with all of its difficulties, threats and challenges.
- *Hiddenness* – the religious object is “hidden” in some way (and not necessarily in the sense of being invisible to the eye) in the sense that it inspires awe and reverence as well as mystery. In all cases, there is a sense that there is much more than meets the eye, that what is ultimately real is invisible to the eye and may never be fully comprehended or ascertained.

Unitarian Universalist theologian James Luther Adams, who taught at Meadville Lombard, Harvard and Andover Newton seminaries, came up with two things that, he said, permit appreciation or recognition of a thing being a religion, or being religious: *ultimacy*⁵⁰ (cf *primacy* above), that is, a place to seek meaning about the ultimate questions of life and death,⁵¹ and *intimacy*, that is a place to belong. Morgan (2000:Online) writes that Adams was in no doubt as to what people sought in a religion and why they went to church or whatever was their particular place of worship:

⁵⁰ According to Bellah (1964:Online) religion is “a set of symbolic forms and acts which relate men to the ultimate condition of his existence”. Tillich (1958:124) also said as much, stating that religion is that which concerns us ultimately, being prepared to include secularism in his construct of “ultimate concern” on the basis that “secularism is never without ultimate concern”.

⁵¹ Forrest Church, senior minister of All Souls Church (Unitarian) in New York City, has written (2003:Online): “Religion is our human response to the dual reality of being alive and having to die. ... Knowing we must one day die, we cannot help but question what life means. ... The purpose of life, and its truest test as well, is to live in such a way that our lives will prove worth dying for.”

In response to a question about why people came to our religious communities at all, Dr Adams was quite succinct: They came for ultimacy and intimacy.

He went on to explain that they came to wrestle with (and from time to time to actually find answers to) life's ultimate questions. Who am I? In what or in whom do I trust? In what community do I belong? And they came for a sense of intimacy, a safe place in which they could be accepted while making connections with others.⁵²

Indeed, the *questions* asked, and the nature, scope and subject-matter, of the types of questions asked by and of a religion – as opposed to the nature of the *answers* given – are largely determinative of a thing being a religion as opposed to a philosophy or mere way of life.

Insofar as the *ultimacy* of religion is concerned, religion asks and sometimes seeks to answer questions such as the following:

- Who am I?
- Why am I here?
- Is there a power or presence for good active in the universe that is of ultimate value which I can use?
- In whom or in what can I trust?
- How am I called to live?

Insofar as the *intimacy* of religion is concerned, religion asks and sometimes seeks to answer questions such as the following:

- In what community do I belong?
- Am I connected to others?
- In what ways am I connected to others?
- How am I to relate to the life around me?
- How am I to relate to other human beings?

As regards the last mentioned question, one of the things that appears to be inseparable from religion - *any* religion - is the perceived need for and importance of forgiveness. The

⁵² See also Small (2003).

theme of forgiveness would appear to be at the heart of every religion, as one prominent rabbi (Brasch 1995:53-4) has pointed out:

All religions have taught forgiveness. Unequivocally, they demand of their followers not to take vengeance or to bear grudges, but to forgive even one's enemies and, going to the extreme, to turn the other cheek.

...

Religion has not failed, but people have failed to apply its teachings, especially that of forgiveness.

Yinger (1970:6-7) lists the following as some of the more important "ultimate" questions posed by any religion:

Though there are important disagreements concerning the ultimate problems for man, a great many people would accept the following as among the fundamental concerns of human societies and individuals: How shall we respond to the fact of death? Does life have some central meaning despite the suffering and the succession of frustrations and tragedies it brings with it? How can we deal with the forces that press in upon us, endangering our livelihood, our health, and the survival and smooth operation of the groups in which we live - forces that our empirical knowledge cannot handle adequately? How can we bring our capacity for hostility and our egocentricity sufficiently under control to allow the groups within which we live - without which our life would indeed be impossible - to be kept together?

...

Religion, then, can be defined as a system of beliefs and practices by means of which a group of people struggles with these ultimate problems of human life. It expresses their refusal to capitulate to death, to give up in the face of frustration, to allow hostility to tear apart their human associations. The quality of being religious, seen from the individual point of view, implies two things: first, a belief that evil, pain, bewilderment, and injustice are fundamental facts of existence; and, second, a set of practices and related sanctified beliefs that express a conviction that man can ultimately be saved from those facts.⁵³

Unitarian Universalist minister Beverly Boke (2003:Online) reduces these all-important questions to the following core issues:

Religion is our way of making sense of our world. Re-ligio. To bind together again. Religion ... is what we use to bind together the ragged, disparate experiences of our lives into a comprehensible whole. Who am I? How do I live? Why do I die? Is there something on which all else depends? And if there is, how do I stand in relation to it? And if there is not, how do I stand in relation to its not being? What do I do with my love - and my gratitude? If there isn't any God running things, whom do I *thank*?

⁵³ In his book *Religion, Society and the Individual* (1957) Yinger gave essentially the same definition of religion (on p 9): "Religion, then, can be defined as a system of beliefs and practices by means of which a group of people struggles with these ultimate problems of human life. It is the refusal to capitulate to death, to give up in the face of frustration, to allow hostility to tear apart one's human associations."

William Sloane Coffin, who served as chaplain of Yale University during the Vietnam War era and later as senior minister of New York's famous Riverside Church, later becoming president of the SANE/FREEZE campaign for global security, which is the largest peace and justice organization in the United States of America, has cogently expressed (see Southworth 1995:v) in salvific language and thought forms that can only be construed as being “religious”, what is the ultimate goal of not only religious naturalism but also most liberal religion:

The chief religious question can no longer be, “What am I going to do to be saved?” It must be, “What are we all going to do together, to save God’s creation?”

The answers - to the extent to which there *are* answers or answers are *offered* – to the above questions differ, of course, depending upon the particular religion. Some religions provide answers that presuppose the existence of a supposed supernatural order or level of reality, while others imply the existence of only one order or level of reality. This matter will be discussed in much greater detail in Chapter 3 of this thesis.

Religious naturalist Crosby (2003:Online) sees *immanence* and *transcendence* as being the two things that permit appreciation or recognition of a thing being a religion, and he has demonstrated that religious naturalism satisfies both of those things. Its immanence can be found in its rejection of all notions of supernaturalism and its repudiation of all theories of intelligent design or underlying purpose, while its transcendence is three-fold: first, we human beings, as “creatures of nature”, have the capacity for self-transcendence; secondly, there occur transformative events that transcend our expectations and lie outside or beyond our conscious will or control; and, thirdly, there is the transcendence, both in time and space, of nature itself over human beings, together with our utter dependence upon nature for the continuance of our lives both physically and otherwise.

Transcendence is an experience that is altogether human, so it is not at all surprising that the word is often used in a religious context or setting, as Brown (2002:46) points out:

Throughout life, you have experienced many little tastes of this joy. There have been occasions of self-forgetting in which something beyond us has not only drawn us out of ourselves, but called us to something more. There have been experiences of pilgrimage, devotion and worship. We have been given glimpses of transcendence – something unknown and unknowable overarching our lives and the universe as a whole. There have been times in which God has seemed particularly close – as if you could almost touch Him.

Now they all come together in that one occasion, that simple look, this single moment: “that central music in every pure experience which [has] always just evaded memory [is] now at last recovered” (C S Lewis, *The Screwtape Letters*).

Stone⁵⁴ (1993:Online) also sees, in the context of religious naturalism, transcendence in the form of a number of preeminent and empowering transcendent ideals that continue to challenge, exhort and inspire us:

The ideal aspect of transcendence, defined minimally, is the set of ideals insofar as they challenge us. There are a number of these which people often recognize. The following are four examples. There is the challenge to universalize respect and care. This is the challenge to learn that all humans are members of one family, that all are our sisters and brothers. But it is also the challenge that we have moral obligations which extend even beyond the human community to other living things and their habitats. Then there is the challenge to deepen love. This is the challenge which comes to us to love more fully. There is always more giving and listening, more care and forgiving and support that another person elicits from us. In the third place we have the challenge to seek adequate information and understanding. We all know that we don't have all the answers. When this is genuinely recognized we accept the challenge to improve our knowledge. Finally there is the challenge to develop strength and sensitivity of character. This is the challenge to develop our human potential to newer levels.⁵⁵

Functional definitions

“The person who seeks to define religion in functional terms, to be sure, faces a number of difficulties”, writes Yinger (1957:8).

A functional definition⁵⁶ is concerned with the *function* or *functions* of religion or any particular religion. Yinger (1957:7) rightly points out that the focus is “on process”, that is, on what religion or any particular religion actually *does* and *how* it functions or otherwise operates in the lives of human beings. The primary emphasis tends to be on what religion does psychologically or socially, for all functional definitions begin with the *consequential* dimension. In some cultures and languages even the word itself for “religion” is functional in nature. For example, the Hawaiian word for religion or sect is *ho’omana*. That word is derived from *ho’o* (to cause or bring about) and *mana* (life force, energy, spirit, or creative power, especially supernatural or divine power); thus, *ho’omana* means, among other things, to empower, to place in authority, to ascribe divine honours, and to worship.⁵⁷ In

⁵⁴ Professor Emeritus, Department of Philosophy, William Rainey Harper College, Palatine IL.

⁵⁵ Stone refers to his version of transcendence as the “minimalist vision of transcendence”.

⁵⁶ Sometimes also referred to as a “structural definition”.

⁵⁷ See *The Pocket Hawaiian Dictionary* (Honolulu HI: University of Hawaii Press, 1975), p 102.

other words, religion empowers people through the release of energy and life force, enabling them to become attuned to and consciously aware of that life force and power in which they live and move and have their being.

By their very nature, functional definitions of religion are naturalistic, seeking to explain and describe religion, or a particular religion, as a function of one or more human needs.

Emile Durkheim⁵⁸ ([1912] 1915:14) wrote of the importance of going beyond the outer layer of religious beliefs and practices in order to understand their true function:

Religious beliefs and practices undoubtedly seem disconcerting at times, and one is tempted to attribute them to some sort of a deep-seated error. But one must know how to go underneath the symbol to the reality which it represents and which gives it its meaning.

Functional definitions have several alleged advantages over substantive definitions, although, as Ross (1901) and Parsons (1937) point out, it is important to keep in mind that the latter are often combined with functional definitions.⁵⁹ At the very least, they tend to be more inclusive than substantive definitions. A functional definition asks what *new forms* religion is taking rather than *whether* people are religious. As James Davison Hunter (see Hunter & Guinness 1990:58) explains:

The substantive model generally delimits religion to the range of traditional theism: Judaism, Christianity, Islam, Hinduism and so on. The functional model, in contrast, is more inclusive. By defining religion according to its social function, the functional model treats religion largely as synonymous with such terms as cultural system, belief system, meaning system, moral order, ideology, world view and cosmology.

Thus, a functional definition can be applied to different types of religions, including both theistic and nontheistic religions, as well as naturalistic and non-naturalistic religions. The first *functional* definitions of religion came out of the work of Durkheim ([1912] 1915) and placed great emphasis on the feelings of solidarity which religious ceremonies tended to evoke and their effects on social cohesion and community unity. Durkheim saw religion as linking individuals to the social whole, to society, regulating individuals with binding

⁵⁸ Emile Durkheim (1858-1917) taught sociology at the University of Bordeaux and later educated on education and sociology at the Sorbonne from 1902 until his death. In his monumental work *The Elementary Forms of Religious Life*, which was first published in 1912, Durkheim used ethnological evidence from the Australian tribes to support and explain his theories. The bulk of *The Elementary Forms of the Religious Life* is a detailed study of primitive religion, more particularly indigenous Australian forms of cults and beliefs.

⁵⁹ Both Ross and Parsons, while recognising that religion exerted social control and legitimated the use of public power, otherwise defined religion substantively, in terms of belief about the unseen or by reference to the supernatural.

standards of conduct, encouraging certain things and discouraging others. Religion, according to Durkheim ([1912] 1915:474-5), had its origins in the ordinary, everyday practical demands of societal life, and was of enormous functional importance:

There is something eternal in religion which is destined to survive all the particular symbols in which religious thought has successfully enveloped itself. There can be no society which does not feel the need of upholding and reaffirming at regular intervals the collective sentiments and the collective ideas which give it its unity and individuality.

Durkheim ([1912] 1954:47) postulated the following functional definition of religion:

*A religion is a unified system of beliefs and practices relative to sacred things, that is to say, things set apart and forbidden - beliefs and practices which unite into one single moral community called a Church, all those who adhere to them.*⁶⁰

As Giddens (1978:92) has pointed out, this definition makes it clear that:

... Durkheim insisted upon two elements in his definition of religion: the existence of sacred symbols and objects on the one hand, and on the other their connection with definite ceremonial practices organized through a church.

Whereas Professor William James was concerned with the variety of religious experience of *individuals*, that is, “personal religion”, the primary focus of Emile Durkheim was with community, that is, “the communal activity and the communal bonds to which participation in religious activities gives rise” (Coser 1977). For Durkheim religion was equated with society (Dobbelaere and J Lauwers 1973).⁶¹ Religion integrates and socializes.

Coser (1977) has pointed out:

Durkheim argued that religious phenomena emerge in any society when a separation is made between the sphere of the profane - the realm of everyday utilitarian activities - and the sphere of the sacred - the area that pertains to the numinous, the transcendental, the extraordinary. An object is intrinsically neither sacred nor profane. It becomes the one or the other depending on whether men choose to consider the utilitarian value of the object or certain intrinsic attributes that have nothing to do with its instrumental value. The wine at mass has sacred ritual significance to the extent that it is considered by the believer to symbolize the blood of Christ; in this context it is plainly not a beverage. Sacred activities are valued by the community of believers not as means to ends, but because the religious community has bestowed their meaning on them as part of its worship. Distinctions between the spheres of the sacred and the profane are always made by groups who band together in a cult and who are united by their common symbols and objects of worship. Religion is “an

⁶⁰ Original emphasis. For Durkheim the sacred was not necessarily synonymous with the divine, for all sorts of things could be sacred, including not only gods and spirits but rocks, trees and pieces of wood. Something *becomes* sacred when it becomes the subject of a prohibition that sets it radically apart from other things, the latter *becoming* profane as a direct result of that setting apart.

⁶¹ Dobbelaere and Lauwers criticize Durkheim for identifying the religious group with the total society.

eminently collective thing." It binds men together, as the etymology of the word religion testifies.⁶²

Religion was for Durkheim ([1912] 1954:47, 63) "an eminently collective thing" and a religious organization was a "cult" in the true sense of the word:

In reality, a cult is not a simple group of ritual precautions which a man is held to take in certain circumstances; it is a system of diverse rites, festivals and ceremonies which all have this characteristic, that they reappear periodically. They fulfil the need which the believer feels of strengthening and reaffirming, at regular intervals of time, the bond which unites him to the sacred beings upon which he depends.

For Durkheim the concept of sacredness derived from one's experience of social norms. The sacred was the exemplification of the power of society, God functionally being nothing more than society, which "from a subjective point of view had all the characteristics normally attributed to Deity" (Mitchell 1979:59). Having said that, it was fundamental to Durkheim's understanding of religion that humans did not first invent gods, and then find a societal use for them. On the contrary, notions of divinity and sacredness are simply the expression of pre-existing social sentiments (Giddens 1978:80). Having said that, Durkheim did not reject religion as mere illusion. It was real, and true after its own fashion. As Prowse (2005:Online) has pointed out:

Religion has to reflect some fundamental aspect of human existence, [Durkheim] reasoned, because it could not otherwise have played so prominent a role historically or have survived the rise of empirical science.

Durkheim also rejected the simplistic view, often espoused by those, including lawyers and judges, who seek to define religion in narrow, traditional terms, that religion necessarily pertained to supernatural beings or gods. That notion was rejected by Durkheim, who stressed that religious beliefs "expressed the character of the social totality" (Giddens 1978:81). Prowse (2005:Online) writes:

... A god or gods do not represent the essence of religion, [Durkheim] argued. It lies instead in an absolute division of the world into two categories: the sacred and the profane. ...

Giddens (1978:85) writes that, insofar as the idea of supernaturalism was concerned, it was the view of Durkheim that the notion of religion as necessarily involving supernaturalism was a "quite recent development" presupposing a certain level of what

⁶² Coser, as cited in "The Sociology of Religion".

Durkheim referred to as secularization (the process by which original religious thought forms are “socialized”):

... [T]he “supernatural” only has sense when counterposed to the “natural world”, governed by impersonal laws. Nor is the notion of a god or gods a defining characteristic of religion. One can quite easily find examples of major religions where the idea of god is absent (Durkheim cited the case of Buddhism to support this). The most distinctive characteristic of religious beliefs and symbols is the attitude with which they are approached, which severs them absolutely from the instrumental activities of ordinary daily life. All religious beliefs presuppose a polar division of reality into two opposed classes of objects: those which are “sacred”, on the one hand, and those which are “profane” on the other. Sacred things are the subject of attitudes of awe and veneration, and thus kept completely separate from life in the profane world.

Even theologians have at times sought to construct functional definitions of religion. For example, Angus (1933b:21) wrote:

The main purpose of religion is not to supply us with a stereotyped set of opinions or a ready-made scheme of doctrines, but to steady us in allegiance to our ideals, to maintain our faith in the moral values, and to strengthen us in increasing truth and goodness upon earth. Religion gives no clear proof of the existence of God or of the objective existence of moral values, but it increases our faith that the things we love deepest have in them an imperious degree of reality, and that they are not at the mercy of a heedless mechanical universe.

Yinger (1946, 1957, 1969, 1970) went even further than Durkheim, being one of the first sociologists to promulgate an exceptionally inclusive functional definition of religion, proposing that a social phenomenon should be regarded as religious if it fulfilled the manifest function of religion, which Yinger saw as being the provision of purpose in life and meaning in the face of death, suffering, evil, and injustice.⁶³ For Yinger religion helps individuals cope with life by providing a strategy to overcome despair, hopelessness, and futility.

Yinger's (1970:33) definition of religion is as follows:

Where one finds awareness of and interest in the continuing, recurrent, *permanent* problems of human existence - the human condition itself, as contrasted with specific problems; where one finds rites and shared beliefs relevant to that awareness, which define the strategy of an ultimate victory; and where one has groups organized to heighten that awareness and to teach and maintain those rites and beliefs - there one has religion.⁶⁴

More specifically, Yinger (1970:7) proffered:

⁶³ However, Norris and Inglehart (2004) make the point that life is all the more meaningful by reason of the fact that we don't have the final answers to the nature of the universe and our place in it.

⁶⁴ Rationalist and cynic H L Mencken ([1930] 1946) in a similar vein wrote that religion's “single function is to give man access to the powers which seem to control his destiny, and its single purpose is to induce those powers to be friendly to him”.

Religion, then, can be defined as a system of beliefs and practices by means of which a group of people struggles with the ultimate problems of human life. It expresses their refusal to capitulate to death, to give up in the face of frustration, to allow hostility to tear apart their human aspirations.

Blasi (in Swatos 1979:Online) points out that for Yinger religion is “social but relativizes evils and desires for individuals”. It is “an organized effort to make virtue of our ultimate necessities” (Yinger 1970:10), with far-reaching implications and consequences for both the individual and the group, as Yinger (1970:15-16) himself points out:

First, failure and frustration are symbolically reinterpreted: failure is only apparent; death is not what it seems. Second, religion brings each individual into a fellowship that emphasizes shared experiences. This has two aspects: it spreads the burdens of one’s fears and frustrations, and thus is a kind of psychic insurance policy; and it lays emphasis on shared and universally available values - the scheme of salvation – rather than upon the scarce values, which makes the inevitable failures with regard to the latter seem less important. This leads to a third element in religion. At least some of the values that it upholds are superempirical. This does not necessarily mean that they are supernatural, but rather that they are beyond the reach of constant refutation by the facts of immediate experience.

A functional definition as wide and inclusive as Yinger’s would clearly embrace both theistic and nontheistic systems of belief as well as supernatural and nonsupernatural systems of belief and practice, and it is particularly noteworthy that Yinger recognizes that belief in the supernatural is not an essential prerequisite for there to be a religion. Also, a definition of this kind can also take account of historical and sociological change. However, Yinger’s (1970:15) functional view of religion was still very “Durkheimian”:

... Religion is the attempt to relativize the individual's desires, as well as his fears, by subordinating them to a conception of absolute good more in harmony with the shared and often mutually contradictory needs and desires of human groups.

... [R]eligion brings each individual into a fellowship that emphasizes shared experiences ...

In all his writings Yinger makes the point that religion is rarely static. For example, in a rapidly changing society religion itself changes, although not necessarily at the same pace. New forms of religion can emerge over time, forms that cannot satisfactorily be measured by traditional concepts of religiosity. It therefore becomes imperative to assess the effect of religion on everyday life.⁶⁵

⁶⁵ Norris and Inglehart (2004) make the point that, contrary to the predictions of almost all the social scientists - who thought that secularization would bring to an end all religion - religion is not, in fact, dying out, but is simply going through an evolutionary phase.

Thus, rather than enquiring about a person's *religion* - a word that tends to conjure up traditional concepts of ritual, liturgy, prayer and "orthodoxy" for most people - Yinger utilizes a five-point, strongly agree to strongly disagree scale to elicit a person's level of agreement with various statements aimed at identifying that person's "ultimate concern", such as the following:

- Suffering, injustice, and finally death are the lot of humanity; but they need not be negative experiences; their significance and effects can be shaped by our beliefs.
- Somehow, I cannot get very interested in the talk about "the basic human condition" and "humanity's ultimate problems".
- A person's most difficult and destructive experiences are often the source of increased understanding and powers of endurance.
- Despite the often chaotic conditions of human life, I believe that there is an order and pattern to existence that someday we will come to understand.

According to Yinger a person's responses to statements such as those set out above are an indication of the person's basic religiosity. Yinger (1969:93) then seeks to determine what it is that serves as an ultimate concern for those religious persons by asking the following open-ended question:

In your most reflective moments, when you are thinking beyond the immediate issues of the day - however important - beyond headlines, beyond the temporary, what do you consider the most important issue humanity has to face? Or, to put the question another way, what do you see as the basic, permanent question for humankind?

Because Yinger, as did Durkheim before him, also believes that religion is essentially a social phenomenon that takes on its most significant aspects in social contexts, he also seeks to discover in what groups the individual may be participating that support the emphasis on this ultimate concern and that develop a strategy to address it. Yinger's (1969:93) follow-up question is this:

Are you a participant or member of some group, whether large or small, for which the "basic, permanent question" and the beliefs connected with it are the focus of attention and the most important reasons for its existence? If so, please characterize the group briefly.

Yinger's inductive approach tends not to lend itself to quantitative research. Whether certain beliefs point to a certain level of religiosity tends to beg the question. Perhaps

more importantly, just because a certain person finds for whatever reason a certain group or organization beneficial does not necessarily mean that the group or organization is religious. There could be any number of reasons why the person chooses to participate.

Indeed, functional definitions do have their limitations. By its very nature, a functional definition, as functionalist Yinger (1957:6) himself concedes, is little more than “a heuristic device, a tool of analysis, useful for one purpose, but of no value for another”. As Williams (1962:3) has pointed out, a functional definition sidesteps altogether the issue of what religion really *is*.

One obvious limitation of functional definitions is that the existence in any given society of multiple competing religions causes one to question the cohesive function of religion for the community as a whole. In addition, other non-religious symbols and rituals, such as those which belong to the nation, the state or any particular ethnic group, can also serve the same function of creating solidarity, social cohesion and community sentiment. Furthermore, as Kirkland (2005:Online) asks, “what of religious movements which engender beliefs and values antagonistic to the existing norms of the overall society?” Functional definitions, with their *ex post facto* approach to the study of religion, often lack direction and coherence because “they have not clarified [upfront] what is to count as religion and what is not” (Prevos 2001:Online).

Another problem with functional definitions is that religion is inherently multi-functional.⁶⁶ In addition, the functions of any particular religion may vary from adherent to adherent. For some, a particular religion may serve a societal function, but for others one or more psychological or emotional functions. Recognition of the latter has led some social scientists to define religion by its consequences not in social life but in the *personal* life of individuals. These commentators have tended to define religion as “a combination of forms and symbolic acts which relate the individual to the ultimate conditions of his existence” (Bellah 1964:358) or as “a system of beliefs and practices through which a group of people faces the fundamental problems of life” (Yinger 1970:7). Such “fundamental problems of life” would include the life’s perceived injustice in terms of sickness, starvation, natural disasters and the like, human suffering, and the existential awareness of what life supposedly lacks in meaning and purpose (*angst*).

⁶⁶ For example, Nielsen (2001:44-5) lists some 8 separate functions purportedly performed by religion.

English mathematician and philosopher Alfred North Whitehead (1926 ["Religion in History" Lecture 1]:Online) saw the underlying function of religion as being the transformation of human character:

A religion, on its doctrinal side, can thus be defined as a system of general truths which have the effect of transforming character when they are sincerely held and vividly apprehended.

However, Whitehead (1926 ["Religion in History" Lecture 1]:Online) recognized that for any particular individual religion may serve one or more other functions as well, for he then quickly went on to add (in what has since become an oft-cited "definition" of religion):

Religion is what the individual does with his own solitariness. ...⁶⁷

Although he conceived of religion exclusively in terms of supernaturalism, Wallace (1966:107) also saw the primary function of religion as being associated in some way with personal transformation:

[R]eligion is a set of rituals, rationalized by myth, which mobilizes supernatural powers for the purpose of achieving or preventing transformations of state in man and nature.

Van Harvey (1966:258-9) has provided the following functional definition of religion:

... a perspective, a standpoint in which certain dominant images are used by its adherent to orient themselves to the present and the future ... a way of interpreting certain elemental features of human existence.

In a similar vein, Erich Fromm (1959:21) has offered the following:

... any system of thought and action shared by a group which gives the individual a frame of orientation and an object of devotion.

Milton Steinberg (as quoted by Greenberg 1960:204) has provided a solid functional definition of religion which, despite its Jewish monotheism, is readily applicable to a number of religions, not just Judaism:

Religion subserves many purposes. It is a principle of explanation of the universe, in the light of which the individual can find meaning for his own career and that of mankind. It is a sanction for morality. It is an esthetic, and much else besides. But not the least of its utilities is this: by positing God it inhibits man from laying claim to being God. It prevents his becoming less than man through the arrogance of claiming to be more. In brief, it helps to keep man human.

⁶⁷ Of course, people do all sorts of things with, and in, their own respective solitariness, and some of those things have little or nothing to do with religion in any sense of the word, so Whitehead's oft-cited "definition" is not particularly helpful.

Applying a similar functional and pragmatic approach, in the Iowa Court of Appeals case of *State of Iowa v Amana Society*⁶⁸ it was stated:

Surely a scheme of life designed to obviate [man's inhumanity to man], and by removing temptations, and all the allurements of ambition and avarice, to nurture the virtues of unselfishness, patience, love, and service, ought not to be denounced as not pertaining to religion when its devotees regard it as an essential tenet of their religious faith.⁶⁹

Religions purportedly provide two types of answers to the problems of life. On the one hand, they offer explanations for those problems giving them meaning. On the other, they propound methods and programs of action intended and directed to manage, overcome or otherwise deal with those problems.

Using a functional definition of religion which seeks to embrace not only the personal but the collective Peterson, Reichenbach and Basinger (1991:4) describe religion as

a set of beliefs, actions and emotions, both personal and corporate, organized around the concept of an Ultimate Reality. This Reality may be understood as a unity or a plurality, personal or nonpersonal, divine or not, and so forth, differing from religion to religion.⁷⁰

Geertz (1979:79-80) provides the following multi-faceted and highly descriptive definition of religion, which, for the most part, is a functionalist definition that manages to stop short of being unduly speculative:

Religion is (1) a system of symbols which acts to (2) establish powerful, pervasive, and long-lasting moods and motivations in [people] by (3) formulating conceptions of a general order of existence and (4) clothing these conceptions with such an aura of factuality that the moods and motivations seem uniquely realistic.

The United States Supreme Court in *United States v Seeger*⁷¹ saw the relevant enquiry as being directed to “whether a given belief that is sincere and meaningful occupies a place in

⁶⁸ 132 Iowa 304, 109 NW 894 (1906).

⁶⁹ 132 Iowa at 315, 109 NW at 898, cited in *Berman v United States* 156 F2d 377, 381 (CA 9th Cir 1946). (Emphasis by the Court of Appeals.)

⁷⁰ This definition is wide enough to encompass both religious naturalism and even secular humanism. Insofar as the concept of “Ultimate Reality” is concerned, theologian Wilfred Cantwell Smith, for many years Professor of World Religions and Director of the Center for the Study of World Religion, Harvard University, points out that the concept appears fundamental to all religion (see Smith 1965). In Judaism, God is “I AM THAT I AM” (cf Ex 3:14), with each one of us being “I AM”. Jewish philosopher Martin Buber (*I and Thou*) refers to the *Thou* of one's life. (In Christianity, see also Jn 8:24: “Except ye believe that I AM [he] ...” The Revised Version notes correctly that there is no “he” in the original.) In ancient Egyptian religion, there is *Nuk pu Nuh* (“I AM that I AM”). In Hinduism, there is *tat tvam asi* (“that thou art”). The Chinese, and not just the Taoists, have the *Tao* (meaning “Way”) as well as *yin-yang*. What is being alluded to is Pure Being in the Absolute, spaceless and timeless, the one and ever-abiding Presence and Power active in the universe.

⁷¹ 380 US 163 (1965).

the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption".⁷² Rejecting a content-based approach the court stated:

The examiner is furnished a standard that permits consideration of criteria with which he has had considerable experience. While the applicant's words may differ, the test is simple of application. It is essentially an objective one, namely, does the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption?⁷³

There is a weakness in this approach, and it is this: how does one recognize a case that is "clearly qualified for exemption"? If it is all that easy then one can only wonder why the matter has been the subject of seemingly endless litigation over the years, both in the United States of America and elsewhere. Lisa Price (1998:Online) has astutely pointed out:

This, of course, assumes that the judge examiner is intimately familiar with at least one of the traditional religions in order to make this comparison so simple. Because it is essentially standardless, it also somewhat resembles Justice Stewart's observation about obscenity: "I know it when I see it."⁷⁴

Baker's Dictionary of Theology (Harrison [1960] 1972:441) points out what is perhaps the most serious problem with functional definitions of religion:

Many of the suggested definitions have been drawn up to serve a particular purpose, eg, the purpose of psychology, or of sociology, or of some philosophical position such as humanism. Whether they are adequate for such special purpose must be decided by the specialists in that field; but they clearly fail to give a characterization of religion that is useful for more general purposes. This need not cause confusion, provided that their special purpose is noted and that their use is confined to that special purpose. When such a definition is employed as adequate for some other purpose, however, confusion results. ...

Kirkland (1976:Online) has noted:

On the other hand, functional definitions of religion have some disadvantages, the major one being that they tend to lead to a functionalistic explanation of religion, and functionalistic explanations tend to lead to **reductionism**. A "functionalistic explanation" of religion is an explanation which finds that there is nothing to religion (or a specific religion) beyond the social or psychological functions which it performs. Such an explanation reduces religion to a social or psychological phenomenon. ...

⁷² 380 US 163 at 166 per Clark J. Admittedly, this "definition" combines elements of both a functional definition and a comparative definition.

⁷³ 380 US 163 at 183-4 per Clark J.

⁷⁴ Citing *Jacobellis v Ohio* 378 US 184, 197 (1964) (Stewart J concurring).

... The reductionist fallacy is that if one can study only the functions of religion, then religion can be concluded to consist solely of said functions. [Original emphasis]

Kirkland (1976:Online) goes on to add:

A functional definition of religion does not necessarily entail a functionalistic explanation which reduces "the religious" to "the social" or "the psychological." But a definition or explanation of religion which takes into account solely its functions inherently tends toward the reductionist fallacy. It is well-known that a substantive definition essentially concerns what religion is, while a functional definition is basically concerned with what religion does. The reductionist fallacy may be avoided by stating simply that whatever one may find that religion does, one may not assume that that is all religion is.

Even the functionalist Yinger (1957:8) himself concedes:

If religion is defined by what are thought to be its functions, then one should not be surprised to find it "functional". And this may lead, in turn, to a circularity of reasoning: If it can be shown that a given system of beliefs and practices that are generally thought to be a religion is not performing the functions by which religion has been defined, then one declares that such a system is not "really" religion at all.

Yinger (1957:8) goes on to suggest how this problem can be overcome:

This error can be avoided by indicating that religion is an *effort* to perform certain functions for man. This does not imply the value position that it always succeeds, not that systems which do not succeed are therefore not religions. And it does not necessarily imply that one desires those functions to be performed. [Original emphasis]

With respect, this is tantamount to *petitio principii* (begging the question). Further, it still does not overcome the problem of reductionism that is inherent in all functional definitions.

Another problem with functional definitions is the presence of ideological bias, whether conscious or unconscious. Peter Berger (1967, 1970 and 1974) has written widely that functionalists generally have an ideological motive for adopting a particular functional definition of religion. That motive tends to be almost exclusively a secular one that seeks to explain religion in terms other than transcendence. Because of the difficulties involved with the notion of transcendence, religion is all too often perceived not so much as a thing-in-itself but something subservient to other societal purposes deemed fit and proper and appropriate to the current and future needs of any particular society. In other words, religion is reduced to an aspect of some *other* phenomenon deemed socially acceptable or important. Berger's point appears to be a good one.

The functional approach tends to be non-phenomenological. As Prevos (2001:Online) notes:

[Another] problem with functional definitions is that they attempt to give explanations of religion from the outside without conceding the possibility of internal explanations from the believers [sic] perspective. There is no particularly compelling reason for assuming that the only adequate explanations of religious phenomena are from outside the structure of religion.

Kirkland (1976:Online) has also pointed out a more serious problem with functional definitions of religion:

Another problem with functional definitions ... is that anything which performs the prescribed functions thereby becomes "religion." There is thus no clear line separating religion from non-religion. The only way to differentiate clearly between a religious belief and a non-religious belief, a religious act and a non-religious act, is to introduce some substantive element in terms of which to make the distinction.

Thus it would seem that if substantive definitions of religion tend to be imprecise and less useful in empirical research, functional definitions tend to be reductionistic and insufficiently restrictive.

He goes on to state:

Yet even when the functionalists manage to stay clear of blatant reductionism, they infallibly omit the religious factor which the humanists generally claim to be essential. Their only excuse for that omission has been that empirical research cannot take seriously any factor which cannot be empirically verified. But such a position in regard to religion ipso facto shows the inability of empirical methods to deal with this subject matter. Can it be proven that the criteria for empirical validity are the same as the criteria for actual reality? Clearly not. Those who insist on an empirical approach to religion display an implicit "ideological" stance, i.e. they are clinging to assumptions which cannot be proven, but yet which are never questioned. To make truth claims as to the nature of humanity and reality based on such unverifiable assumptions is to overstep the boundaries of science and land in fallacious scientism.

Another major problem with functional definitions of religion is that they are generally not sufficiently specific to distinguish between what is religious and what is not. Even Yinger (1957:12) concedes this to be so:

A primary difficulty with a functional definition is that there is no obvious point at which one may draw a line and say: "Here religion ends and non-religion begins." In a religiously-heterogeneous and changing society, the question of "private" systems of belief and practice arises. Are they to be called religions? Are they not attempts to fulfill the same functions that shared and historically identified faiths seek to perform?

Yinger (1957:12) answers those question in the negative, stating that although there can be “religious aspects of private systems of belief and action”:

A complete religion, however, is a social phenomenon; it is shared; it takes on many of its most significant aspects only in the interaction of the group. Both the feelings from which it springs and the “solutions” it offers are social, they arise from the fact that man is a group-living animal. The “ultimate questions” which we have identified as the center of the religious quest are ultimate primarily because of their impact on human association. Even death is not fundamentally an individual crisis, but a group crisis, threatening to tear the fabric of family and community.

Be that as it may, and Yinger undoubtedly has a point, the fundamental problem and fatal flaw with all functional definitions is that they are all relativist, in the sense used by Professor John Anderson, for nothing can be properly defined by reference to its relations with other things for the simple reason that nothing is constituted by its relations with other things. As Williams (1962:3) points out, they all avoid the issue of what religion really *is*. Anderson (1962:42) has written:

Thus the recognition of the "subject-object" relation, or relation between knower and known, implies that each of these is an independent thing, or thing with an existence and characters of its own, and that it cannot be properly described in terms of the other thing or of the relation between them. This point I expressed ... by saying that the thing which is known, or the "object", is not *constituted* by the knower or by being known, nor is the thing which knows, or "subject", constituted by knowing or by the known. In other words, we cannot define the nature or character or constitution or "what is it" of a thing by saying what relations it has or what it is related to. Hence I concluded that we must reject the notions of "that whose nature it is to know", or *consciousness*, and "that whose nature it is to be known", or *idea*. ...

Anderson is saying that nothing is constituted by its relations with other things. In the case of religion, seeking to elicit the supposed functions served by religion or a particular religion does not define religion in any way whatsoever, for “if we specify something only by the relations it has to us or to other things, we know nothing about the thing itself” (Anderson 1982:10). We fall into grave error if we suppose, even for a moment, that we have defined the essential qualities of religion if we describe its functions. The most that we have done is to describe the relations that religion or some particular religion has with certain other persons. That is not a description or definition of religion itself.

Elsewhere (Anderson 1982:29), Anderson has made more-or-less the same point - again in the context of art - but the point he makes is just as valid as respects the nature of religion and *religious-ness*:

The view that “art is always a social servant and historically utilitarian” is thus simply false. As we have noted, artistic production may advance a certain form of social organization, but it is not this fact that makes it “artistic”. If we are primarily interested in society, then we may consider artistic tendencies as they affect or enter into social movements. But we may just as well, in discussing social movements, consider whether they encourage or oppose artistic production and enjoyment, and it may actually be considerations of this kind that lead in particular cases to the taking up of an attitude of support or opposition to a certain social movement. ...

In other words, functionalism is a two-way street that is ultimately circular.

Anderson (1982:32), again in the context of art, has made it clear why we need to focus on “religion for religion’s sake”, regardless of our own attitude toward the subject-matter:

The two sets of considerations, then, the motives and mode of working of the artist and the effects and appeal of the finished work, are irrelevant to the discussion of its character. The formula, “Art for Art’s sake”, would be absurd if it demanded that an artist should work simply for art’s sake and that people should like works simply for art’s sake. These things do not commonly happen; and all that can be demanded is that a consideration of the works as art should be a consideration of their aesthetic character. This is a condition of there being a science of aesthetics; relativism, the confusion of a thing with its relations or things related to it (causes, effects, and the like), is an obstacle to any science. For aesthetics, then, we must find a thing beautiful “for its own sake”, ie, *as it is*.

Applying all that to the study of religion, and its definition, we get nowhere when we simply describe the relations that religion or a particular religion has with other things related to it or focus on the aims and objectives, motives and attitudes of either the founders of a religion or its past and present adherents. An objective approach, devoid of relativism, is required.

Comparative definitions

A comparative definition is concerned with distinguishing a religion from other belief systems or bodies of thought, not being other religions, which seek to explain or give meaning to reality and life (eg the various schools of philosophy). The focus is on those characteristics that supposedly distinguish religion or any particular religion from other belief systems or bodies of thought.

For example, in *Re South Place Ethical Society; Barralet v Attorney General*⁷⁵ Dillon J saw religion as being “concerned with man’s relations with God”, whereas ethics were “concerned with man’s relations with man”. A few years earlier, the United States Supreme Court in *United States v Seeger*⁷⁶ declared that religion did not include views that were “essentially political, sociological, or philosophical”⁷⁷ nor considerations that were “essentially political, sociological or economic”⁷⁸ nor a merely personal code, that is, a personal belief “in no way related to a Supreme Being”.⁷⁹ However, subject to the foregoing, provided a belief was “sincere and meaningful” and occupied a place in a person’s life *parallel to that filled by an orthodox belief in God* it ought to be regarded as being “religious”. According to the *Seeger* court a religious belief was one “based upon a power or being or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent”.⁸⁰

In his *Varieties of Religious Experience* William James rightly recognized that there was an important distinction between religious experiences and experiences based on belief systems that were merely a matter of “stoic morality”. James ([1902] 1958:52, 54, 56) wrote:

A life is manly, stoical, moral, or philosophical, we say, in proportion as it is less swayed by paltry personal considerations and more by objective ends that call for energy, even though that energy bring personal loss and pain.

...

If religion is to mean anything definite for us, it seems to me that we ought to take it as meaning this added dimension of emotion, this enthusiastic temper of espousal, in regions where morality strictly so called can at best but bow its head and acquiesce. It ought to mean nothing short of this new reach of freedom for us, with the struggle over, the keynote of the universe sounding in our ears, and everlasting possession spread before our eyes. (fn 11: Once more, there are plenty of men, constitutionally sombre men, in whose religious life this rapturousness is lacking. They are religious in the wider sense; yet in this acutest of all senses they are not so, and it is religion in the acutest sense that I wish, without disputing about words, to study first, so as to get at its typical *differentia*.)

...

For when all is said and done, we are in the end absolutely dependent on the universe; and into sacrifices and surrenders of some sort, deliberately looked at and accepted, we are drawn and pressed as into our only permanent positions of repose. Now in those states of mind which fall short of religion, the surrender is submitted to as an imposition of necessity, and the sacrifice is undergone at the very best without complaint. In the religious life, on the

⁷⁵ [1980] 3 All ER 924.

⁷⁶ 380 US 163 (1965).

⁷⁷ 380 US 163, 165 (1965).

⁷⁸ 380 US 163, 173 (1965).

⁷⁹ 380 US 163, 186 (1965).

⁸⁰ *Webster's New International Dictionary* (2nd ed), as cited by the US Supreme Court in *Seeger* at 380 US 163, 174.

contrary, surrender and sacrifice are positively espoused: even unnecessary givings-up are added in order that the happiness may increase. *Religion thus makes easy and felicitous what in any case is necessary*; and if it be the only agency that can accomplish this result, its vital importance as a human faculty stands vindicated beyond dispute.

In other words, religion interpolates *purpose* and *meaning* whereas stoicism can only suggest submission without complaint. Well, that may be true of stoicism but it is not necessarily true of all other philosophies, for it must surely be the case that at least some non-religious philosophies of life see purpose and meaning in life.

Stark and Gluck (as cited in Frigerio 2004:Online) distinguish between “humanist perspectives”, which constitute attempts to intentionally grant a meaning to life, and religions which assert that they contain *the* meaning to life in an *a priori* and pre-existent sense. In that regard, Reginald Bibby (as cited in Frigerio 2004:Online) says:

Religious perspectives imply the possibility that our existence has a meaning which precedes that which we as human beings decide to give it. By contrast, the humanist perspective leaves to one side the search for the meaning of existence in favor of a new preoccupation with giving meaning to existence.

One of the problems here, as Mora (1960:65) points out, is that there are innumerable schools of philosophy, such as

... idealism, personalism, realism, new realism, critical realism, realistic philosophy, immanentism, evolutionism, emergentism, pragmatism, intellectualism, operationism, intuitionism, irrationalism, rationalism, phenomenology, existentialism, logical positivism, logical empiricism, scientific empiricism, analytic philosophy, ‘neutralism’, Marxism, and Neo Scholasticism.

Thus, attempts to compare and contrast religious belief systems with philosophical belief systems are fraught with difficulties. In 1949 the historian of religions Mircea Eliade⁸¹ wrote in his monograph *Patterns in Comparative Religion* ([1949] 1958:xi) that:

a religious phenomenon will only be recognized as such if it is grasped at its own level, that is to say, if it is studied as something religious. To try to grasp the essence of such a phenomenon by means of physiology, psychology, sociology, economics, linguistics, art or any other study is false; it misses the one unique and irreducible element in it - the element of the sacred.

⁸¹ Educated as a philosopher the Romanian-born Mircea Eliade (1907-1986) joined the faculty of the University of Chicago in 1956 and assumed the chair of the History of Religions department in 1958 where he remained until his death. He published extensively on both the history of religion and comparative religion.

In other words, reductionist methodologies in sociology or psychology are inappropriate to the study and proper understanding of religion. Religion, which, according to Eliade, is *sui generis* and self-generating, must be *systematically*⁸² understood on its *own* terms. For Eliade the meaning and central focus of religion pertains to the existence in human experience of “the sacred”, as opposed to “the profane”,⁸³ as the ontological foundation of the world, the object of worship of religious humanity (*homo religiosus*), and the source of power and ultimate value, and, more particularly, “the sudden irruption of the sacred in the profane world, sacred time opening to the transcendent, resulting in radical discontinuities” (W Doniger, in foreword to Eliade [1964] 2004). According to Eliade religion is about how “the sacred” and “the profane” are divided. “Hierophanies”,⁸⁴ supposed physical manifestations of the sacred, take the form of archetypal symbols, themes,⁸⁵ myths, ritual, taboos and the like, and give access to what Eliade calls *illud tempus*,⁸⁶ taking us back to the world of origins and events that took place *in illo tempore*.⁸⁷

In any religion there are sacred places (as well as sacred spaces), sacred times (eg holy days, high holy days), sacred objects, sacred symbols, sacred scriptures, sacred personages and sacred actions that have great existential value for human beings. These are sometimes referred to as the “footprints” of religion (Hayward 1995:26), and they are highly visible and for the most part tangible. But what does “sacred” actually mean? For Eliade there is no purely or exclusively religious phenomenon; as Muthuraj (2001:Online) points out, any phenomenal entity or natural occurrence in time and space can be sacred in the sense of it being a potential “hierophany”, for “the sacred is a structure of human consciousness” (Eliade 1969:i). Unitarian Universalist minister William F Schulz

⁸² Eliade was a personal friend of Protestant systematic theologian Paul Tillich.

⁸³ See especially Eliade (1959). Humanist philosopher Paul Kurtz (1994:12) agrees, stating that religion, particularly “a theistic approach to reality and morality”, claims that “there is a ‘sacred’ and ‘divine’ character to reality”.

⁸⁴ Appearances of the holy, as opposed to the narrower term “theophanies”, denoting appearances or manifestations of gods. Eliade (1965:31-33) points out that luminous theophanies (his description) are attested to in many religions including Hinduism and even Buddhism. Eliade also speaks of “cratophanies” (appearances of power) and “ontophanies” (appearances of being) as being *other* manifestations of the sacred. Eliade’s notion of the “sacred” went further than the traditional concept of deity. For Eliade God was a mystery and indefinable.

⁸⁵ Themes include the sky god, the quest, and the sacred centre. As to “The Sky and Sky Gods” see the second chapter of *Patterns in Comparative Religion* (1958) in which Eliade discusses the almost universal belief in a celestial divine being and the mythological and religious significance of “the sky”. “Height’, ‘being on high’, infinite space - all these are hierophanies of what is transcendent, what is supremely sacred”, writes Eliade.

⁸⁶ Latin for “that time”, what Eliade sometimes refers to as non-historical time or “sacred time”, said by Eliade to be a constitutive feature of the religious aspect of humanity. Although he did not believe in a collective unconscious Eliade was Jungian in a great number of respects.

⁸⁷ Latin for “in that time”.

(1990:Online) has expressed something very similar when he affirmed about Unitarian Universalism:

... That the Sacred or Divine, the Precious and Profound, are made evident not in the miraculous or supernatural but in the simple and the everyday[.]

There are enormous problems with the invocation of words such as “sacred” and “divine”. As Pummer (1975:164) has pointed out, to define religion in terms of the sacred or divine “either implies a theological or ontological understanding of the sacred, or, in the absence of such an understanding, requires a definition of it”.

Comparative definitions run into the same sort of problems as does the study of comparative religion. As Kristensen (1960:1-13) has pointed out, all too often comparative religion proceeds on the basis of a wholesale and far too subjective comparison of the various major religions, all ranged side by side, as opposed to a comparison ranging across traditional boundaries. In addition, comparative religion all too often ends up as a supposed “comparison for determining the *value* of different religions, with some of them described as ‘higher’ religions” (Lewis and Slater [1966] 1969: 17).

Something akin to a comparative definition is the so-called “definition by analogy”.⁸⁸ Whereas a formal definition seeks precision (eg “the heart is the organ that regulates the flow of blood throughout the body of an animal”) a definition by analogy usually takes the form of a comparison (eg “the heart is a pump”). As Lisa Price (1998:Online) has pointed out:

What distinguishes an analogical approach from definitional approaches is that analogical approaches may compare the challenged practice to traditional religions both in content and in structure, rather than relying on key characteristics in either category for the definition.

In the context of defining religion for legal purposes, United States Third Circuit Court of Appeals Judge Arlin M Adams in *Malnak v Yogi*⁸⁹ adopted the “definition by analogy” approach, stating:

⁸⁸ Also known as the “analogical approach”.

⁸⁹ *Malnak v Yogi* 592 F2d 197 (1979).

The modern approach thus looks to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted “religions”.⁹⁰

In practice, comparative definitions generally end up combining elements of both substantive definitions and functional definitions. For example, in *Malnak* Judge Adams identified three indicia of religion, the first and most important being the nature of the ideas in question (a content-based indicia), the second being the “ultimate” nature of the ideas presented⁹¹ and their comprehensiveness in scope (more akin to a functional approach), and the third being the existence of any formal, external, or surface signs (eg formal services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation, observation of holidays and other similar manifestations associated with the traditional religions) that may be analogized to accepted religions.⁹²

Attempts to arrive at some common definition of religion by isolating the supposed common characteristics or indicia of the recognized religions run into a number of difficulties, as *Baker’s Dictionary of Theology* (Harrison [1960] 1972:442) points out:

The effort to gain a definition by isolating the common characteristics of the recognized religions runs into the following difficulties: (1) there are border-line cases the inclusion or exclusion of which will determine the resulting definition; eg, including original Buddhism or Marxism in the cases studied will remove from the definition a mention of a supernatural Object. But the decision to include or exclude must in either case seem arbitrary. (2) The characteristics of the various religions differ so widely that it may be impossible, by this method, to find any common features, or, if they are found, they must be so vague as to be of doubtful value. ...

A similar view is expressed in *A Dictionary of Philosophy* (Flew 1979:304):

⁹⁰ *Malnak v Yogi* 592 F2d 197, 207 (1979). His Honour noted that the analogical approach had previously been used in such cases as *Washington Ethical Society v District of Columbia* 249 F2d 127 (1957) and *Fellowship of Humanity v County of Alameda* 315 P2d 394 (1957). Freeman (1983) advocates a comparative approach using, as a basis for comparison, a paradigm with 8 enumerated desired features. However, as McHugh J warned in *Crimmins v Stevedoring Industry Finance* (1999) 200 CLR 1 at 32, incremental development of the law by analogy, to be successful, needs to be rooted in principle and policy, otherwise the flexibility of a case-by-case analysis will only result in uncertainty, inconsistency and ad hocery.

⁹¹ There is a fairly obvious problem with the use of the word “ultimate”. Humanist philosopher Paul Kurtz (1994:11-12) has written: “If anything that expresses our ‘ultimate concern’ is to be viewed as a religion, then might not this term also apply to libertarianism, socialism, atheism, feminism, vegetarianism, that is, to any movement that expresses someone’s highest ideals and aspirations, gives direction and meaning, and provides a way of life?” In a similar vein M E Spiro (in Barton 1966:96) has noted that “if communism, or baseball, or the stockmarket are of ultimate concern to some society, or to one of its constituent social groups, they are, by definition, sacred”.

⁹² See 592 F2d 197 at 208-9.

It seems likely, however, that there is in fact no single feature or set of features belonging to all those, and only those, things which we should ordinarily call religions, but rather that they form what [Ludwig] Wittgenstein [1889-1951] called a “family”, with a complex network of resemblances and interrelations - so that a satisfactory answer to the question “What is religion?” would be more like an encyclopedia than a one-sentence definition.

Feofanov (1994:343) has written in a similar vein:

In *Seeger-Welsh* the Supreme Court enunciated the “parallel belief” test. [*United States v Seeger* 380 US 163; *Welsh v United States* 398 US 333 (1970).] However, this approach has a fundamental flaw. Its acceptance of acknowledged religions as yardsticks for other religions, followed by the query of whether the claimed religion is a functional equivalent, renders it unintelligible: “Functionally equivalent in what way?” [Stanley Ingber, “Religion or Ideology: A Needed Clarification of the Religion Clauses” (1989) 41 *Stan L Rev* 233, 273.] Clearly, depending on one's preferences, one can make the analogies wide or narrow. If the analogy is narrow, there will be a problem of underinclusiveness. Conversely, if the analogy is wide, there will be a problem of overinclusiveness, such as in the case of secular humanism. Thus, the result is bound to be arbitrary. The analogical test fails to bring clarity to the issue.

Thus, rather than focus on some given enumerated set of so-called indicia others have advocated a more general comparative approach. For example, Kent Greenawalt (1984), applying Wittgenstein's ([1953] 1958) methodology analogizing to games as a family,⁹³ considers that religion is more aptly described or defined as a family. Religions do not necessarily share any one defining characteristic nor do they necessarily perform the same function in the lives of their respective followers. Nevertheless, when one looks at the various religions “a complicated network of similarities overlapping and crisscrossing: sometimes overall similarities, sometimes similarities of detail” (Greenawalt 1984:816). In such an approach no single common feature is indispensable.

Analytical definitions

An analytical definition⁹⁴ is concerned with the characterization, in an analytic manner, of religion or any particular religion. The focus is on the different ways in which religion or any particular religion manifests itself.

The occultist Manly Palmer Hall (1945:15) opined:

⁹³ See Wittgenstein [1953] 1958:¶65, ¶66 and ¶67.

⁹⁴ For example, an analytical definition of water would be “two parts hydrogen and one part oxygen”, with a substantive definition of water being “water is a colourless, odorless liquid”.

A complete religion must consist of four parts. First, theogenesis – the creation, order, and power of the God or gods. Second, cosmogenesis – the formation, unfoldment, and succession of the worlds. Third, anthropogenesis – the origin, development, and perfection of man as a human being. And fourth, psychogenesis – the substance, nature and release of the spiritual powers resident in the human soul. It is obviously impossible for a religion to fulfill these four requirements without recourse to philosophy and the development of a contemplative mental life.

From this perspective there is said to exist considerable consensus among all religions regarding the forms through which adherents express their religiosity (Frigerio 2004). Accordingly, it then becomes possible, from an Andersonian point of view, to identify the distinguishing characteristics or principal aspects of religiosity, in other words, those things which pertain to religious belief systems and practices and which, hopefully, will permit appreciation or recognition of a thing being “religious” or a “religion. Stark and Glock (1965, as quoted by Frigerio 2004:Online) opine that the distinguishing characteristics or principal aspects of religiosity include:

- sharing the beliefs which constitute the body of doctrine of the group
- participating in rituals and other acts of devotion
- experiencing direct contact with so-called “ultimate reality”
- acquiring religious information
- experiencing changes or results in quotidian life derived from the other aspects of religiosity.

Manly Palmer Hall, too, opines that there is substantial unity amongst the various world religions. Using a neo-Platonic approach, he writes (1945:20):

Religion itself is a general, or universal. Religions are particulars, or specializations.

He goes on to write (1945:20-1):

[A]ll religions function from a single pattern of idealistic convictions containing a number of basic elements. First, the supreme power of good; Second, the presence in the universe of a superior being, or principle, by nature good; Third, this supreme being or power has the relationship to mankind of parent to child; Fourth, through prophets, sages, saviors and saints this superior being has revealed his will, and his revelations have been compiled into books called scriptures; Fifth, the happiness, peace, and security of the human being results from obeying the laws of the creating power, and the performance of virtuous and charitable actions according to the will of the divine being; Sixth, the human being is immortal as a spiritual creature but mortal as a physical creature, passing through various experiences according to the merits and demerits of its actions while in the physical world; Seventh, at various times the supreme being, or principle, will send into the world peculiarly enlightened

messengers called messiahs. Some of these have come already and others are yet to come. The purpose of these messiahs is to fulfill certain promises of faith and to establish new dispensations; Eighth, the supreme being is worthy of veneration and adoration, and, therefore, shrines have been built, priesthoods established and various forms and rituals devised to glorify and adore the one source of all life.

The general thrust of Hall's expository definition is helpful, although it is quite sloppy in parts due primarily to inconsistencies in language (eg "superior being, or principle", "superior being or power", "divine being") and a certain universalist bias. As regards the latter, Christianity does not expect any further messiahs, Jesus Christ being seen as God's final revelation. Hall may well have believed that there would be more messiahs or world teachers in the future, but clearly not all religions hold such an expectation. Also, the use of the word "messiah" is itself problematic and limiting. Presumably, Hall would also include "ascended masters", "adepts", "avatars", and other holy ones. Be all that as it may, it is an interesting and not unhelpful contribution.

However, attempts to gain a definition of religion by analyzing the common manifestations of recognized religions run into the same difficulties as those that tend to be encountered when one tries to isolate their supposed common characteristics or indicia.

The Phenomenological Approach

One approach to the study of religion, which provides some assistance in relation to its definition, is derived from phenomenology, which, for present purposes, may be described conveniently as follows:

The discipline of phenomenology may be defined initially as the study of structures of experience, or consciousness. Literally, phenomenology is the study of "phenomena": appearances of things, or things as they appear in our experience, or the ways we experience things, thus the meanings things have in our experience. Phenomenology studies conscious experience as experienced from the subjective or first person point of view. This field of philosophy is then to be distinguished from, and related to, the other main fields of philosophy: ontology (the study of being or what is), epistemology (the study of knowledge), logic (the study of valid reasoning), ethics (the study of right and wrong action), etc.

...

Phenomenology studies structures of conscious experience as experienced from the first-person point of view, along with relevant conditions of experience. The central structure of an

experience is its intentionality, the way it is directed through its content or meaning toward a certain object in the world.⁹⁵

Unlike the functional approach to the study of religion, which supposedly focuses on the objective functions of religion, the phenomenologist attempts to explain religion from an internal point of view. One advantage of the phenomenological approach is that there is no *a priori* attempt to delimit religion by reference to some specified function or essence. Rather, the task is to “look at religion as it appears to the researcher” (Prevos 2001:Online).

The downside to the phenomenological approach is subjectivity, even eccentricity. Too much emphasis is placed on the appearance of religion, rather than its substance. Nevertheless, the phenomenologist, unlike the functionalist, at least attempts to study and document religion and religious phenomena having due regard to the particular orientation of the adherents and participants - “a method consistent with current hermeneutical trends in humanities” (Prevos 2001:Online). As Prevos (2001:Online) has pointed out:

... The phenomenology of religion looks at religion as being made up of different components. It is by both identifying the different components within religions and looking at these across traditions that an understanding of them can be gained.

In so doing, the phenomenologist takes full advantage of the techniques and methodologies of comparative religion and analysis. Comparative religion rightly places a considerable emphasis on what Cullum and Lycos (introduction to Anderson 1982:7-8) in the context of the arts and the study of aesthetics refer to as “common principles as a *sine qua non* of objective inquiry” for, as John Anderson (1982:260) has pointed out in the above mentioned context, despite considerable differences in subject-matter, there are still certain common principles that are relevantly applicable to the study of *any* discipline, including the study of religion:

To deny that there is a common subject-matter of the arts is not to deny that there are common aesthetic principles (principles of beauty), and, failing such a basis, there would be no ground for speaking of principles of literary *criticism* - there would only be particular

⁹⁵ “Phenomenology”, in *Stanford Encyclopedia of Philosophy* [Online] viewed February 28 2005, <<http://plato.stanford.edu/entries/phenomenology/#1>>.

observations on particular works, observations little if at all removed from the “that reminds me” procedure.⁹⁶

According to Bouquet (1942:21) Edward, Lord Herbert of Cherbury (1583-1648) “may claim to have initiated in [Great Britain] the comparative study of religion”. Lord Herbert attempted a scientific definition of religion, summarized in five interrelated and interconnected propositions (Bouquet 1942:21-2):

1. There is a Supreme *Numen*, possessing eleven attributes, ie it is blessed, self-existent, first cause, the energy and purpose of all things, eternal, good, just, wise, infinite, omnipotent and free.
2. It is man’s duty to worship this Supreme Being.
3. Virtue and piety form the vital part of such worship.
4. Sin against this *Numen* must be repented of, and reparation made for it.
5. The world is morally governed. That is to say in the future life man receives the due reward of his deeds.⁹⁷

Bouquet (1942:22) notes both Lord Herbert’s strengths and weaknesses:

Herbert is excusably misled by his Reformation tradition into attributing much early religion to the deliberate imposition of venal priesthoods, and his information about non-Christian faiths is naturally scanty and superficial, but he at least attempts to systematize his knowledge.

One of the leading exponents of the modern phenomenological approach is Ninian Smart, for many years J F Rowny Professor of Comparative Religion at the University of California, Santa Barbara. Smart (1992:11) refers to the ever-elusive task of trying to find the supposed “essence” of religion:

... The search for an essence ends up in vagueness - for instance in the statement that a religion is some system of worship or other practice recognizing a transcendent Being or goal.
...

It is more practical to come to terms first of all not with what religion is in general but with what a religion is. Can we find some scheme of ideas which can help us to think about and to appreciate the nature of the religions?

Smart, who is one of a number of religious phenomenologists who have developed so-called “three dimensional models of religion”,⁹⁸ opines that, despite the diverse pluralism

⁹⁶ Original emphasis. On the other hand, Passmore (1951), in his deflationary article “The Dreariness of Aesthetics”, decries the “phoney”, “suspect” and “dreary” subjectivism of most aesthetics with its “pretentious nonsense” about the conception of beauty.

⁹⁷ Lord Herbert’s *De Religione Gentilium*, a treatise on what is now called comparative religion, was published in 1663. A popular account of his views on religion, *A Dialogue between a Tutor and His Pupil*, by Edward Lord Herbert of Chirbury, which may or may not have been written by himself, was published in 1768. See Johnson (1994).

both within particular religious traditions and between them, “it is possible to make sense of the variety and to discern some patterns in the luxurious vegetation of the world’s religions and subtraditions” (Smart 1992:12).

Smart (1996:10-11) has identified seven different dimensions of religion:⁹⁹ the ritual or practical dimension, the doctrinal or philosophical dimension, the mythical or narrative dimension, the experiential or emotional dimension, the ethical or legal dimension, the organizational or social dimension, and the material or artistic dimension. Smart (1992:12) is at pains to point out that this approach is but *one* approach. He has never claimed that it is the only possible approach.

The ritual or practical dimension

Smart observes that every religion or religious tradition has some practices to which it adheres. These practices, often known as rituals, may take many different forms (eg worship, preaching, prayers, meditations, litanies, exercises, patterns of behavior) including liturgical and non-liturgical. Chetwynd (1986:173-4) has written, in rather esoteric terms, of the importance of rites:

Rites express the living experience of the collective Soul passed from generation to generation. It is like a great image that arrives from the past: it may be improved or defaced, and then gets passed on to the next generation. ...

The pointless world of passing events and phenomena is gathered up into the interior reality of the Soul, and given a permanent place there, where it can be given personal human value and subjective significance for man. The outside world gets absorbed, digested, related, and therefore nourishes the Soul, which integrates what was otherwise divided. The little Ego is put in its true perspective, absorbed and integrated into the vast context of the communal Soul of mankind down the ages. ...

In much less esoteric language, David Suzuki (1997:173) has spoken of the important role that ritual plays in binding people together and binding them back to their source (cf *religare*):

⁹⁸ Others include Frank Whaling and Bryan Rennie.

⁹⁹ The list of seven in the first instance is drawn from the catalogue in Smart’s book *The World’s Religions: Old Traditions and Modern Transformations* (1992). He first enunciated the “dimensions of religion” idea in *The Religious Experience of Mankind* (1969), but had a slightly smaller list of six dimensions. In some of his later works (see, eg, *The Phenomenon of Religion* (1973) and *The World’s Religions: Old Traditions and Modern Transformations* (1992)) Smart added a seventh dimension, viz the material dimension, recognizing that most religions also have a material dimension which manifests itself in such things as places of worship (eg church buildings, temples), art, statuary and sacred places. In *The World’s Religions* Smart alluded to two dimensions which, in his opinion, were the most basic: the political and economic dimensions of religion.

Rituals are a public affirmation of meaning, value, connection. They tie people to each other, to their ancestors and to their place in the world together.

Ritual, in *some* form or another, is an integral part of all religion. Without it, there can be no religion.

Ritual in religion also plays an important role in the promulgation of moral values. Giddens (1978:95) makes the point that, even in highly secularized societies and cultures, ritual “derives its hold over those who enact it from the moral power which comes from the collective affirmation of beliefs and symbols that it helps to create”. As Durkheim ([1915] 1954) has pointed out, ritual and religious ceremonial has an important role to play as part of the process of collective moral affirmation, involving devotion and obligation, that goes far beyond a mere belief in supernaturalism of the supposed supernatural efficacy of the rites or practices themselves (eg the Christian sacrament of baptism). Durkheim writes ([1915] 1954:403):

This is why the easy criticisms to which an unduly simple rationalism has sometimes submitted ritual prescriptions generally leave the believer indifferent: it is because the true justification of religious practices does not lie in the apparent ends they pursue, but rather in the invisible action which they exercise over the mind

Rites, according to Durkheim, are essentially of two kinds: “positive”, and “negative”.¹⁰⁰ The former constitute the bulk of the substance of any religious ritual and ceremonial, and they exist to promote or facilitate the achievement of communion with the divine. Negative rites or taboos are primarily designed to maintain both a separation between the sacred and the profane as well as the sanctity of the sacred. However, even the latter are intended to “sanctify the individual so that [the individual] is able to enter the sacred sphere” (Giddens 1978:94).

Of course, ritual serves other more mundane functions as well. As Smoley (1999:Online) has pointed out:

One function that religious ritual fills is quite simply social. Human beings like to do things together celebrate, rejoice, lament, and remember things gone by. And collective activity reinforces a sense of group solidarity, whether it is a matter of a Roman Catholic Mass, a municipal parade, or a group of women who get together to sew or make pies.

¹⁰⁰ In fact, Durkheim also identified a third form of rite - “piacular” rites – which have to do with mourning.

Roy A Rappaport has written of the important role ritual plays in bringing people together and uniting them:

The distinctions of language cut the world into bits - into categories, classes, oppositions, and contrasts. It is in the nature of language to search out all differences and to turn them into distinctions which then provide bases for boundaries and barriers.

...

It is...in the nature of [ritual] to unite, or reunite, the psychic, social, natural and cosmic orders which language and the exigencies of life pull apart. It is of importance in this regard that representation in ritual are often multi-modal, employing at one and the same time words, music, noise, odors, objects and substances.¹⁰¹

Assayag (1988:116) makes a similar point, calling ritual “a form of symbolic communication, definitively identical to spoken language and its functioning”. Ritual binds us back to our roots, to others and to the world itself, the purpose being, in the words of Margot Adler (as cited in “Ritual”, Online):

... to end, for a time, our sense of human alienation from nature and from each other. Ritual seems to be one method of reintegrating individuals and groups into the cosmos, and to tie in the activities of daily life with their ever present, often forgotten, significance. It allows us to feel biological connectedness with ancestors who regulated their lives and activities according to seasonal observances. Just as ecological theory explains how we are interrelated with all other forms of life, rituals allow us to re-create that unity in an explosive, nonabstract, gut-level way. Rituals have the power to reset the terms of our universe until we find ourselves suddenly and truly "at home."

Adler (2005:Online) has also written:

The deepest truth of life is that we are always connected. But our most common experience is to feel estranged. Through dance, chant, gesture, breath, candles, incense, the experience of speaking our concerns and truths, and sharing food and drink together, we can reconnect with nature and each other. At those moments, we understand once again that we are connected to the cycles of life, to the rhythms of birth, growth, death, and rebirth.

Apart from any supposed supernatural purpose or connection, ritual can have enormous transformative power as Sharon Devlin (as quoted in Adler 1986:141) points out:

The purpose of ritual is to change the mind of the human being. It's a sacred drama in which you are the audience as well as the participant. The purpose of it is to activate parts of the mind that are not activated by everyday activity. We are talking about the parts of the mind that produce the psychokinetic, telekinetic power, whatever you want to call it - the connection

¹⁰¹ Roy A Rappaport, author of many books including *Ecology, Meaning and Religion* (1979), as quoted in “The Purpose of Ritual in Freemasonry”. Rappaport, who died in 1997, was an internationally known anthropologist. A cultural materialist, he sought to explain cultural phenomena in terms of material factors among people and their natural environment.

between the eternal power and yourself. As for *why* ritual, I think that human beings have a need for art and art is ritual. I think that when we became sapient, we became capable of artistic expression. It is simply a human need.

William James ([1902] 1958:352-3) saw prayer, in one form or another, as being essential to personal religion:

Prayer is religion in act; that is, prayer is real religion. It is prayer that distinguishes the religious phenomenon from such similar or neighboring phenomena as purely moral or aesthetic sentiment. ...The religious phenomenon, studied as inner fact, and apart from ecclesiastical or theological complications, has shown itself to consist everywhere, and in all its stages, in the consciousness which individuals have of an intercourse between themselves and high powers with which they feel themselves to be related.

Kang-nam Oh¹⁰² agrees that prayer, in one form or another, and religion are probably inseparable¹⁰³ and, in a manner reminiscent of James' approach in his *Varieties*,¹⁰⁴ asserts that mantra-like repetitive prayer, such as the "Jesus Prayer", does not depend for its efficacy on any notions of supernaturalism or an "interventionist God" but rather on psychological mechanisms of expanded consciousness and, in particular, transcendence of dualistic ego consciousness ("I" versus "others"), that is, dissolution of ego boundaries (Oh 2005).¹⁰⁵ Then, in the words of Luong Sĩ Hăng (1992:4):

There is no more ego. When our spiritual heart is related with the universe, the ego ceases to exist. Our fundamental capital is "nothingness." ... When I know this principle, then I can begin to detach myself from the physical body and material matters on earth.

Or, in the words of the *Bhagavad-Gita* (§2.70-2.72):

One attains peace in whose mind all desires enter without creating any disturbance, as river waters enter the full ocean without creating a disturbance. One who desires material objects is never peaceful.

One who abandons all desires and becomes free from longing and the feeling of "I" and "my" attains peace.

¹⁰² Dr Kang-nam Oh is professor of religious studies at the University of Regina, in Regina, Saskatchewan. An acknowledged expert on religious pluralism and comparative religion, he is the author of many published articles as well as the editor of David Chung's *Syncretism: The Religious Context of Christian Beginnings in Korea* (2001).

¹⁰³ In Hasidism there is the saying *oro, ergo sum* (I pray, therefore I am).

¹⁰⁴ See especially James' Lecture XX: Conclusions and Postscript.

¹⁰⁵ In Judaism, the experience is referred to as *bittul ha-yesh*, the "annihilation of the self", in which the so-called empirical ego fades away as one moves from a sense of self to a sense of being. American minister Dr Norman Vincent Peale would refer to this process as a "shift in emphasis from self to non-self". Similarly, Bhagwan Shree Rajneesh wrote, "The ego has to be thrown off-centre."

O Arjuna, this is the Braahmee or superconscious state. Attaining this [state], one is no longer deluded. Gaining this state, even at the end of one's life, a person attains oneness with the Supreme.¹⁰⁶

Or, in the words of Jesus (Jn 10:30; 17:21):

I and [my] Father are one.

That they all may be one; as thou, Father, [art] in me, and I in thee, that they also may be one in us

Or, in the words of Plotinus (as cited in Burnier 1985:72):

For how can one describe as other than oneself that which, when one saw it, seemed to be one with oneself.

It is not possible to see it or to be in harmony with it, while one is occupied with anything else. The soul must remove from itself, good and evil, and everything else, that it may receive the One alone, as the One is alone. When the soul is so blessed and is come to it, or rather when it manifests its presence, when the soul turns away from visible things ... and becomes like the One ... And seeing the One suddenly appearing in itself, for there is nothing between, nor are they any longer two, but one, for you cannot distinguish between them, while the vision lasts. ... When is this state, the soul would exchange its present condition for nothing, no, not for the very heaven of heavens

In our own day, Krishnamurti (1970a:130) has expressed it this way:

... [R]eligion is the sense of comprehension of the totality of existence, in which there is no division between you and me. Then if there is that quality of goodness which is virtue, then the mind can go beyond and find out, through meditation, through a deep, quite silence, if there is such a thing as reality. Therefore a religious mind is a mind that is constantly aware, sensitive, attentive, so that it goes beyond itself into a dimension where there is no time at all.

The doctrinal or philosophical dimension

Givens (2004:16) writes that all religions “impose some kind of order on the chaos of lived reality”. Doctrine, often in conjunction with organization, plays a very important role in imposing order. However, doctrine is also intended to ensure that the religious adherent achieves what the religion itself sets out to achieve. Thus, Adler (1990:46) has written:

In all religions there is something like a code of religious laws, precepts, or prescriptions that outline, in varying degrees of detail, a way of life or a style of conduct to be followed by those who seek salvation, conceived as the attainment of a spiritual goal, never as one or another form of worldly success.

¹⁰⁶ The “Braahmee or superconscious state” is the state of dwelling in God.

Adler makes the point that some religions are “explicitly creedal [sic]” while others are “explicitly preceptorial and legalistic” (1990:47). He goes on to make a further distinction between those religions that may be called “theological” and those that may be called “cosmological” (1990:47). The former affirm the existence of supernatural deities.¹⁰⁷ The latter, including, for example, such religions as Buddhism and Taoism, do not explicitly affirm (even though they may not actually reject or deny) the existence of supernatural deities; instead, they focus on the so-called “characteristics of the cosmos, usually spiritual characteristics, that are not known to the empirical natural sciences and lie beyond the reach of philosophical insight and analysis” (Adler 1990:47).

Smart (1992:17) has noted that doctrines (eg doctrines of salvation or ultimate liberation) eventually come to play “a significant part in all the major religions”, although it is demonstrably clear the various religions of the world differ greatly on matters of theology and religious doctrine. The word “doctrine” simply means teaching. Doctrines and other teachings are developed for a number of reasons: to instruct, to edify, to nourish and satisfy the need on the part of at least some for intellectual stimulation, and, of course, to ensure discipline, control and dependency. However, as philosopher John Dewey (1934:26) pointed out, whilst some sort of “doctrinal apparatus” appears to be reasonably required for there to be a religion, there may not, and indeed need not, be any formal authoritative claims of infallibility or final truth or revelation:

Some fixed doctrinal apparatus is necessary for a religion. But faith in the possibilities of continued and rigorous inquiry does not limit access to truth to any channel or scheme of things. It does not say first that truth is universal and then add that there is but one road to it. It does not depend for assurance upon subjection to any dogma or item of doctrine. It trusts that the natural interactions between man and his environment will breed more intelligence and generate more knowledge, provided the scientific methods that define intelligence in operation are pushed further into the mysteries of the world.

For example, the non-creedal religious movement known as Unitarianism (or Unitarian Universalism, in some countries), which has as one of its seven governing “principles” the principle of a “free and responsible search for truth and meaning” (Unitarian Universalist

¹⁰⁷ “Theological” religions may be monotheistic (eg Judaism, Christianity, Islam) or polytheistic (eg Hinduism, Shintoism). However, that distinction is not always clear-cut. For example, Swami Venkatesananda (author of *Karma Yoga*) makes the point that, according to Hindu Scriptures, the many gods of that religion are but “aspects of the One Supreme Being” (as cited in Vines (1970:35)), such that when any one god is worshipped, that god is taken as including all the gods. Max Muller referred to this type of theism as “Katheno-theism”, that is, the One God including all the other gods as well: see Leadbeater & Jinarajadasa (2000:45).

Association 2005:Online),¹⁰⁸ holds that truth, not being static, is always in process and that personal experience, conscience and reason are the final authorities in all religious matters. According to the Unitarian Universalist Association (1995:Online):

With its historical roots in the Jewish and Christian traditions, Unitarian Universalism is a liberal religion - that is, a religion that keeps an open mind to the religious questions people have struggled with in all times and places. We believe that personal experience, conscience and reason should be the final authorities in religion, and that in the end religious authority lies not in a book or person or institution, but in ourselves. We are a "non-creedal" religion: we do not ask anyone to subscribe to a creed.

One Unitarian Universalist minister (Davies 1946:Online) has succinctly stated the correct position not only as regards his denomination but also as respects others including some mainstream Protestant denominations such as the Baptists who are almost dogmatically non-creedal in their approach to religion:

Creeds are divisive. They are also *negative*; they say "no" to new truth. They put the dead in the place of the living; they make yesterday the oppressor of today. It is better, says Unitarianism, to be *affirmative*, to be free to believe what persuades you, and to follow the truth as it grows. If you do not have this freedom, how can your belief be real? ...

Let a man affirm his real beliefs, says Unitarianism. And if new knowledge or experience tells him that he needs to change them, let him change them. His beliefs should most of all be real; nothing should stand in the way of their persuading him. Let us have, not a negative church which suppresses men's real beliefs, but an affirmative one which liberates them. Let us have, not a creed which stands in the way of plain and honest thinking and impedes sincere believing, but a determination that religious thinking shall be free from fetters, and believing natural and real.

William Schulz, a former president of the Unitarian Universalist Association, has sought to explain why truth is essentially a pathless land and how, at least for religious liberals, it can never be said that God (however one conceives of God) has spoken his or her final word whether in Jesus Christ or whatever. Schulz (as cited by Babcock 2001:Online) writes:

When we Unitarian Universalists proclaimed that "revelation is not sealed," we had it almost right, but not quite. It is not just that revelation is not sealed; revelation is not sealable. If there is one thing that follows from the New Physics, it is this: the perspective from which we observe the world changes what we see. Look at an electron in one way and it looks like a wave; look at it in another and it looks like a particle. Mystery lies curled into the very heart of being like a worm in an apple.

¹⁰⁸ Excerpted. The other six principles (as described in that document) are as follows: the inherent worth and dignity of every person; justice, equity and compassion in human relations; acceptance of one another and encouragement to spiritual growth in our congregations; the right of conscience and the use of the democratic process within our congregations and in society at large; the goal of world community with peace, liberty, and justice for all; and respect for the interdependent web of all existence of which we are a part.

Aristotelian logic was wrong. We do not have to choose between A and Not-A; the same thing can be both. The first conclusion we draw from the New Physics is that even the most sophisticated instruments of observation cannot touch the ineffable. The first Unitarian Universalist affirmation which we can make is that the wonders of creation outspill every category into which we try to fit them.

In a similar vein, many religious liberals would agree with Unitarian Universalist minister George N Marshall, who said, “the Bible of tomorrow has not been written, is not completed” (1970:191). Nevertheless, even a liberal religion such as Unitarianism must draw from some treasury of teaching and knowledge. In the case of the Unitarian Universalist Association of congregations, and many other Unitarian and Universalist congregations around the world, the doctrinal or philosophical position draws from all of the following sources (Unitarian Universalist Association 2005:Online):

The living tradition which we share draws from many sources:

- Direct experience of that transcending mystery and wonder, affirmed in all cultures, which moves us to a renewal of the spirit and an openness to the forces which create and uphold life;
- Words and deeds of prophetic women and men which challenge us to confront powers and structures of evil with justice, compassion, and the transforming power of love;
- Wisdom from the world's religions which inspires us in our ethical and spiritual life;
- Jewish and Christian teachings which call us to respond to God's love by loving our neighbors as ourselves;
- Humanist teachings which counsel us to heed the guidance of reason and the results of science, and warn us against idolatries of the mind and spirit;
- Spiritual teachings of earth-centered traditions which celebrate the sacred circle of life and instruct us to live in harmony with the rhythms of nature.

What L B Fisher¹⁰⁹ (as cited by Eller 2000:Online) once said about the Universalists is equally applicable to the stance of most religious liberals:

Universalists are often asked to tell where they stand. The only true answer to give to this is that we do not stand at all, we move ... We do not stand still, nor do we defend any immovable positions, theologically speaking, and we are therefore harder to count or to form into imposing bodies. We grow and we march, as all living things forever must do. The main questions with Universalists are not where we stand but which way are we moving. Our main interest is to perceive what is true progress and to keep our movement in line with that.

One must be careful not to concentrate too much on the philosophical side of religion. Felix Adler (1913:22) has written:

¹⁰⁹ Universalist pastor L B Fisher was for many years also the editor of the Universalists' denominational newsletter *The Leader*.

It is a mistake to approach the subject of religion from the point of view of philosophy. All really religious persons declare that religion is, primarily, a matter of experience. We must get a certain kind of experience, and then philosophic thinking will be of use to us in explicating what is implicated in that experience. But we must get the experience first.

The mythical or narrative dimension

According to the American mythographer Joseph Campbell all myths, indeed all story-telling, folk traditions and ritual practices, share certain common themes. More particularly, Campbell asserted that all such things could be understood in terms of what he described as the “hero myth” (and what he referred to as the “monomyth”). Indeed, Campbell tended to construe all religions as “misunderstood mythologies” (Campbell 1986; see also Adler 1990:58-9), and saw the principal function of mythology as well as ritual as the “supply [of] the symbols that carry the human spirit forward, in counteraction to those other constant human fantasies that tend to tie it back” (Campbell [1949] 1990:11). According to Campbell (1973:19):

Mythology is apparently coeval with mankind. As far back, that is to say, as we have been able to follow the broken, scattered, earliest evidences of the emergence of our species, signs have been found which indicate that mythological aims and concerns were already shaping the arts and world of Homo sapiens. Such evidences tell us something, furthermore, of the unity of our species, for the fundamental themes of mythological thought have remained constant and universal, not only throughout history, but also over the whole extent of mankind’s occupation of the earth.

Chetwynd (1986:145-6) has written, rather esoterically, about the importance of myth:

Myth is not a complicated way of talking about something perfectly simple like gathering the last sheaf for next year’s planting, or a sort of fancy-dress version of astronomy. It is the simplest and the most forceful language for talking about what is obscure about life - its Sacred Hidden Depths. The most profound human experiences which rouse feelings of stupendous awe and wonder, and which come in flashes of inspiration that leave a trace for the rest of your life and mark many other lives besides, these are the subject matter of myth and cannot be expressed in another way except through a mythical perspective on Nature, Body, Culture, Sky, Pattern, Number, any or all of which will do, so long as none of them is taken literally but are seen from the perspective of Soul.

In almost all of the world’s religions one finds fairly similar myths of creation,¹¹⁰ the flood, and so forth. Then there is the myth of the dying and rising god, which is common to a number of religions and religious philosophies. These myths and common motifs,

¹¹⁰ As Suzuki (1997:185) has pointed out, “Creation stories create, or re-create, the world human beings live in, shape what we see and suggest the rules by which we should live. Unbelievably numerous and diverse, these tales of the Beginning of Everything are considered by the peoples that live by them the most sacred of all the stories, the origin of all the others.”

although not in themselves historical, are nevertheless “poetic expressions of ... transcendental seeing” (Campbell 1973:31). Tom Harpur (2004:17) has written:

As [Joseph] Campbell repeatedly made clear in his many books and in the interviews with [Bill] Moyers, the deepest truths about life, the soul, personal meaning, our place in the universe, our struggle to evolve to higher levels of insight and understanding, and particularly the mystery we call God can be described only by means of a story (mythos) or a ritual drama. The myth itself is fictional, but the timeless truth it expresses is not. As Campbell puts it, “Myth is what never was, yet always is.”

In addition to myths, there are stories, often associated with a charismatic leader such as Jesus, Buddha or Muhammad who is regarded as “ideal”, setting an example as to how followers are to live their lives. The stories commonly involve very similar patterns of behaviour. History and myth often coalesce into what Campbell (1973:26) refers to as “themes of the imagination”, but care must be exercised here. As Smart (1992:15) points out:

... These stories often are called myths. The term may be a bit misleading, for in the context of the modern study of religion there is no implication that a myth is false.

Campbell (1987:389) opined that the common theme of all mythology was “achievement”, in particular, the achievement of a supreme good (whether that be eternal life, universal justice, enlightenment or whatever). In his view, mythology had a fourfold function: to relate the individual to God, to the cosmos, to society and to developmental energies (Cousineau 1990:162). Campbell (1988:70) wrote:

The myths and rites were means of putting the mind in accord with the body and the way of life in accord with the way that nature dictates.

He also wrote that myth served certain additional functions, such as the following:

- myth enables individuals and communities to address and overcome psychological stresses by arousing hitherto dormant energies (Campbell 1987:370);
- myth validates and assists in the maintenance of social systems (Cousineau 1990:165); and
- myth assists persons to find their place in the universe (Campbell 1987:4) and to discern and engage the source of the phenomenological (Cousineau 1990:167).

As Suzuki (1997:185) points out, myth is essentially curative and unifying in its effects:

Myths help us to reconcile conflicts and contradictions and describe a coherent reality. They make a meaning that holds the group together and express a set of beliefs; even in our skeptical society, we live by myths that lie so deep we believe them to be reality.

Indeed, myth, properly understood, is real, not imaginary. Mike Young (1999:Online), minister of the First Unitarian Church of Honolulu, has spoken of the experiential reality of myth and its importance:

Joseph Campbell has rescued the concept of myth. When I was a youngster a myth was clearly something that was not true. What Campbell kept reminding us was that myths are *not* not true. For myths are not about how things are *out there*, even though that may be the vocabulary of the story. Myths are about how things are *in here*. They have their roots in the human experience. They are part of who we are inside as a species, not just as individuals but as a people. During the period of our history when we came into existence as conscious entities, we *Homo sapiens* existed in self-contained groups. Today we live in a world where the horizons are far, far more vast.

A Masonic writer (Swick 1996:74-5), invoking the Masonic legend of Hiram Abiff, has compellingly articulated the dramatic and transformative power of myth in the lives of believing participants:

It is the lucky man who realizes early on that there is a way in which he, himself, is our Grand Master Hiram Abiff. When revelation of this sublime truth comes to the individual, it may strike him with a great force, making him dead to all that has gone before. We are the myth! And the lives of the great ones who have preceded us, are our lives, if we but choose to have it so! As we seek to walk the path they have walked, we become Adam, we become Abraham, we become Hiram. Their stories belong to us - and their lives are our lives; for the truth of their lives is the truth of human existence.

The experiential or emotional dimension

In his *Varieties of Religious Experience* psychologist William James observed that there were no specifically *religious* emotions, but simply ordinary human emotions manifesting themselves in a religious setting. James ([1902] 1958:40) wrote:

[R]eligious awe is the same organic thrill which we feel in a forest at twilight, or in a mountain gorge; only this time it comes over us at the thought of our supernatural relations.

According to Anthony, Robbins and Schwartz (1983:2), new religious movements that are successful “have in common an emphasis on emotional fervour and/or inner spiritual ‘experience’”. However, it seems that all religious movements, even the more liberal ones, have, as a vital feature, a certain emotional appeal to their adherents and possibly to

others as well. The present author (2000) has written previously on the topic of the emotional appeal of religion, stating:

What religion has traditionally given people, and *continues* to give many people, including many who have abandoned the formal practice of their faith, is a set of ancient archetypal symbols, myths, fables, stories, moral principles, as well as rites of passage, by means of which they can have a satisfying *emotional* attitude to the universe (a “feeling of being at home in the universe”, as William James once put it), as well as a sense of “belonging” (and, at best, not just to a particular group). The “comfort” of those symbols, myths, fables, stories and principles often remains in people’s consciousness, in sweet remembrance, long after the “substance” of the faith has been relinquished by the former believer, for, as Rabbi Jonathan Sacks [1991:7-8] has correctly pointed out:

The majority is content with increasingly attenuated forms of attachment ... Religious identity can persist in the absence of religious belief.¹¹¹

Felix Adler (1913:4) wrote of the emotional aspects of the spiritual experience of a sense of oneness with all life and with others:

The fact that there is a spiritual power in us, that is to say, a power that testifies to the unity of our life with the life of others, which impels us to regard others as other selves – this fact comes home to us even more forcibly in sorrow than in joy. It is thrown into clearest relief on the background of pain.

Emotion has been described by Chetwynd (1986:68) as “the motion or movements of the Soul”, and this is what myth expresses, as do dreams and hopes. He also writes (1986:68):

Depth of feeling gives rise to fantasy, images and myth. For William Blake, Feeling was a Divine influx, the way human beings experience the Divine.

Smart (1992:13) refers to the “visions of the Prophet Muhammad, the conversion of Paul, the enlightenment of the Buddha”:

... These were seminal events in human history. And it is obvious that the emotions and experiences of men and women are the food on which the other dimensions of religion feed: ritual without feeling is cold, doctrines without awe or compassion are dry, and myths which do not move hearers are feeble.

Religious experience often involves what Rudolf Otto¹¹² referred to as the “numinous”.¹¹³

Rem B Edwards (1979:313) has written:

¹¹¹ Norris and Inglehart (2004) also agree that part of the appeal of religion is the “need for belonging”.

¹¹² Rudolf Otto (1868-1937), one of the most influential and original thinkers and writers about religion in the first half of the 20th century, is perhaps best known for his analysis of what he saw as the underlying experience of all religion - a sense of the “numinous” or “holy”.

¹¹³ Otto provides little or no explanation on the choice of this word., which is from the Latin *numen*: “numen - inis n [nodding , a nod; as an expression of will, command, consent]; of a deity, [divine will, divine command];

The mystical experience is more than feeling: It is a kind of immediate knowledge by acquaintance with a supreme, self-sufficient religious object. To be sure, the feeling is also there, but it is not the only element Otto's main emphasis, however, was on the holy object and not on the feelings of the mystic subject.

In *The Idea of the Holy* Otto ([1917] 1977:6-7) expressed his opinion that, at the heart of the so-called mystical experience, there was this sense of the numinous or the holy. The numinous experience was, according to Otto, "inexpressible, ineffable" ([1917] 1977:5). Otto saw the numinous or holy as a *mysterium tremens et fascinans*, that is, a tremendous (read, awe- and fear-inspiring) and fascinating mystery. The experience of the numinous or holy is, according to Otto (as cited in McCarty 2006:4):

a unique experience of confrontation with a power ... "Wholly Other," outside of normal experience and indescribable in its terms; terrifying, ranging from sheer demonic dread through awe to sublime majesty; and fascinating, with irresistible attraction, demanding unconditional allegiance.

Further, the experience, writes Otto ([1917] 1977:12-13):

grips or stirs the human mind. ... The feeling of it may at times come sweeping like a gentle tide, pervading the mind with a tranquil mood of deepest worship. It may pass over into a more set and lasting attitude of the soul, continuing, as it were, thrillingly vibrant and resonant, until at last it dies away and the soul resumes its "profane," non-religious mood of everyday experience. It may burst in sudden eruption up from the depths of the soul with spasms and convulsions, or lead to the strongest excitements, to intoxicated frenzy, to transport, and to ecstasy. It has its wild and demonic forms and can sink to an almost grisly horror and shuddering.

Otto (as cited in McCarty 2006:4) then offers this definition of religion:

It is the positive response to this experience in thought (myth and theology) and action (cult and worship) that constitutes religion.

In other words, it is not so much the experience of the numinous or holy that constitutes religion but rather our *response* to the experience.

hence, in gen [divine majesty, divinity, deity]": University of Notre Dame *Latin Dictionary and Grammar Aid*, viewed March 7 2005, <<http://www.nd.edu/~archives/latin.htm>>.

Conversion experiences and so-called mystical experiences often involve one or more of the elements identified by Otto.¹¹⁴ In a similar vein, Jung (1938:4) makes it clear that, for him, religion involves

a careful and scrupulous observation of what Rudolf Otto aptly termed the “numinosum,” that is, a dynamic existence or effect not caused by an arbitrary act of will.

He continues:

The numinosum is either a quality of a visible object or the influence of an invisible presence causing a peculiar alteration of consciousness.

Reverence for life, so important to religious naturalism, also carries with it an emotional intensity that can only be described as spiritual. As Ericson (1988:99) points out:

... Not only do we reverence life by feeling compassion and empathy for its concrete forms; but, more fundamentally, through reverence for life we see life as a precarious but infinitely precious creative process pregnant with the meanings that give to human existence the only enduring values that we can know.

There is, however, another type of religious experience, that is equally real, and it lies entirely in the moral realm. Ethicist Felix Adler (1913:22-3) writes:

The experience to which I refer is essentially moral experience. It may be described as a sense of subjection to imperious impulses which urge our finite nature toward infinite issues; a sense of propulsions which we can resist, but not disown; a sense of a power greater than ourselves, with which, nevertheless, in essence we are one; a sense, in times of moral stress, of channels opened by persistent effort, which let in a flood of rejuvenating energy and puts us in command of unsuspected moral resources; a sense, finally, of the complicity of our life with the life of others, of living in them in no merely metaphorical signification of the word; of unity with all spiritual being whatsoever.

Professor Montague, of Columbia University, refers (1930:6-8) to religion as

the acceptance neither of a primitive absurdity, nor of a sophisticated truism, but of a momentous possibility – the possibility, namely, that what is highest in spirit is also deepest in nature; that the ideal and the real are at least to some extent identified, not merely evanescently in our own lives, but enduringly in the universe itself

and also as

the faith that there is in nature an urge or power other than man himself that makes for the kind of thing that man regards as good.

¹¹⁴ See eg the various conversion stories recounted in the 3rd and 4th editions of *Alcoholics Anonymous*.

Religious experience, like every experience of life, is highly subjective, even if, as Krishnamurti (1970a:130) pointed out, “[r]eligion is not what I think”. Even among the adherents of any particular religion there will be great differences in experience, perception and understanding. Schleiermacher (1893:Online) writes:

[Each person] must be conscious that his religion is only part of the whole; that about the same circumstances there may be views and sentiments quite different from his, yet just as pious; and that there may be perceptions and feelings belonging to other modifications of religion, for which the sense may entirely fail him.

Thus, any definition of religion must recognize that members and adherents of a religious group may, indeed will, differ among themselves as to the meaning of the various ideas, beliefs, practices and activities that go to make up their particular religion.

The ethical or legal dimension

Smart (1992:17) writes that “[t]he law which a tradition or subtradition incorporates into its fabric can be called the ethical dimension of religion”. For example, Judaism has its Torah, Islam its *Sharī‘a*. Smart (1992:17) writes:

Other traditions can be less tied to a system of law, but still display an ethic which is influenced and indeed controlled by the myth and doctrine of the faith. For instance, the central ethical attitude in the Christian faith is love. This springs not just from Jesus’ injunction to his followers to love God and their neighbors: it also flows from the story of Christ himself who gave his life out of love for his fellow human beings. It also is rooted in the very idea of the Trinity, for God from all eternity is a society of three persons, Father, Son and Holy Spirit, kept together by the bond of love.

Adler (1913:114) sees ethics as sovereign:

Theologians often say that faith must come first, and that morality must be deduced from faith. We say that morality must come first, and faith, to those whose nature fits them to entertain it, will come out of the experience of a deepened moral life as its richest, choicest fruit.

Indeed, another ethical leader Algernon D Black¹¹⁵ (2005:Online) has written of the essential unity of all religions on the subject of ethics and ethical standards:

The religions of man should be a unifying force, for all the great religions reveal a basic unity in ethics. Whether it be Judaism, Catholicism, Protestantism, Buddhism or Confucianism, all grow out of a sense of the sacredness of human life. This moral sensitivity to the sacredness of human personality - the Commandments not to kill, not to hurt, not to put a stumbling block

¹¹⁵ Black was, for many years, the senior leader of the New York Society for Ethical Culture.

in the path of the blind, not to neglect the widow or the fatherless, not to exploit the servant or the worker - all this can be found in the Bibles of man, in all the sacred books. All teach in substance: "Do unto others as you would that others should do unto you." There is, then, a basic unity among the great religions in the matter of ethics. True, there are religious philosophies which turn men away from the world, from the here and now, concentrating life-purposes on salvation for one's self or a mystic union with some supernatural reality. But most of the great religions agree on mercy, justice, love - here on earth. And they agree that the great task is to move men from apathy, from an acceptance of the evils in life, to face the possibilities of the world, to make life sweet for one another instead of bitter.

The organizational or social dimension

This dimension is also known as the "institutional dimension" (Smart 1992:18).

Religion tends to incarnate itself, that is, formally organize itself, and, in order to understand a faith "we need to see how it works among people" (Smart 1992:18). Smart (1996:11) makes the point that a particular religious tradition will manifest itself in society "either as a separate organization with priests or other religious specialists (gurus, lawyers, pastors, rabbis, imams, shamans and so on), or as coterminous with society".

The material or artistic dimension

The organizational or social dimension of religion tends to become further incarnated in material or artistic form, such as church buildings and works of art. Smart (1992:20-1) also refers to the importance of certain sacred landmarks in the natural world:

Also important material expressions of a religion are those natural features of the world which are singled out as being of special sacredness and meaning – the river Ganges, the Jordan, the sacred mountains of China, Mount Fuji in Japan, Eyre's [sic] Rock in Australia, the Mount of Olives, Mount Sinai, and so forth. Sometimes of course these sacred landmarks combine with more direct human creations, such as the holy city of Jerusalem, the sacred shrines of Banaras, or the temple at Bodh Gaya which commemorates the Buddha's Enlightenment.

Frank Whaling (1986:38) sees religion as containing eight inter-locked elements:

[A]ll the major religious traditions of the world contain eight inter-linked elements. The major religions are dynamic organisms within which there are eight inter-acting dimensions; they are historical chains within which there are eight connecting links. . . . these elements are present in separate traditions with different weights and different emphases. Because all religions have these elements this does not mean that they are all the same.

Whaling's eight elements or dimensions, which can be easily reworked to more-or-less correspond to Smart's seven dimensions, are as follows: religious community, ritual and worship, ethics, social and political involvement, scripture/myth, concept, aesthetics, and

spirituality. For Whaling (1987:46-7), and many others, the notion of transcendence is the truly distinguishing feature of religion:

Lying behind [all religion] is something that is even more important, namely transcendent reality. For a Christian this would be God, for a Muslim Allah, for a Jew Yahweh, for a Hindu Brahman, and for a Buddhist Nirvana. Insofar as it is transcendent this reality is less clear than the eight elements. . . they are directly observable, transcendence is not.

However, transcendent reality is made more clear by means of a Mediating Focus that lies at the heart of each religious tradition. This mediating focus - Christ for a Christian, the Koran for a Muslim, the Torah for a Jew, a personal deity or the Atman for a Hindu, and the Buddha or the Dharma for a Buddhist - brings transcendent reality closer and makes it more meaningful. God is therefore mediated through Christ, Allah through the Koran, Yahweh through the Torah, Brahman through a Hindu Lord or the Atman within, and Nirvana through the Buddha or the Dharma. It is this combination of a transcendent reality and a mediating focus that lies behind and gives meaning to the eight elements of each religious tradition.

. . . [S]ome person, and indeed some group of persons, has to respond to mediated reality. Persons have dynamically to use the eight elements that form a tradition otherwise those elements are lifeless forms.

For Bryan Rennie¹¹⁶ (2004:Online) religion has six dimensions, as follows: experience (revelation), response (faith), knowledge, ethics, community, expression (witness). Rennie points out that these dimensions are “certainly not independent one of another but interpenetrate like the pieces of a jigsaw puzzle, each one completes and is completed by the others, and the whole is a dynamic unity.”

The Dimension of Experience (Revelation)

This more-or-less corresponds to Smart’s “experiential or emotional dimension”.

Avery Dulles (1983:27-8) speaks, in the Catholic tradition, of revelation referring to both the Bible “viewed as a collection of inspired and inerrant teachings” and the creative process whereby “God reveals himself . . . in his great deeds”. Rennie (2004:Online) also makes the point that revelation is more than just holy scripture. It is the revealed experience of central religious figures:

Religion represents an assurance not only that there **is** an unseen order but that this order authoritatively reveals itself to humanity in some way. In the major world religions the main vehicle of revelation is often thought to be scripture, the written sacred word. Whatever the vehicle of revelation, the arena is always, and necessarily, human experience. The Christian Bible is not so much the revelation as was the life of Jesus in history; the Koran (the sacred book of Islam) is not so much the revelation of Allah as were the visions of Muhammad; the

¹¹⁶ Vira I Heinz Professor of Religion and Co-ordinator of the Heinz Lecture Series at Westminster College: *Religion and the Religions*. Rennie is the author of *Reconstructing Eliade: Making Sense of Religion* (1996).

Tripitaka (the sacred texts of Buddhism) are not so much the revelation as was the enlightenment of the Buddha. In pre-literate religions the experience of the shaman or spiritual specialist is the vehicle of revelation and only thereafter sacred lore, mythology. Of course, a large part of our experience is the experience of our human community.

So, for the Christian, the life, death and, most importantly, resurrection of Jesus Christ is the supreme revelation of the saving love of God. "God was in Christ, reconciling the world unto himself" ¹¹⁷

The Dimension of Response (Faith)

This is an important dimension that is obliquely referred to by Smart but not identified by him as a separate dimension of religion. Nevertheless, religion involves faith, which involves more than just intellectual adherence to certain religious doctrines or principles. Faith consists of belief and trust. It also involves notions of surrender and letting go. Rennie (2004:Online) has written:

Faith is a response to experience as revelation which can be divided into faith as assurance and faith as belief. The former is the emotional state of final optimism about the unseen order, the latter is the adherence to certain specific doctrinal claims about that order. Although separable as descriptions of inner or intentional states, they can be seen to converge in specific behavior. One acts out of one's optimism and out of adherence to specific propositional truths. The human creative response to our environment as both that which is inspired or breathed into us (by the gods etc) and that which is imitative (of the divine acts of creation and of revelation) thus becomes itself a medium of revelation.

Religion and faith are inseparable. Theologian H Richard Niebuhr¹¹⁸ (1960:Online) referred to faith as being "a fundamental personal attitude which, whether we call it *faith* or give it some other name, is apparently universal or general enough to be widely recognized". He went on to illustrate what is involved in faith, making it clear that religious faith may take various forms and may manifest itself in a number of different ways including faith as "primarily reliance ... as an enduring value-center" (1960:Online).

G A Larue¹¹⁹ (2003:Online) extracts what appear to be the salient features of religious faith:

¹¹⁷ 2 Cor 5:19 [AV].

¹¹⁸ H Richard Niebuhr was for many years professor of Christian ethics at Yale University. He was the brother of prominent theologian Reinhold Niebuhr.

¹¹⁹ Larue, who is the author of *Freethought Across the Centuries* (1996), is Emeritus Professor of Biblical History and Archaeology at the University of Southern California.

“Value-center,” “trust,” “loyalty,” “meaning” are intertwined to provide the definition of “faith” or “a faith.” It is not difficult to understand that, whereas a theist may express such a faith in a god, an atheist or a humanist may also claim to have such a value-center that gives meaning and direction to life. This value-center would be a faith in the possibilities and potentials of “humanity.” Inasmuch as many religions have humanistic concerns and dimensions, there will be overlaps in outreach to those in need and in the interpretation of meaningful response. Whereas the religious person may respond to human need because his or her faith system calls for such response, the humanist will respond out of the well-springs of compassion. The responses may be the same or paralleled, but the motivations will emerge from different value-centers.

It is submitted that there can indeed be faith - and religious faith - without supernaturalism. As Arthur Blecher (2004:Online), a rabbi of a humanistic congregation, has pointed out, faith does not necessarily involve belief in the supernatural, “higher powers”, miracles, and so forth:

There is another meaning, a different meaning, to the word "faith" that doesn't require me to abandon intelligence and reason. As child I realized that I am not alone in the world. I am part of a web of family and neighbors and teachers, that I am part of a community. The more I learned about society and how it works, the more I came to see myself as one cell among billions.

So I do have faith because I have convictions. I have faith that humans must seek the truth. I acknowledge that people do not know everything about the universe, but I am convinced that we must strive to learn all we can. I acknowledge that life often sucks, but I am convinced we don't have to accept misery as the fate of society. I have faith not only that we can achieve social justice, we must achieve social justice.

...

I think there is another aspect to this non-supernatural meaning to "faith." And that has to do with idealism and hope. I have convictions, and I also have hope. This is not to say that I am [naïve]. Rather, I have faith because I have high standards, because I am arrogant enough to insist that the world - this world - can and should become like my ideal of a society of justice and wholeness and joy for every one.

For John Dewey (1934:26) there could be no religion without faith, although he, too, opined that faith did not require nor depend upon notions of the supernatural:

Understanding and knowledge also enters into a perspective that is religious in quality. Faith in the continued disclosing of truth through directed cooperative human endeavor is more religious in quality than is any faith in completed revelation. ... There is such a thing as faith in intelligence becoming religious in quality - a fact that perhaps explains the efforts of some religionists to disparage the possibilities of intelligence as a force.¹²⁰

¹²⁰ Some Unitarians and Unitarian Universalists see their religious beliefs as being based on reason and experience rather than faith (the latter being optional). By way of example, Rzepka (2005:6) writes: “If faith provides you with a spiritual strategy, and it doesn't contradict what you know to be true, then faith is yours. There's room for us all.”

Any definition of religion which purports to apply a narrow definition of faith based on some notion of supernaturalism is bound to run into difficulties.

The Dimension of Knowledge

Rennie (2004:Online) takes this much further than did Smart in his “doctrinal or philosophical dimension” of religion. Rennie makes the point that knowledge, in particular, sacred knowledge, is transmitted through faith:

What is revealed through faith is thus regarded as sacred knowledge. That experience apprehended in faith as an authoritative source of knowledge (ie revelation) is conducive to specific activities in response. This activity is justified by knowledge of cosmology, of theology, and of anthropology. For example, that all action (ie karma) will be justly repaid; that Allah is merciful; or that the meek will inherit the earth.

Thus, the Christian speaks in terms of coming to a “saving knowledge of Jesus Christ”, salvation being by grace through faith in Jesus as Savior and Lord.

The Dimension of Ethics

This corresponds to Smart’s “ethical or legal dimension”. Religion is concerned not just with one’s relationship to the divine or sacred (however that may be defined or conceived) but also with one’s relationship to other human beings. There are, of course, ethical systems that are not associated with religion (eg secular humanism, ethical culture), but, ordinarily, religions contain ethical systems which, for the most part, depend for their authority and authenticity, on some sort of appeal to religious authority (eg some holy book or deity). In relation to this ethical dimension of religion Rennie (2004:Online) has written:

This represents the specific claim that there is a particular correct and beneficial pattern of human behavior. This pattern of behavior is harmonious with the unseen order: externally it harmonizes community with cosmos, internally it harmonizes personal behavior with personal experience of the world (mediated through knowledge).

Religious naturalism has its own naturalistic ethics. Schweitzer (1936:Online) has written that there are three kinds of “natural ethics”:

... There is, to start with, the suggestion that ethics exists within our very natures, waiting to be developed. ...

Next, comes the sort of natural ethics which is said to exist in man’s nature, but is incapable of being developed by the individual himself. ...

The third type of natural ethics was expounded by Hume. It admits that ethics is a matter of sentiment, but explains that it is given in the nature of man, for the sake of preserving his life.

...

Ultimately, Schweitzer saw our sense of ethics, and our social instincts, as being innate:

This, then is the nature and origin of ethics. We have dared to say that it is born of physical life, out of the linking of life with life. It is therefore the result of our recognizing the solidarity of life which nature gives us. And as it grows more profound, it teaches us sympathy with *all* life. Yet, the extremes touch, for this material-born ethic becomes engraved upon our hearts, and culminates in spiritual union and harmony with the Creative Will which is in and through all.

Moral and ethical values grow out of a religious people's sense of responsibility and community. William G Sinkford (2004:Online), the current president of the Unitarian Universalist Association, has written:

Moral values are not just particular opinions on "hot button" topics in a divisive election year. Moral values grow out of our calling as religious people to work to create the Beloved Community. Moral values instruct us to "love our neighbors as ourselves" and always to ask the question, "Who is my neighbor?" They are fundamentally inclusive rather than exclusive, and they call on generosity of spirit rather than mean spiritedness.

In this post election season, let me express some of the moral values held dear by the Unitarian Universalist community, which I lead, and by many other progressive people of faith:

- We believe that feeding the hungry and clothing the naked are moral duties, and we will continue to work on behalf of economic justice.
- We believe that ensuring equal civil rights for gay and lesbian families is our moral duty, and we will continue to work for Marriage Equality nationwide.
- We believe that serving as stewards of the earth is a moral duty, and we will continue to do everything in our power to protect the environment.
- We believe that safeguarding a woman's right to choose is a moral duty, and we will vigorously oppose any efforts to eliminate or significantly compromise reproductive freedom.
- We believe that providing affordable health care for all Americans is a moral duty, and we will continue to advocate for medical rights for the young, the old, the frail, and all of those in need.

The Dimension of Community

Rennie (2004:Online) writes:

Those who share the same "sacred genealogy," that is to say, whose ethics are known through the same faith in the same revelations, have a recognizable identity and are united into a coherent and recognizable social group.

Thus, the Christian speaks in terms of the “communion of saints”, the church visible and invisible throughout the ages. This rather ethereal concept goes much deeper than Smart’s more tangible “organizational or social dimension”. The religious naturalist speaks, in predictably naturalistic language, in terms of “care for the universal community of all beings ... imaginatively entertained” (Stone 1993:Online).

The present author has written previously on the topic of religion providing a sense of belonging to a people and a tradition, stating (Ellis-Jones 2000:12):

Religion is more about belonging to a people and a tradition than upholding a particular set of defined doctrines. As the nineteenth-century French sociologist Emile Durkheim, often called the father of modern anthropology and sociology, pointed out, although “[t]he old gods are dead”, the rituals and other social aspects of religion tend to continue in a modified form for many formerly practising religious adherents. God, if no longer an objective reality for those persons, may or may not still remain as some sort of human-created subjectivity, but it is demonstrably the case that belief in some so-called supernatural “God”, and in other tenets of faith, is entirely secondary to such matters as cultural identity and continuity, rites of passage, family belonging, moral structure, and the like.

There is also the associated cultural aspect of religion (Ellis-Jones 2000:12, quoting Geertz 1973:90):

Religion, at its best, is, as the anthropologist Clifford Geertz has written, a cultural system that acts to “establish powerful, persuasive and long-lasting moods and motivations” by “formulating conceptions of a general order of existence and clothing these conceptions with such an aura of factuality that the moods and motivations seem uniquely realistic.”

The Dimension of Expression (Witness)

Rennie (2004:Online) has written:

The expressions of the religious group, both intentionally and unintentionally, support and strengthen the worldview from which they are made. Deliberately in the form of mission and unconsciously in the application of religious knowledge as knowledge - in the living of the life of the community - the religious community bears witness to and to [sic] persuades others of its truth and thus propagates and spreads as a faith... .

Witnessing with one’s life, and not just with one’s words, appears to be a very important aspect of most, if not all, religions.

Conclusions

What, if anything, can be drawn from the various kinds of definitions of religion?

As regards substantive definitions, it is clear that no single definition ordinarily suffices to encompass the multifarious sets of traditions, practices, and ideas which constitute the different religions that exist in our world today.

Functional definitions are certainly more inclusive than substantive definitions and are readily applicable to different types of religions (eg theistic and nontheistic, as well as naturalistic and non-naturalistic). Religion is inherently multi-functional. Further, any particular religion may serve more than one function, or different functions, for different people, and different religions may serve quite different and varied functions. Unfortunately, functional definitions tend to lead to a functionalistic explanation of religion, and functionalistic explanations tend to lead to reductionism. Reductionist methodologies in sociology or psychology are self-evidently inappropriate to the study and proper understanding of religion. Additionally, functionalists generally have an ideological motive for adopting a particular functional definition of religion. As a result, functional definitions attempt to give explanations of religion from the *outside* without conceding the possibility of internal explanations from the perspective of the *insiders*. The most serious problem with all functional definitions is that they are relativistic (in the Andersonian sense). Nothing can be properly defined by reference to its relations with other things for the simple reason that nothing is constituted by its relations with other things, and that goes for religion as well.

As for comparative definitions, there is arguably no single characteristic or set of characteristics belonging to all those, and only those, things which are ordinarily referred to as religions. Attempts to compare and contrast religious belief systems with philosophical belief systems are also fraught with reductionist difficulties. Whatever religion is, it would appear to be *sui generis* and self-generating and must therefore be *systematically* understood on its *own* terms.

As regards analytical definitions, one generally encounters the same kinds of difficulties as those that tend to be encountered when one attempts to isolate the supposed common characteristics or indicia of religions.

The advantages of the phenomenological approach are several. There is no *a priori* attempt to delimit religion by reference to some specified function or essence. The approach takes full advantage of the techniques and methodologies of comparative

religion and analysis whilst at all times having due regard to the particular orientation of the adherents and participants. Religion, like all other occurrences in time and space, is rightly seen as being made up of different components, with the focus being on the actual occurrence of religious phenomena and structures. The main shortcoming with the phenomenological approach is subjectivity, even eccentricity. The hope is that the dual application of both Andersonian realism and the phenomenological approach will ensure an objectivist approach *without* minimizing the subjective factor in religion. Importantly, no attempt will be made to construct a definition of religion in the abstract by reference to some *a priori* pre-determined function or essence. The definition will hopefully emerge out of the study of a number of religions of one kind or another. One thing is, however, disturbingly clear already: the task of defining religion is an elusive one, as Angus (1933b:15) has pointed out:

But what is religion? Religion may be defined psychologically, philosophically, ethically, historically, aesthetically, but not exclusively by one of these methods. I know what religion is, but I hesitate to define it. Some of us are alive, but few of us could offer an adequate definition of life. And those who are most alive would discover the more surely the defects of the best definition of life. Similarly, those who are most familiar with religion would find it most difficult to offer a satisfying definition. ...

CHAPTER 2

THE AUSTRALIAN LEGAL POSITION

“We would therefore hold that, for the purposes of the law, the criteria of religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief”

- *Church of the New Faith v Commissioner of Pay-roll Tax (Vic)*
(1983) 154 CLR 120 at 137 per Mason ACJ and Brennan J.

Preview

1. It was not until 1943, in the *Jehovah's Witnesses* case,¹ that the High Court of Australia made its first important pronouncement on the meaning of “religion” for legal purposes but, regrettably, only two justices in the case found it necessary to state a view as to the connotation of the term.
2. According to one of those justices (the then Chief Justice) religion ordinarily involved any or all of the following: a system of beliefs or statement of doctrine, a code of conduct, some prescribed form of ritual or religious observance. Further, in determining whether a particular belief system was religious it was ordinarily necessary to have regard to the current meaning of the word.
3. The other justice (McTiernan J) saw religion as extending to faith and worship, to the teaching and propagation of religion, and to the practices and observances of religion.
4. However, according to the High Court, the notion of what is religion is open-ended and elastic, for the scope of religion has varied very greatly during human history. Religion may be theistic or nontheistic.
5. In *Attorney-General (Vic); ex rel Black v Commonwealth*² Stephen J appeared to acknowledge that religion involves or may involve any one of more of the following: a particular religious philosophy or faith, a set of beliefs, a system of moral philosophy or particular doctrines of faith,

¹ *Adelaide Company of Jehovah's Witnesses Incorporated v The Commonwealth* (1943) 67 CLR 116.

² (1981) 146 CLR 559.

the religious community which supports that faith, and its organization and practices.

6. In 1983, in the *Church of the New Faith* case, two justices (Mason ACJ and Brennan J) were of the view that, for the purposes of the law, the criteria for religion were twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief. Two other justices (Wilson and Deane JJ) opined that there was no single characteristic which could be used to identify an organization as constituting a religion and that the most that could be done was to formulate a range of indicia gleaned from past decisions, one of the more important indicia being that the particular collection of ideas and/or practices involved belief in the supernatural. The other justice (Murphy J) recommended that anything that claimed to be religion and purported to provide a meaning or purpose to life ought to be regarded by the courts as being a religion.
7. Although only two of the justices in the *Church of the New Faith* case held that belief in the supernatural was an essential prerequisite for there to be a religion there was certainly majority support for the view that, at the very least, religion *usually* involves a belief in the supernatural but the court provided little or no assistance as to how one supposedly determines whether a particular belief system postulates belief in the supernatural.
8. In addition, the judgments in the *Church of the New Faith* case have been criticized for minimizing the subjective factor in religion.
9. In any event, a definitive test was not propounded by a majority of the High Court and to date no such test has ever been propounded by the court.

Introduction

In *Canterbury Municipal Council v Moslem Alawy Society Ltd*³ McHugh JA said:

The preservation of religious equality has always been a matter of fundamental concern to the people of Australia and finds its place in the Constitution, s 116. ...⁴

³ (1985) 1 NSWLR 525.

His Honour then proceeded⁵ to cite with approval what Mason J had pointed out in *Attorney-General (Vic); ex rel Black v The Commonwealth*:⁶

...To the Australian colonists the preservation of religious equality was perhaps more important than the preservation of religious freedom for the simple reason that they had experienced the disadvantages of religious inequality and it posed a more immediate threat than the absence of religious freedom.⁷

Givens (2004:4) has written that “Australia is one of the most religiously heterogeneous countries on earth” and that it has “long needed to contend with the management of religious diversity”. He also notes that Australia and the United States of America “share an unusual heritage of religious pluralism and diversity”. Be that as it may, it is the case that in Australia, unlike the position in the United States, the courts have on only a few isolated occasions been called upon to consider the meaning of religion for constitutional and other legal purposes.

By way of introduction, *Butterworths Australian Legal Dictionary* defines religion in these terms:

- **Religion** A system of ideas and practices, usually involving a belief in the supernatural: *Church of the New Faith v Cmr for Pay-roll Tax (Vic)* (1983) 154 CLR 120; 49 ALR 65. There exists no formularised legal criterion, whether of inclusion or exclusion, for determining whether a given system constitutes a religion. However, indicia can be used as guidelines, some of which are: that there is belief in the supernatural; that the system of ideas relates to the place of humanity in the universe and its relationship with the supernatural; that the ideas are accepted by adherents as requiring the observation of particular codes of conduct; that the adherents constitute an identifiable group; and that they see the system as constituting a religion: *Church of the New Faith v Cmr for Pay-roll Tax (Vic)*.⁸

In *New South Wales Stewards' Co Ltd v Strathfield Municipal Council*⁹ the court had to determine whether a company, which had among its objects the promotion of the true welfare of humankind in Christian or benevolent principles and the teaching of the word of God, was a "religious body" and on that basis entitled to a rating exemption. The court noted that the expressions “religious body” and “religion” were not defined in the relevant

⁴ (1985) 1 NSWLR 543-4.

⁵ At (1985) 1 NSWLR 544.

⁶ (1981) 146 CLR 559

⁷ (1981) 146 CLR 559 at 617. “... Freedom of religion, the paradigm freedom of conscience, is of the essence of a free society”: per Mason ACJ and Brennan J in *Church of the New Faith v Commissioner of Pay-roll Tax (Vic)* (1983) 154 CLR 120 at 130.

⁸ *Butterworths Australian Legal Dictionary* (Sydney: Butterworths, 1997), p 1007, cross-references omitted.

⁹ (1944) 15 LGR 139.

rating statute,¹⁰ but were to be given their natural or popular meaning. Judicial authorities cited or referred to in the decision make it clear that, as at 1944, the courts saw a religion as involving a profession of belief, that is, faith, in a Supreme Being by an association of persons holding particular tenets or a creed and who agreed to meet together and worship in a clearly defined way according to a particular liturgical or non-liturgical tradition or custom.

The Jehovah's Witnesses case

In *Adelaide Company of Jehovah's Witnesses Incorporated v The Commonwealth*¹¹ the High Court of Australia made its first important pronouncement on the meaning of "religion" for legal purposes.¹² However, as Mason ACJ and Brennan J pointed out in the latter case of *Church of the New Faith v Commissioner of Pay-roll Tax (Vic)*,¹³ only Latham CJ¹⁴ and McTiernan J found it necessary to state a view as to the connotation of the term.

Section 116 of the *Constitution* is as follows:

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.¹⁵

Section 5 of the *National Security Act 1939* (Cth) empowered the Governor-General to make regulations for securing the public safety and the defence of the Commonwealth and the territories of the Commonwealth and for prescribing all matters which were necessary

¹⁰ *Local Government Act 1919* (NSW).

¹¹ (1943) 67 CLR 116.

¹² In 1912, in *Krygger v Williams* (1912) 15 CLR 366, the High Court dismissed a constitutional objection under s 116 of the Australian Constitution that enforced military training prohibited the free exercise of religion, but there was no discussion of the meaning of the word "religion" per se. Many other cases over the years are either unhelpful or irrelevant because they deal not with the meaning of the word "religion" or the adjective "religious" in isolation but with the adjective in conjunction with a noun: see, eg, *R v Registrar-General; ex parte Segerdal* (1970) 1 QB 430; (1970) 2 QB 697. There are other cases where the question has turned almost entirely on the corporate structure of the organization: see eg *Theosophical Foundation Pty Ltd v Commissioner of Land Tax (NSW)* (1966) 67 SR (NSW) 70 at 84. See also *Young Men's Christian Association of Melbourne v Federal Commission of Taxation* (1926) 37 CLR 351; *Kick v Donne* (1917) 33 TLR 325; *Berry v St Marylebone Borough Council* (1958) Ch 406; *Baxter v Langley* (1868) 38 LJMC 1 at 5; and *Barralet v Attorney-General* (1980) 1 WLR 1565; (1980) 3 All ER 918.

¹³ *Church of the New Faith v Commissioner of Pay-roll Tax (Vic)* (1983) 154 CLR 120 at 130.

¹⁴ Sir John Latham (1877-1964), Chief Justice from 1935 to 1952, was a lifelong rationalist, skeptic and opponent of organised religion. He was for some years corresponding secretary to the Rationalist Press Association as well as president of the Rationalist Association of Victoria. See Dahlitz (nd:100).

¹⁵ *Australia's Constitution*. Canberra: AGPS, 1995. Although it has been held to be much narrower than its US counterpart, s 116 is nevertheless modelled directly on the First Amendment to the Constitution of the United States of America, which relevantly states: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." See, in particular, the discussion of the "State Aid" case in the body of this chapter.

or convenient to be prescribed for the more effectual prosecution of any war in which the sovereign was, or might be, engaged.

The *National Security (Subversive Associations) Regulations 1940* were made under that regulation-making power. Regulation 3 of those regulations was as follows:

Any body corporate or unincorporate the existence of which the Governor-General, by order published in the Gazette, declares to be in his opinion, prejudicial to the defence of the Commonwealth or the efficient prosecution of the war, is hereby declared to be unlawful.

Regulation 4 of those regulations was as follows:

Any body in respect of which a declaration is made in pursuance of the last preceding regulation shall, by force of that declaration, be dissolved.

On 17 January 1941 the Governor-General declared by an Order in Council that the existence of the organization or organizations known as Jehovah's Witnesses or the Witnesses of Jehovah¹⁶ were prejudicial to the defence of the Commonwealth and the efficient prosecution of the war.

On the same day the Attorney-General of the Commonwealth gave a direction to an officer of the Commonwealth to take possession of and occupy certain premises exclusively occupied by the plaintiff association known as Kingdom Hall in Adelaide and which were used as a meeting place for persons who designated themselves Jehovah's Witnesses.¹⁷ (Services of a religious character were held in the hall, at which discourses were delivered upon the doctrines, beliefs and teachings of Jehovah's Witnesses.) An officer of the Commonwealth entered into possession of those premises in accordance with the authority given.

The plaintiff association had been incorporated under the *Associations Incorporation Act 1929* (SA). Although its rules and regulations made no reference to religion they otherwise provided for management by trustees and for control over belongings and property to be

¹⁶ The sect was founded in the 1870s by Charles Taze Russell. In 1881 Russell formed the legal entity that ultimately became The Watch Tower Bible and Tract Society of Pennsylvania which, in 1884, was incorporated with Russell as its president.

¹⁷ Commonwealth authorities also seized the Society's office, factory and warehouse at Strathfield, NSW on 18 January 1941. Gillman (1988:71) writes: "Since the ban prohibited the literature of the Watch Tower Society, as well as the holding of meetings in halls, or large groups, the Witnesses met regularly in private homes. They continued their trade-mark door-to-door visitations, using the Bible only."

exercised by the Australian representative of the Australian Watchtower Bible and Tract Society of New South Wales.

The plaintiff association contended that the regulations, or some of them, were not authorised by the enabling statute and, alternatively, that if they were so authorised, then the Act itself exceeded the powers of the Commonwealth Parliament under the defence power.¹⁸ The association claimed an injunction to restrain the Commonwealth, its servants and agents, from continuing to trespass upon the company's property as well as damages for trespass. The alleged trespass consisted in acts done by servants of the Commonwealth in pursuance of the regulations.

Ultimately, it was held that s 116 of the Constitution did not prevent the Commonwealth Parliament from enacting laws prohibiting the advocacy of doctrines or principles which, though advocated in pursuance of religious convictions, were prejudicial to the prosecution of a war in which the Commonwealth was engaged.

The Chief Justice, Sir John Latham, in his judgment began by saying:

In the first place, it is important to observe that s 116 is an express prohibition of any law which falls within its terms. The section deals with laws which in some manner relate to religion. The Constitution, however, contains no provision which confers upon the Commonwealth Parliament any power to make laws with respect to the subject of religion. Section 116 therefore cannot be regarded as prescribing the content of laws made with respect to religion upon the basis that the Commonwealth Parliament has some power of legislating with respect to religion. Section 116 is a general prohibition applying to all laws, under whatever power those laws may be made. It is an overriding provision. It does not compete with other provisions of the Constitution so that the Court should seek to reconcile it with other provisions. It prevails over and limits all provisions which give power to make laws.

Accordingly no law can escape the application of s 116 simply because it is a law which can be justified under ss 51 or 52, or under some other legislative power. All the legislative powers of the Commonwealth are subject to the condition which s 116 imposes.¹⁹

His Honour then went on to observe that the Constitution did not purport to differentiate between one religion and another:

Section 116 applies in express terms to "any religion," "any religious observance," the free exercise of "any religion" and any "religious test." Thus the section applies in relation to all religions, and not merely in relation to some one particular religion.²⁰

¹⁸ See *Constitution*, s 51(vi).

¹⁹ (1943) 67 CLR 116 at 122-3.

²⁰ (1943) 67 CLR 116 at 123. All religions, including all Christian denominations, are "sects" and equal in the eyes of the law: see *Thornton v Howe* (1862) 31 Beav 14; 54 ER 1042; *O'Hanlon v Logue* [1906] 1 IR 247; *Re*

What then is meant by the word “religion”? Latham CJ continued:

It 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. There are those who regard religion as consisting principally in a system of beliefs or statement of doctrine. So viewed religion may be either true or false. Others are more inclined to regard religion as prescribing a code of conduct. So viewed a religion may be good or bad. There are others who pay greater attention to religion as involving some prescribed form of ritual or religious observance. Many religious conflicts have been concerned with matters of ritual and observance. Section 116 must be regarded as operating in relation to all these aspects of religion, 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. What is religion to one is superstition to another. Some religions are regarded as morally evil by adherents of other creeds. At all times there are many who agree with the reflective comment of the Roman poet — “Tantum religio potuit suadere malorum.” [“So potent was religion in persuading to evil deeds” (or “How many evils have flowed from religion”): Titus Lucretius Carus, *De Rerum Natura*, I, 101.]

The prohibition in s 116 operates not only to protect the freedom of religion, but also to protect the right of a man to have no religion. No Federal law can impose any religious observance. Defaults in the performance of religious duties are not to be corrected by Federal law—*Deorum injuria Diis curae* [sic]. [*Deorum iniurias dis curae* (“Leave offenses against the gods to the care of the gods”): Tacitus, *Annales*, I, 73.] Section 116 proclaims not only the principle of toleration of all religions, but also the principle of toleration of absence of religion.²¹

So, religion involves any or all of the following “aspects” of religion: a “system of beliefs or statement of doctrine ... a code of conduct ... some prescribed form of ritual or religious observance.” The Chief Justice made it clear that, in determining whether a particular belief system was religious it was necessary to have regard to the current meaning of the word, with an important proviso:

It was suggested in argument that no system of beliefs or code of conduct or form of ritual could be protected under the section unless the general opinion of the present day regarded the belief or conduct or ritual as being really religious. It is true that in determining what is religious and what is not religious the current application of the word “religion” must necessarily be taken into account, but it should not be forgotten that such a provision as s 116 is not required for the protection of the religion of a majority. The religion of the majority

Watson (deceased) [1973] 3 All ER 678; [1973] 1 WLR 1472. “One religion is as true as another”: Robert Burton, *Anatomy of Melancholy: Democritus to the Reader* 4, memb 2, subsec 1. In that regard, the High Court of Australia has favoured using an open approach to statutory interpretation which avoids discriminating against any group or sect whose rites may differ from those of mainstream religious groups: see eg *Canterbury Municipal Council v Moslem Alawy Society Ltd* (1987) 162 CLR 145 at 149. In the *Moslem Alawy* case, in the NSW Court of Appeal, McHugh JA stated [at (1985) 1 NSWLR 525 at 544]: “Although this case is essentially concerned with a question of statutory construction, at back of the proceedings is a question of freedoms to exercise religious beliefs.” (See, generally, Report of the NSW Anti-Discrimination Board, *Discrimination and Religious Conviction* (1984).)

²¹ (1943) 67 CLR 116 at 123.

of the people can look after itself. Section 116 is required to protect the religion (or absence of religion) of minorities, and, in particular, of unpopular minorities.²²

Thus, there was, in the Chief Justice's opinion, absolutely no justification for the court reading down the word "religion" to embrace only religions that were "popular" or that enjoyed "majority" support.²³

The Chief Justice went on to note²⁴ that section 116 of the *Constitution* referred in express terms to the *exercise* of religion, and therefore it was intended to protect from the operation of any Commonwealth laws "acts which [were] done in the exercise of religion". In other words the section also protected acts done in pursuance of religious belief as part of religion.

His Honour then spoke about the scope of religion over time and referred to Buddhism in particular:

The scope of religion has varied very greatly during human history. Probably most Europeans would regard religion as necessarily involving some ideas or doctrines affecting the relation of man to a Supreme Being. But Buddhism, one of the great religions of the world, is considered by many authorities to involve no conception of a God. For example, Professor *Gilbert Murray* says: "We must always remember that one of the chief religions of the world, Buddhism, has risen to great moral and intellectual heights without using the conception of God at all; in his stead it has Dharma, the Eternal Law."—*Five Stages of Greek Religion*, ch 1. On the other hand, almost any matter may become an element in religious belief or religious conduct. The wearing of particular clothes, the eating or the non-eating of meat or other foods, the observance of ceremonies, not only in religious worship, but in the everyday life of the individual—all of these may become part of religion. Once upon a time all the operations of agriculture were controlled by religious precepts. Indeed, it is not an exaggeration to say that each person chooses the content of his own religion. It is not for a court, upon some *a priori* basis, to disqualify certain beliefs as incapable of being religious in character.²⁵

From the above it is at least possible to elicit the following working principles:

²² (1943) 67 CLR 116 at 124. In the US Supreme Court case of *United States v Ballard* 322 US 78, 87 (1944) Douglas J stated: "The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position."

²³ In the US Supreme Court case of *McGowan v Maryland* 366 US 420, 564 (1961) Douglas J stated in dissent: "The First Amendment commands government to have no interest in theology or ritual; it admonishes government to be interested in allowing religious freedom to flourish - whether the result is to produce Catholics, Jews, or Protestants, or to turn the people toward the path of Buddha, or to end in a predominantly Moslem nation, or to produce in the long run atheists or agnostics. On matters of this kind government must be neutral."

²⁴ At (1943) 67 CLR 124.

²⁵ (1943) 67 CLR 116 at 124.

1. The notion of what is a religion is not fixed or inelastic. It is open-ended.²⁶
2. The scope of religion has varied very greatly during human history.
3. Religion ordinarily but not necessarily involves some ideas or doctrines affecting the relation of man to a Supreme Being or some other “higher power”.²⁷ Religion may be theistic or nontheistic.²⁸
4. Almost any matter can become an element in religious belief or religious conduct.²⁹
5. The content of religious belief is not standardised as each person chooses the content of his or her own religion.³⁰
6. It is not for a court, upon some *a priori* basis, to disqualify certain beliefs as incapable of being religious in character.

The Chief Justice then went on to consider what types of beliefs were “religious”:

... [I]n the early history of mankind it was almost impossible to distinguish between government and religion (*Encyclopedia Britannica*, 14th ed, vol 19, p 105). A clear distinction between ruler and priest developed only at a relatively late stage in human development. Those who believe in a theocracy refuse to draw the distinction between government and religion which is implicit in s 116. The beliefs of the Anabaptists were similar to those of Jehovah’s Witnesses, which the Court, as it will be seen, has to consider in the present case. The Anabaptists refused to take oaths, they refused to appear before civil law courts, they

²⁶ According to *Baker’s Dictionary of Theology* (Harrison [1960] 1972:441) “[t]he large number, and often contradictory character, of the definitions to be found in modern discussions of religion suggest that scholars find it impossible to formulate a generally acceptable definition.”

²⁷ See *Davis v Beason* 133 US 333, 342 (1890) per Field J.

²⁸ See *Torcaso v Watkins* 367 US 488, 495, n 11 per Black J. Thus, the *Shorter Oxford English Dictionary*, 3rd ed, vol 2, at p 1697 provides among meanings ascribed to religion the following: “5. Recognition on the part of man of *some higher unseen power* as having control of his destiny, and as being entitled to obedience, reverence, and worship; the general mental and moral attitude resulting from this belief, with reference to its effect upon the individual or the community; personal or general acceptance of this feeling as a standard of spiritual and practical life.” [Emphasis added.] The “higher unseen power” may be God or an impersonal law such as karma.

²⁹ “I take [religion] to be a fixed feeling of fear, resignation, admiration or approval, no matter what may be the object, provided only that this feeling reaches a certain strength, and is qualified by a certain degree of reflection.” F H Bradley, *Appearance and Reality*, p 438n, as cited in *Baker’s Dictionary of Theology* (Harrison [1960] 1972:442).

³⁰ The author of “The Law and the Definition of Religion” (1984) argues for a subjective definition of religion, noting that the subjective aspect of religion receives more emphasis in the international domain. Latham CJ, unlike the majority of the High Court in the later *Church of the New Faith* case, recognized the importance of this.

refused to bear arms or to make any resistance to wrongdoers. The civil governments of the world were regarded by them as pertaining to anti-Christ. Accordingly they would take no public office, and would render only passive obedience to governments. Many of the early Christians held similar beliefs. It cannot be said that beliefs upon such matters founded upon Biblical authority (as understood by those who held them) are not religious in character. Such beliefs are concerned with the relation between man and the God whom he worships, although they are also concerned with the relation between man and the civil government under which he lives. They are political in character, but they are none the less religious on that account.³¹

Thus, beliefs that are based upon a sincerely held understanding of sacred scripture cannot be said not to be religious in character. Further, religious beliefs do not cease to be so merely because they are also concerned with the relation between persons and the civil government under which they live. A belief may have a hybrid character, being both religious and political. Indeed, it is impossible to absolutely separate religious belief and practice either from politics or from ethics:

It is perhaps not out of place to mention at the present time that there are large numbers of people in Japan who believe that the Shinto religion, the Way of the Gods, affords a path to universal peace and prosperity under the guidance of the people of Japan. The worship of the Emperor as divine is represented to the Japanese people as the way of escape to happiness for the whole world.

At all periods of human history there have been religions which have involved practices which have been regarded by large numbers of people as essentially evil and wicked. Many religions involve the idea of sacrifice, and the practice of sacrifice has assumed the form of human sacrifice or animal sacrifice as appears in the Old Testament, and in many other sacred writings and traditions. So also religions have differed in their treatment of polygamy. Polygamy was not reprov'd in the Old Testament; it has been part of the Mormon religion; it is still an element in the religion of millions of Mohammedans, Hindus, and other races in Asia. The criminal religions in India are well known. The Thugs of India regarded it as a religious duty to rob and to kill. The practice of suttee, involving the immolation of the widow upon the funeral pyre of her husband, was for centuries a part of the Hindu religion.

These examples are sufficient to show that religious belief and practice cannot be absolutely separated either from politics or from ethics. An inconsistency between religious and political duty has often appeared in history. The early Christians refused to take part in the worship of the Emperor as divine, just as Christian converts in Korea refuse to take part in Shinto ceremonial. In each case the State view is that the ceremony which has been made obligatory is merely political in character—a form of "saluting the flag"—but the other view of the question is that it is something which requires a true believer to abjure part of his cherished faith.

Section 116, however, is based upon the principle that religion should, for political purposes, be regarded as irrelevant. It assumes that citizens of all religions can be good citizens, and

³¹ (1943) 67 CLR 116 at 125.

that accordingly there is no justification in the interests of the community for prohibiting the free exercise of any religion.³²

Is it possible for *any* beliefs to be religious, if they are so described by a person? The Chief Justice put the question this way:

The examples which have been given illustrate the difficulty of the problem with which a court is confronted when it is asked to determine whether or not a particular law infringes the constitutional provision by prohibiting "the free exercise of ... religion." Can any person, by describing (and honestly describing) his beliefs and practices as religious exempt himself from obedience to the law? Does s 116 protect any religious belief or any religious practice, irrespective of the political or social effect of that belief or practice?³³

His Honour did not directly answer the question but gave an extended amplification of the difficult issues involved:

It has already been shown that beliefs entertained by a religious body as religious beliefs may be inconsistent with the maintenance of civil government. The complete protection of all religious beliefs might result in the disappearance of organized society, because some religious beliefs, as already indicated, regard the existence of organized society as essentially evil.

Section 116 does not merely protect the exercise of religion, it protects the free exercise of religion. The word "free" is vague and ambiguous, as is shown by the many decisions in this Court and in the Privy Council upon the meaning of the word "free" in another place when it appears in the Constitution—in s 92, which provides for free trade, commerce and intercourse between the States. When a slogan is incorporated in a constitution, and the interpretation of the slogan is entrusted to a court, difficulties will inevitably arise.

The word "free" is used in many senses, and the meaning of the word varies almost indefinitely with the context. A man is said to be free when he is not a slave, but he is also said to be free when he is not imprisoned, and is not subject to any other form of physical restraint. In another sense a man is only truly free when he has freedom of thought and expression, as well as of physical movement. But in all these cases an obligation to obey the laws which apply generally to the community is not regarded as inconsistent with freedom.³⁴

³² (1943) 67 CLR 116 at 125-6. *Shinto*, or Shintoism, which is much older than Buddhism, is the natural indigenous religion of Japan. Polytheistic in nature, the religion embraces a number of traditional religious practices that originated in Japan and which developed over many years from time untold, even though there is no fully organized, well articulated body of doctrine as such. See Shintoism became the national religion of Japan in the 19th century but ceased to be the official state religion after the end of World War II, and in a January 1 1946 radio broadcast to the Japanese people the then Japanese Emperor Hirohito repudiated his divine right to rule. Clark B Offner, in N Anderson (1976:190). Potter (1955:70) writes: "What is left of original Shinto is hardly a religion at all, but rather a collection of ancient festivals, pilgrimages to old shrines, and the faithful but rather mechanical observance of time-worn customs and rituals". Indeed, the religion's influence on the thought of the Japanese of today does not appear to be great and seems to be confined to a number of disparate superstitions.

³³ (1943) 67 CLR 116 at 126.

³⁴ (1943) 67 CLR 116 at 126-7. The Chief Justice expressly acknowledged that s 116 of the Constitution contains both a "free exercise" component as well as an "establishment of religion" component similar to the First Amendment of the US Constitution.

Ultimately, the Chief Justice proceeded to hold that regulations 3 and 4 (but not regulation 6A, which purported to authorise the occupation of the subject premises) of the *National Security (Subversive Associations) Regulations 1940* were authorised by the defence power of the Commonwealth. (See *Constitution*, s 51 (vi).) For the same reasons it was, in the opinion of the Chief Justice, not beyond the powers conferred by section 5 of the *National Security Act 1939* (Cth). The other members of the Court (Rich, Starke, McTiernan and Williams JJ) also dismissed the argument based on s 116 of the Constitution, but held aspects of the regulations invalid on other grounds.³⁵

McTiernan J had only this to say about the meaning of the word “religion”:

The word religion extends to faith and worship, to the teaching and propagation of religion, and to the practices and observances of religion.³⁶

With respect, his Honour’s definition is quite circular and, in his use of the word “extends”, he fails to make it clear whether religion requires both “beliefs” *and* “practices”.³⁷

Williams J gave a little consideration to the intended meaning of the word “religion” in s 116 of the Constitution:

The determination of the meaning of an ordinary English phrase or word in a statute is a question of fact, the problem being to ascertain what the phrase or word meant in its ordinary popular acceptance at the date the statute was passed. At the date of the Constitution it would not have been considered in a popular sense to have been an interference with the free exercise of religion for the legislation of the States to have included laws (as in fact it did) making polygamy or murder a crime, although it was still a tenet of some religious beliefs to practice polygamy or human sacrifice. Such laws would be classified as ordinary secular laws relating to the worldly organization of the community, even if their indirect effect might be to prevent some religious sects indulging in practices which in the ordinary popular acceptance would be regarded as crimes and as having no connection with any observance which an enlightened British community would consider to be an exercise of religion. The right to the free exercise of religion conferred by the Constitution postulates a continuous right to such freedom in a Commonwealth which will survive the ordeal of war. When, therefore, the safety of the nation is in jeopardy, so that the right to such free exercise can only survive if the enemy is defeated, laws which become necessary to preserve its existence would not be laws for prohibiting the free exercise of religion.

³⁵ Rich J stated that “freedom of religion may not be invoked to cloak and dissemble subversive opinions or practices and operations dangerous to the common weal.” 67 CLR 116, 149-50.

³⁶ (1943) 67 CLR 116 at 156. His Honour’s definition refers to most of the elements or indicia referred to in the definition offered by *Webster’s Collegiate Dictionary*: “1. The service and adoration of God or a god as expressed in forms of worship. 2. One of the systems of faith and worship. 3. The profession or practice of religious beliefs; religious observances, collectively. 4. Devotion or fidelity; conscientiousness. 5. An awareness or conviction of the existence of a supreme being, arousing reverence, love, gratitude, the will to obey and serve, and the like.”

³⁷ For example, Yinger’s definition of a religion requires both a system of beliefs and practices.

...

So bodies corporate and unincorporate and individuals may profess ideas or carry on activities which in times of peace may be harmless, but which in time of war may interfere with the successful defence of the Commonwealth.³⁸

What is interesting about the judgment of Williams J, apart from his opinion that the subject regulations purported to confer judicial power contrary to s 71 of the Constitution (cf Latham CJ, Starke and McTiernan JJ), is his view that the determination of the meaning of word religion for the purposes of s 116 of the Constitution is a question of fact having regard to its ordinary popular acceptance *at the date the statute was passed*.³⁹ Such an approach, if adopted, could lead to nontraditional or new belief systems being rejected as religions on the ground that they would not have been seen to be such in 1900 when the popular acceptance of religion, at least in most of the western world, tended to favour traditional theistic religions.

The Bible Society case

The British and Foreign Bible Society was founded in 1804, in order to publish, distribute and translate the Bible. The central issue before the court in *Arrowsmith v North Sydney Municipal Council*⁴⁰ was whether the body was a religious body.

The court, after noting that the main object of the body was to circulate the Bible, held that it was not a religious body, primarily because it advanced no particular teaching or training of a religious kind, professed no particular creed or tenets of belief, did not have any clergy, and possessed no places of worship.⁴¹ According to the learned magistrate Pocock SM:

I am of the opinion that in order to maintain exemption from rating ... a "religious body" must be a body of persons professing a particular creed, worshipping in a church or other building in accordance with that teaching and creed and maintaining a residence for a minister specifically charged with the advancing of that teaching and creed.⁴²

³⁸ (1943) 67 CLR 116 at 159-61.

³⁹ In *Reynolds v United States* 98 US 145 (1879) Waite CJ adopted a similar approach, saying: "The word "religion" is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the times in the midst of which the provision was adopted. The precise point of the inquiry is, what is the religious freedom which has been guaranteed...." 98 US 145, 162 (1879).

⁴⁰ (1955) 20 LGR 267.

⁴¹ At (1955) 20 LGR 271.

⁴² (1955) 20 LGR 267 at 271

The decision, albeit only that of a magistrate, and also one pertaining to a particular statutory provision⁴³ conferring an exemption from rating in the event that certain specified preconditions were all satisfied, is still nevertheless of some relevance, and it has been widely referred to. The court's insistence on the need for a religion to advance a particular creed or tenets and for there to be worship of some kind is altogether understandable and entirely consistent with traditional notions of religion as expounded by the High Court in the *Jehovah's Witnesses* case.

The Theosophists

Theosophy ("Divine Wisdom", from the Gk *theos* god, and *sophia* wisdom), whose maxim is "There is no religion higher than Truth", is a body of ideas and beliefs promulgated by the Theosophical Society, founded by H P Blavatsky and others in New York City in 1875. However, as Potter (1955:269) points out:

Ancient in origin, Theosophy stems not only from the Neo-platonists like Plotinus (who held that the physical universe, nature, and man were all emanations from God, to whom man might be reunited by ecstatic trance) but derives also from the still other Hindu and Buddhistic search for the divine knowledge which they called *Brahma-vidya*, the exact Sanskrit equivalent of Theosophy.

Early mystics like the Chinese Taoists, the Christian Gnostics, and the Jewish Cabalists were often theosophical; so was the Renaissance genius Paracelsus and, a century later, the German cobbler mystic Jakob Boehme, who got much from Paracelsus and gave much to George Fox and the early English Quakers.

The ideas and beliefs of Theosophy are said by Theosophists to form the basis or "secret doctrine" of all the major religions and mythologies. However, as Potter (1955:269) points out, Theosophy "implies secret wisdom or vital information obtained only by student initiates after a lengthy process of indoctrination". The use of the word "indoctrination" is perhaps unfortunate, for even Potter himself concedes that Theosophists "combine with intuition a great deal of philosophical speculation and reasoning".

Many prominent individuals have been members of the Theosophical Society, including Australia's 2nd prime minister Alfred Deakin, the Indian parliamentarian Rukmini Devi Arundale, the scientist and inventor Thomas A Edison, the artist Paul Gauguin, the

⁴³ *Local Government Act 1919* (NSW), s 132(1)(h).

composer Alexander Scriabin, the writer L Frank Baum (*The Wizard of Oz*), the artist and architect Claude Bragdon, the poet W B Yeats, and the American philosopher and psychologist William James, who, notes Lysy (2000:Online), joined the society in 1882. Although not an actual member, Mahatma Gandhi, who purportedly said, “God has no religion,” had a long association with the Theosophical Society beginning in his youth. Walter Burley Griffin, a member of the not dissimilar Anthroposophical Society, was also greatly influenced by Theosophy and some of his writings were published in theosophical journals in Australia.

The three principal objects of the non-sectarian and non-political Theosophical Society (which imposes no belief on its members), as listed on the official website of The Theosophical Society in Australia, are as follows:

- To form a nucleus of the Universal Brotherhood of Humanity without distinction of race, creed, sex, caste, or color;
- To encourage the study of Comparative Religion, Philosophy and Science;
- To investigate the unexplained laws of nature and the powers latent in humanity.⁴⁴

Thus, the core values espoused by the Theosophical Society, which affirms the essential oneness, indivisibility and universality of all life, are brotherhood, freedom of thought and tolerance.

Roe (1980 & 1986) has written about the rise of Theosophy in Australia. The movement in Australia had quite an impact, particularly in the 1920s and 30s. Indeed, Sydney became a major Theosophical centre in the 1920s, with much of the attention focused on the building by the Order of the Star in the East of a large amphitheatre at Balmoral Beach in 1923-24 in preparation for the expected coming of the “World Teacher” (the Lord Maitreya), who, it was believed by certain Theosophists, would “overshadow” and speak through the vehicle of Jiddu Krishnamurti (1895-1986): see, especially, Roe (1980:89-104), Vernon ([2000] 2002) and Ellis-Jones (2006c). However, as Roe (1986:353-4) has written, despite all of this “apocalyptic zeal” (Roe 1980:102), things started to fall apart badly, depending upon one’s point of view (see, in that regard, Schüller 1997), when on 2 August 1929 Krishnamurti publicly repudiated the role that had been imposed upon him by others.

⁴⁴ “The Three Objects of the Theosophical Society”, viewed March 15 2006, <<http://www.austheos.org.au/>>.

Theosophy and the Theosophical Society have been acknowledged in Australian courts to be a religion and a religious society respectively, even though Theosophy does not ordinarily claim to be a religion in itself. In that regard, Blavatsky (1950 10:163) writes:

... Theosophy is not a Religion, we say, but RELIGION itself, the one bond of unity, which is so-universal and all-embracing that no man, as no speck – from gods and mortal down to animals, the blade of grass and atom – can be outside of its light.

However, some prominent Theosophists have seen it a little differently. For example, Tingley (1978: 71) writes:

Theosophy was once the universal religion of mankind, and it is destined to be the universal religion of the future.

One thing is clear. Even a cursory reading of Theosophical literature reveals that Theosophy, with its “Great White Brotherhood” of superhuman Mahatmas, Ascended Masters, Adepts and Holy Ones, does postulate a belief in the existence of higher and lower levels of reality, that is, a belief in the supernatural, and does contain a fairly organized and systematic formulation of ideas and beliefs concerning the divinity of humanity and its ultimate destiny, which are generally characteristic of most of the traditional religions. Certainly, the categories of religion are not closed and include revivals of earlier cults.⁴⁵ Also, as Potter (1955:269) has written, “Later Theosophists are also inclined to regard the writings of earlier ones as in the nature of revealed Truth”, which is something that is ordinarily especially characteristic of religion.

In *Theosophical Foundation Pty Ltd v Commissioner of Land Tax (NSW)*,⁴⁶ a decision of the NSW Court of Appeal, the foundation (all shares in which were held by 2 companies limited by guarantee, being Australian Section Theosophical Trust Ltd and The Blavatsky Lodge of the Theosophical Society) was not accepted as a religious society⁴⁷ even though the foundation held property on trust for 2 affiliated bodies the common purpose of which was the advancement of a religious cause (Theosophy), with at least one of those affiliated

⁴⁵ See *Church of the New Faith v Commissioner of Pay-roll Tax (Vic)* (1983) 154 CLR 120 per Murphy J at 151.

⁴⁶ (1966) 67 SR (NSW) 70.

⁴⁷ At first instance the trial judge (Wallace J) had concluded that the foundation was a religious society after “looking through” the associated bodies of which the foundation was a member, being the Theosophical Society, Australian Section, and a Theosophical lodge, both of which existed for the purpose of promoting Theosophical ideas and beliefs. See *Theosophical Foundation Pty Ltd v Commissioner of Land Tax (NSW)* (1965) 82 WN (Pt 1) (NSW) 545 at 553.

bodies (viz the Theosophical Society, Australian Section) being admitted for the purposes of the proceedings to be a religious society. Although Sugerman JA felt compelled to observe that “[e]ven though a corporation which holds land on trust for a religious society does not, by force of that circumstance, itself become a ‘religious society’”,⁴⁸ the court appeared to be in no doubt that the various ideas, beliefs, practices and activities of Theosophy constituted a religion.

Unfortunately, there was no discussion in the case on the meaning of the word “religion”, it being accepted for the purposes of the proceedings that Theosophy was a religion. Sugerman JA did, however, make special mention of the purpose of the Theosophical Society, Australian Section, which, as stated in clause 4 of the body’s rules, is “the pursuit and dissemination of the Divine or Spiritual Wisdom known as Theosophy and synonymously called by some the Wisdom-Religion”.⁴⁹ Nevertheless, if Theosophy is a religion, it is a most syncretistic one, but not so diffuse as to be incapable of being seen to be a religion as is arguably the case with the New Age movement.⁵⁰

In *Manor Foundation Ltd v Commissioner of Land Tax (NSW)*,⁵¹ a decision of the NSW Supreme Court, the plaintiff body was the legal owner of certain land in Mosman upon which was erected a property known as “The Manor” which was used as a spiritual centre and spiritual and educational community based on theosophical ideals by the Esoteric School [or Section] of Theosophy. That body was a distinct entity from the Theosophical Society and its Australian Section: see *Manor Foundation* (1951).

Yeldham J referred to and quoted from an affidavit that had been sworn on behalf of the plaintiff body and which described the activities of “the Manor” in a given year which was said to be a representative one:

Members of the Manor were and are required to respect the Manor as a Spiritual Centre and to dedicate themselves to the ideals of the School. Those who were engaged in occupations outside the Manor or the Society itself were and are required to protect the Spiritual Centre from exterior influences and disturbances, although it was and is regarded as important that members of the Community at the Manor should be in touch with the “outside world” and be able to spread the knowledge gained by them as members of the Society. In addition to the

⁴⁸ At (1966) 67 SR (NSW) 70 at 84.

⁴⁹ At (1966) 67 SR (NSW) 70 at 79.

⁵⁰ In *Alvarado v City of San Jose* 94 F3d 1223 (9th Cir 1994) the US 9th Circuit Court of Appeals concluded that the New Age movement was too diffuse, unorganized and inchoate to be a religion in itself.

⁵¹ (1983) 83 ATC 4727, (1983) 14 ATR 676.

general admonition to the Community of residents at the Manor to devote their lives to the ideals of the School and of the Society, there was also a number of specific spiritual and educational disciplines to which they were expected to subject themselves. These involved attendance at a service of the Holy Eucharist which was a religious ceremony of the Liberal Catholic Church, somewhat similar to a communion service in the Anglican Church. This was held in the Manor chapel each morning. There was also held each morning in the Temple a short service of the Egyptian rite, which is the Theosophical ceremony of invocation and dedication A solemn benediction service, also a service of the Liberal Catholic Church, took place every Monday night in the Chapel. Also on Monday nights a further Egyptian rite service was held in the Temple.⁵²

In the opinion of Yeldham J, the plaintiff body was a religious society in the charitable sense which held the land in trust for what was also a religious society (the Esoteric Section). In that regard, his Honour did not accept the assertion made on behalf of the respondent that the beliefs of the members of the Esoteric School were so vague and uncertain that they practised what was essentially an “individualistic religion” meaning that they could not properly be described as a religious society.⁵³ In his Honour’s view, the people associated with the subject land had a “common faith” as members of the Esoteric Section.

The 2 abovementioned cases are highly significant on account of the broad tolerant approach shown by the courts to unconventional belief systems and practices. However, it would be a few more years before there was a clear judicial pronouncement on the meaning of religion for legal purposes.

The State Aid case

In *Attorney-General (Vic) ex rel Black v Commonwealth* (the “State Aid case”)⁵⁴ the High Court of Australia was called upon to decide the constitutionality of several impugned

⁵² *Manor Foundation Ltd v Commissioner of Land Tax (NSW)* [Online version] viewed March 15 2006, <<http://law.ato.gov.au/atolaw/view.htm?rank=find&criteria=AND~%22liberal%20catholic%22~basic~exact&targ et=CE&style=java&sdocid=JUD/14ATR676/00001&recStart=1&recnum=1&tot=1&pn=ALL:::ALL>>. The Liberal Catholic Church (the first services of which were held in Melbourne in 1916 and whose orders are derived from the Old Catholic Church of Holland) is a religious denomination which allows its members freedom of interpretation and expression. It has a neo-Platonic Gnostic theology the doctrines of which have a strong connection with the basic ideas, teachings and principles of Theosophy and which was formed by Theosophists. Although the Liberal Catholic Church and the Theosophical Society are organizationally quite separate and distinct, dual membership is fairly uncommon. The Manor in Mosman NSW was for many years the Sydney residence of leading Theosophist Charles W Leadbeater (1847-1934) who was Presiding Bishop of the Liberal Catholic Church from 1923-34. According to Lutyens (1959:154) the Manor was, at least in its heyday (viz the 1920s and early 1930s), designated “The Occult Centre for the Southern Hemisphere”. See, generally, Tillet (1982) and Parry & Rivett (1973).

⁵³ cf *Alvarado v City of San Jose* 94 F3d 1223 (9th Cir 1994).

⁵⁴ (1981) 146 CLR 559.

federal statutes including statutes appropriating consolidated revenue to fund the implementation of other statutes granting money to the States of the Commonwealth as well as the granting statutes themselves. The statutes provided grants to the States on condition that the money so granted was paid by the States to non-government schools to finance their educational programmes. Ultimately, the High Court upheld the validity of the impugned statutes.

In the course of his judgment Barwick CJ had this to say about the meaning of the word "religion" as used in s 116⁵⁵ of the Constitution of the Commonwealth:

The inhibition of s 116 is directed to the making of any laws for establishing any religion. Although, in my opinion, not critical in the instant case, the word "religion" in s 116 is not really satisfied by a sect or department of the one religion. Hence, the Christian faith, though practised according to particular doctrines by different churches, is in truth one religion. Islam provides another, and so on. I gravely doubt whether it is correct to regard the different Christian churches as separate and distinct religions for the purposes of s 116.

It may well be possible to conclude from this circumstance that the section is not in any wise directed against discrimination of one church in relation to others. But I find no need in this case to seek support for my own opinion by any such construction of s 116. Maybe what I am about to say further explains why I do not here pursue the possibility.

The establishment of any one of the Christian churches would, in my opinion, amount relevantly to the establishment of the Christian religion and a law to establish that church would be a law for establishing a religion. Thus, in practical terms, there is really no need finally to decide in this case whether the expression "any religion" in s 116 is equivalent to any church or section of a religion. Whatever the conclusion in this connexion, the Commonwealth may not make any law for establishing one of the Christian churches because that, in my opinion, would be to establish the Christian religion within the meaning and operation of s 116.⁵⁶

Although his Honour did not find it strictly necessary to decide the matter, he did appear to be of the opinion that, at least for the purposes of the use of the word "religion" in s 116 of

⁵⁵ Section 116 of the Constitution provides as follows: "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."

⁵⁶ (1981) 146 CLR 559 at 580. In a similar vein Wilson J noted: "Some argument has proceeded between the parties concerning the word "religion", but I do not find it to be a significant issue in the present case. Whilst I confess to some difficulty in thinking of the different denominations of the Christian faith as separate religions, as distinct from different forms of the one religion, it does not seem to me to do any violence to the wording of the first clause of s 116 to read it as forbidding any law for establishing any religion or any form of any religion. (1981) 146 CLR 599 at 655.

the Constitution, there is probably some sort of a distinction between “religion” on the one hand and a particular “sect or department” of a religion on the other.⁵⁷

Gibbs J provided little assistance as to the meaning of the word “religion” itself, focusing instead on the use of the word “establish” in the context of religion as used in the collective expression “establishing any religion” in s 116 of the Constitution:

The natural meaning of the phrase "establish any religion" is, as it was in 1900, to constitute a particular religion or religious body as a state religion or state church. If that sense is applied to the word in s 116, there is no inconsistency with, or repugnancy to, the other provisions of the section. On ordinary principles of construction it is the meaning that ought to be given to the words of the section unless sufficient reason is shown for adopting another meaning.⁵⁸

Stephen J did discuss to some extent what might be subsumed within the term “religion”:

The plaintiffs' argument begins by giving to "religion" a meaning which extends beyond a particular religious philosophy so as also to include the religious community which supports that faith and also its organization and practices. So much may readily enough be accepted: to speak of a religion being established by the laws of a country may well be to include much more than the act of according material recognition and status to a set of beliefs, a system of moral philosophy or particular doctrines of faith; it would certainly include the recognition of a particular religion or sect, with its priestly hierarchy and tenets, as that of the nation.⁵⁹

His Honour appears to acknowledge that religion involves or may involve any one of more of the following: a particular religious philosophy or faith, a set of beliefs, a system of moral philosophy or particular doctrines of faith, the religious community which supports that

⁵⁷ In the US Supreme Court case of *Davis v Beason* 133 US 333 (1890) Justice Stephen Field made more-or-less the same point, distinguishing between “religion” on the one hand and “the *cultus* or form of worship of a particular sect” on the other. See 133 US 333, 342. In *Black* at least two judges (relevantly, Gibbs J at 146 CLR 594-5 and Stephen J at 146 CLR 606) expressly, and others implicitly, gave the words “establishing any religion” their plain and natural meaning, resorting for assistance and guidance to authoritative dictionaries: cf *R v Peters* (1886) 16 QBD 636 at 641 per Coleridge LCJ; *The Australian Temperance & General Mutual Life Assurance Society Ltd v Howe* (1922) 31 CLR 290 at 294-5 per Knox CJ and Gavan Duffy J. See also *Black* (1981) 146 CLR 559 at 581-2 per Barwick CJ.

⁵⁸ (1981) 146 CLR 559 at 598. His Honour noted that the Establishment Clause of the First Amendment to the Constitution of the United States of America speaks of a law “respecting an establishment of religion” whereas s 116 of the Australian Constitution more narrowly referred to “any law for establishing any religion”. See 146 CLR 559 at 599. Stephen, Mason and Wilson JJ made more-or-less the same point: see 146 CLR 559 at 609, 616 and 653 respectively. Be that as it may, Harold Berman (1986:785) has contentiously written that the *true* purpose of the US Establishment Clause was the same - to prevent the establishment of a national religion: “[I]t must be concluded that the establishment clause of the first amendment, drafted not by the Deist Jefferson, but by the Protestant Christian James Madison, was not intended to prevent any government aid to religion but was intended rather to prevent the establishment of a national religion.” Not surprisingly, Murphy J saw things quite differently, particularly as regards the Australian Constitution: “To read s. 116 as prohibiting only laws for establishing one religion or church, but permitting laws for establishing a number of religions or churches is inconsistent with the comprehensive terms of the prohibition. There is no warrant for reading ‘any religion’ as ‘any one religion’; yet this is necessary if ‘establishing’ refers only to the recognition or setting up of one national church or religion. Such a reading trivializes the section. ...” (1981) 146 CLR 624.

⁵⁹ (1981) 146 CLR 559 at 606.

faith, and its organization and practices. A religion, in its organizational sense, may also have a priestly hierarchy.

We had to wait another 2 years for the High Court to come up with something more definitive on the meaning of the word "religion".

The Scientology case

In *Church of the New Faith v Commissioner of Pay-roll Tax (Vic)*⁶⁰ the High Court was called upon to determine whether an organization, originally incorporated under the *Associations Incorporation Act 1956* (SA) on 31 January 1969 as "The Church of the New Faith Incorporated", and registered in Victoria under the *Companies Act 1961* (Vic) as a foreign company,⁶¹ was exempt from pay-roll tax under the *Payroll Tax Act 1971* (Vic) as a religious institution.

The organization had objected to the pay-roll assessment upon the ground that the wages were exempt under s 10(b) of the *Payroll Tax Act 1971* (Vic) as wages paid or payable by a religious institution but the objection had been disallowed. At the organization's request the commissioner treated the objection as an appeal and referred it to the Supreme Court of Victoria.⁶²

⁶⁰ (1983) 154 CLR 120.

⁶¹ Subsequently, a change in name to "The Church of Scientology Incorporated" was registered in South Australia. Though no change of name was registered in Victoria, the corporation used and was apparently known by its new name in that State. The applicant Church was an evolution of "Scientology" based on the teachings of Lafayette Ronald Hubbard who stated that he drew inspiration from the Indian Vedas, Buddhism and the Tao-Te-Ching of Lao Tzu: *Phoenix Lectures* (1968), pp 1-35. Hubbard began publishing books on Scientology in the early 1950s in the United States of America. His first two Scientology books were *Dianetics: The Modern Science of Mental Health* which was published in 1950 and *Science of Survival* which was published in 1951. He wrote many subsequent books. The first Scientology Church was the Church of Scientology of California which was founded on 18 February 1954. The organization was known in Australia in the early 1960s as the Hubbard Association of Scientologists International. In September 1965 a Victorian Government Board of Inquiry concluded: "Scientology is evil; its techniques evil; its practice a serious threat to the community, medically, morally and socially; and its adherents sadly deluded and often mentally ill. . . In a community which is nominally Christian, Hubbard's disparagement of religion is blasphemous and a further evil feature of scientology": *Report of the Board of Inquiry into Scientology* (1965), pp 1, 152. This report led to the enactment of the *Psychological Practices Act 1965* (Vic) which made the teaching of Scientology an offence in Victoria: s. 31(1). (Scientology was also outlawed in South Australia and Western Australia.) However, the *Psychological Practices Act 1965* (Vic) did not apply to "anything done by any person who is a priest or minister of a recognized religion in accordance with the usual practice of that religion": s. 2(3). These provisions were repealed on 29 June 1982: see *Psychological Practices (Scientology) Act 1982* (Vic). The Church was first recognized as a religious denomination under s 26 of the *Marriage Act 1961* (Cth) on 15 February 1973 (see Commonwealth of Australia Gazette No 20). See 154 CLR at 152-154 per Murphy J and 154 CLR at 165 per Wilson and Deane JJ.

⁶² The corporation objected to the assessment upon the ground that the wages were exempt under the provisions of s 10(b) of the *Payroll Tax Act 1971* (Vic). At the relevant time (the section was amended in 1979), s 10(b) provided that the wages liable to pay-roll tax under that Act did not include wages paid or payable by "a religious or public benevolent institution, or a public hospital".

Crockett J and, on appeal, the Full Court (Young CJ, Kaye and Brooking JJ)⁶³ held that the corporation was not a "religious institution" for the purposes of the *Payroll Tax Act 1971* (Vic) and upheld the assessment: see *Church of the New Faith v Commissioner for Payroll Tax* (1983) 1 VR 97. The organization then applied for special leave to appeal to the High Court from the decision of the Full Court.

The application came before Gibbs CJ, Wilson and Brennan JJ on 30 July 1982 when it was ordered that it should be referred to the Full Court with leave to argue as on appeal. When the adjourned application came before the Court counsel were invited to argue the application fully, so as to canvass the issues of the appeal which would arise if special leave were granted. Ultimately, the High Court overturned the decision of the Victorian Full Court.

At the start of their joint judgment, Mason ACJ and Brennan J made the important point that it does not necessarily follow that an organization is a religious institution merely because it was founded and is maintained or staffed by persons of a particular religious outlook or belief system:

The case has been fought throughout as though the answer to the question, "Is Scientology a religion?", furnishes the answer to the question whether the corporation was, during the relevant period, a religious institution. That basis has been adhered to in the argument before this Court, and it ought not to be departed from in determining this application. That is not to say that the basis adopted by the parties raised the relevant question for decision. It does not follow that the common religion of a group stamps a religious character on an institution founded, maintained or staffed by members of that group or that the purpose or activity of such an institution is religious. The basis adopted by the parties in fighting this case has concealed the factors which are relevant to the character of the corporation, namely, the purpose for which the corporation was formed and is maintained and the activities of the

⁶³ [1983] 1 VR 97. Crockett J had held that "religion is essentially a dynamic relation between man and a non-human or superhuman being": (1983) 1 VR, at p 111. He found that the doctrines of Scientology were not sufficiently concerned with such "a divine superhuman, all powerful and controlling entity": (1983) 1 VR, at p 110. Young CJ found that Scientology could also not be considered a religion because its doctrines contained "no complete or absolute moral code": (1983) 1 VR, at p 125. He also held that "the ideas with which scientology deals are more concerned with psychology than with ultimate truth . . . man's place in the universe, or with fundamental problems of human existence": (1983) 1 VR, at p 125. Further, Young CJ stated: "I do not think that there has been in Victoria such public acceptance of scientology as a religion as requires the Court to treat it as such": (1983) 1 VR, at p 126. Kaye J, who stated that the word "religion" was a term – but "not a technical term" – for which there was no universally accepted definition, found absent an "acknowledgment of a particular deity by all members of the Church ... members of the Church might hold beliefs in, and have a personal relationship with, a different supernatural being": (1983) 1 VR, at pp 133, 134. Brooking J held against the applicant on the basis that it was illegal by reason of the *Psychological Practices Act 1965* (Vic). In the Supreme Court of Victoria and on appeal to the High Court the respondent declined to rely upon that reasoning. See 154 CLR at 154, 156 and 159 per Murphy J.

corporation. The question whether those factors are religious in nature has not been judicially considered.⁶⁴

Mason ACJ and Brennan J then proceeded to address their minds to what they saw as the *real* question:

The question whether Scientology is a religion cannot be answered, for there seem to be important, perhaps critically important, tenets of Scientology which the parties left without full examination. The question which can be answered is whether the beliefs, practices and observances which were established by the affidavits and oral evidence as the set of beliefs, practices and observances accepted by Scientologists are properly to be described as a religion.⁶⁵

In the opinion of their Honours, special leave should be granted in order to consider that question:

Two circumstances combine to give an affirmative answer: the legal importance of the concept of religion and the paucity of Australian authority. Freedom of religion, the paradigm freedom of conscience, is of the essence of a free society. The chief function in the law of a definition of religion is to mark out an area within which a person subject to the law is free to believe and to act in accordance with his belief without legal restraint. Such a definition affects the scope and operation of s 116 of the Constitution and identifies the subject matters which other laws are presumed not to intend to affect. Religion is thus a concept of fundamental importance to the law. Moreover, although this case does not arise under s 116 of the Constitution or under any part of its fourfold guarantee of religious freedom, it is inevitable that the judgments in the Supreme Court, so long as they stand without consideration by this Court, will influence the construction placed upon s 116 of the Constitution by other Australian courts.⁶⁶

Their Honours noted that since the previous decision of the High Court of Australia in *Adelaide Company of Jehovah's Witnesses Incorporated v The Commonwealth*⁶⁷ the concept has been considered by the courts of the United States and England:

The opinions of those courts are helpful, but it is time for this Court to grapple with the concept and to consider whether the notions adopted in other places are valid in Australian law. The disadvantage in leaving the concept without examination by this Court was manifested by the course of the argument before us. Counsel for the corporation contended for a wide definition of religion in accordance with the indicia of a religion set out by Adams J in *Malnak v Yogi* 592 F (2d) 197 (1979), though it is clear that the formulation of those indicia owed much to the tests adopted by the Supreme Court of the United States in construing particular Acts of the Congress. On the other hand, counsel for the Commissioner contended for a narrow definition which accorded with the test of a religion propounded by Dillon J in *In re South Place Ethical Society; Barralet v Attorney General* (1980) 1 WLR 1565, at p 1572; (1980) 3 All ER 918, at p 924 a test which confines the concept to theistic religions. It is

⁶⁴ (1983) 154 CLR 120 at 129.

⁶⁵ (1983) 154 CLR 120 at 130.

⁶⁶ (1983) 154 CLR 120 at 130.

⁶⁷ *Adelaide Company of Jehovah's Witnesses Incorporated v The Commonwealth* (1943) 67 CLR 116.

undesirable that the clarification of a concept important to the law of Australia should be left to the courts of other countries when there is an appropriate opportunity for the concept to be clarified by this Court. Of course, when Australian courts are engaged in clarifying concepts important to Australian law, they may be aided by appropriate citation from the judgments of courts outside the Australian hierarchy if there is no binding or sufficiently persuasive Australian authority. The differing approaches of the judgments in the Full Court in this case, however, manifest the need for an authoritative Australian exposition of the concept of religion. It is desirable to grant special leave in order to expound, so far as the circumstances of the case require, a concept of religion appropriate to discriminate in law between what is a religion and what is not.⁶⁸

Their Honours, after noting what Latham CJ had said about the difficulty, if not impossibility, of devising a definition which was universally satisfying, pointed to what they saw as a more fundamental difficulty affecting the adoption of a definition for legal purposes:

A definition cannot be adopted merely because it would satisfy the majority of the community or because it corresponds with a concept currently accepted by that majority. ... The freedom of religion being equally conferred on all, the variety of religious beliefs which are within the area of legal immunity is not restricted.⁶⁹

Although the case before the court concerned an exemption of a religious institution from a fiscal burden imposed upon other institutions that did not, in the opinion of their Honours, justify the acceptance of a “narrow definition of religion”:

There can be no acceptable discrimination between institutions which take their character from religions which the majority of the community recognizes as religions and institutions that take their character from religions which lack that general recognition. The statutory syncretism which a Parliament adopts in enacting a provision favouring religious institutions is not to be eroded by confining unduly the denotation of the term religion and its derivatives.⁷⁰

However, Mason CJ and Brennan J were quick to opine that such an approach must not be taken too far:

These considerations, tending against the adoption of a narrow definition, may suggest the rejection of any definition which would exclude from the category of religion the beliefs, practices and observances of any group who assert their beliefs, practices and observances to be religious. But such an assertion cannot be adopted as a legal criterion. The mantle of immunity would soon be in tatters if it were wrapped around beliefs, practices and

⁶⁸ (1983) 154 CLR 120 at 131. In the US Third Circuit Court of Appeals Judge Adams in *Malnak v Yogi* 592 F2d 197, 208-9, adopting the “definition by analogy” approach, stated: “The modern approach thus looks to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted ‘religions’.” His Honour identified the following three indicia of religion: the nature of the ideas in question, the “ultimate” nature of the ideas presented and their comprehensiveness in scope, and the existence of any formal, external, or surface signs that may be analogized to accepted religions. 592 F2d 197, 208-9.

⁶⁹ (1983) 154 CLR 120 at 132.

⁷⁰ (1983) 154 CLR 120 at 132.

observances of every kind whenever a group of adherents chose to call them a religion: cf *United States v Kuch* 288 F Supp 439 (1968). A more objective criterion is required.⁷¹

But where is an objective criterion to be found? Their Honours went on to say:

That criterion must be found in the indicia exhibited by acknowledged religions, so that any set of beliefs, practices and observances which are accepted by a group of adherents and which exhibit that criterion will be held to be a religion. But what is the range of acknowledged religions from which the criterion is to be derived? The literature of comparative religion, modern means of communication and the diverse ethnic and cultural components of contemporary Australian society require that the search for religious indicia should not be confined to the Judaic group of religions-Judaism, Christianity, Islam - for the tenets of other acknowledged religions, including those which are not monotheistic or even theistic, are elements in the contemporary atmosphere of ideas. But the task of surveying the whole range of Judaic and other acknowledged religions is daunting ...⁷²

Further, their Honours were of the view that the derivation of all the common indicia of religions was a task which a court could not hope to perform by a detailed analysis of all acknowledged religions:

... Indeed, courts are not equipped to make such a study, and the acculturation of a judge in one religious environment would impede his understanding of others. But so broad a study is not required. The relevant inquiry is to ascertain what is meant by religion as an area of legal freedom or immunity, and that inquiry looks to those essential indicia of religion which attract that freedom or immunity. It is in truth an inquiry into legal policy.⁷³

Religion is concerned with such things as “the abiding and fundamental problems of human existence” and “the explanation of the existence of the phenomenological universe”, the meaning of human existence and man’s destiny:

... An understanding of these problems is furnished in part by the natural and behavioural sciences and by other humanist disciplines. They go far towards explaining the universe and its elements and the relationships between nations, groups and individuals. Many philosophies, however, go beyond the fields of these disciplines and seek to explain, in terms of a broader reality, the existence of the universe, the meaning of human life, and human destiny. For some, the natural order, known or knowable by use of man’s senses and his natural reason, provides a sufficient and exhaustive solution to these great problems; for others, an adequate solution can be found only in the supernatural order, in which man may believe as a matter of faith, but which he cannot know by his senses and the reality of which he cannot demonstrate to others who do not share his faith. He may believe that his faith has been revealed or confirmed by supernatural authority or his reason alone may lead him to

⁷¹ (1983) 154 CLR 120 at 132. In *United States v Kuch* (1968) 288 FSupp 439 K, a member of the “Neo-American Church”, unsuccessfully claimed protection under the First Amendment guarantee of freedom of religion in relation to criminal charges laid in respect of religious practices of her religion. The Neo-American Church worshipped “Chief Boo Hoo” and claimed that marijuana and LSD were sacramental foods to be partaken of by members on religious occasions.

⁷² (1983) 154 CLR 120 at 132.

⁷³ (1983) 154 CLR 120 at 133.

postulate the tenets of his faith. Faith in the supernatural, transcending reasoning about the natural order, is the stuff of religious belief. Judge Augustus N Hand said, obiter, in *United States v Kauten* 133 F2d 703 (1943), at p 708:

"... the content of the term (religion) is found in the history of the human race and is incapable of compression into a few words. Religious belief arises from a sense of the inadequacy of reason as a means of relating the individual to his fellow-men and to his universe - a sense common to men in the most primitive and in the most highly civilized societies. It accepts the aid of logic but refuses to be limited by it."⁷⁴

In the opinion of their Honours the role of the State insofar as religion was concerned was strictly limited:

Under our law, the State has no prophetic role in relation to religious belief; the State can neither declare supernatural truth nor determine the paths through which the human mind must search in a quest for supernatural truth. The courts are constrained to accord freedom to faith in the supernatural, for there are no means of finding upon evidence whether a postulated tenet of supernatural truth is erroneous or whether a supernatural revelation of truth has been made. We would respectfully adopt what Douglas J said in *United States v Ballard* 322 US 78, at pp 86-87 (88 Law Ed 1148, at p 1154) (1944)

"It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law."⁷⁵

So what, then, is religious belief? Mason ACJ and Brennan J went on to say:

Religious belief is more than a cosmology; it is a belief in a supernatural Being, Thing or Principle. But religious belief is not by itself a religion. Religion is also concerned, at least to some extent, with a relationship between man and the supernatural order and with supernatural influence upon his life and conduct. Clifford Geertz, writing an "Anthropological Study of Religion" in the *International Encyclopedia of the Social Sciences*, vol 13 (1968), p 406 concluded that:

"Whatever else religion does, it relates a view of the ultimate nature of reality to a set of ideas of how man is well advised, even obligated, to live."⁷⁶

Thus, in order for there to be a religion there must be a "belief in a supernatural Being, Thing or Principle". In so declaring, their Honours have effectively ruled out all those belief systems that reject or deny a supernatural view of reality including such belief systems as religious naturalism and religious humanism. Further, their Honours provided no

⁷⁴ (1983) 154 CLR 120 at 134.

⁷⁵ (1983) 154 CLR 120 at 134.

⁷⁶ (1983) 154 CLR 120 at 134.

assistance with respect to what is meant by “supernatural”,⁷⁷ and as to how one supposedly determines whether a particular belief system postulates belief in a “supernatural” Being, Thing or Principle. Be all that as it may, religion encompasses not only belief in the supernatural but also conduct, their Honours opined. The two are inextricably combined:

What man feels constrained to do or to abstain from doing because of his faith in the supernatural is prima facie within the area of legal immunity, for his freedom to believe would be impaired by restriction upon conduct in which he engages in giving effect to that belief. The canons of conduct which he accepts as valid for himself in order to give effect to his belief in the supernatural are no less a part of his religion than the belief itself. Conversely, unless there be a real connexion between a person's belief in the supernatural and particular conduct in which that person engages, that conduct cannot itself be characterized as religious.⁷⁸

Their Honours then went on to describe the inter-relationship between a religion's canons of conduct and the religion's belief system:

The canons of conduct which are part of a religion reflect that religion's set of beliefs, and thus a theistic religion typically includes the acceptance of a duty of ritual observance, as well as ethical practice. In *Jehovah's Witnesses Inc* (1943) 67 CLR, at p 156, McTiernan J said that the “word religion extends to faith and worship, to the teaching and propagation of religion, and to the practices and observances of religion”. Conduct which consists in worship, teaching, propagation, practices or observances may be held to be religious, however, only if the motivation for engaging in the conduct is religious. That is, if the person who engages in the conduct does so in giving effect to his particular faith in the supernatural.⁷⁹

Finally, in an oft-cited dictum Mason ACJ and Brennan J concluded:

We would therefore hold that, for the purposes of the law, the criteria of religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion. Those criteria may vary in their comparative importance, and there may be a different intensity of belief or of acceptance of canons of conduct among religions or among the adherents to a religion. The tenets of a religion may give primacy to one particular belief or to one particular canon of conduct. Variations in emphasis may distinguish one religion from other religions, but they are irrelevant to the determination of an individual's or a group's freedom to profess and exercise the religion of his, or their, choice.⁸⁰

⁷⁷ The *American Heritage Dictionary*, 3rd ed, lists the following definitions of the word “supernatural”: 1. Of or relating to existence outside the natural world. 2. Attributed to a power that seems to violate or go beyond natural forces. 3. Of or relating to a deity.

⁷⁸ (1983) 154 CLR 120 at 135.

⁷⁹ (1983) 154 CLR 120 at 135.

⁸⁰ (1983) 154 CLR 137.

Supernaturalism is, as mentioned previously, an essential prerequisite. There must be belief in a “supernatural” Being, Thing or Principle. In so holding, their Honours were cognizant that the United States Supreme Court and various other US courts had held that a belief in the supernatural was not an essential precondition for there to be a religion for legal purposes. Their Honours were also at variance with the approach taken by other US superior courts, in particular the “definition by analogy” approach articulated by Judge Adams in *Malnak v Yogi*⁸¹ in which his Honour said:

The modern approach thus looks to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted “religions”.⁸²

In the opinion of Judge Adams there were, as has previously been mentioned, “three useful indicia that are basic to our traditional religions and that are themselves related to the values that undergird the first amendment”.⁸³ The first of his indicia was the “ultimate” nature of the ideas presented.⁸⁴ However, that approach did not find favour with Mason ACJ and Brennan J:

This approach, however, focuses attention upon the nature of the questions which the set of ideas seeks to answer and diverts attention from the nature of the answers propounded. It furnishes a criterion which looks only to what we described above as the abiding and fundamental problems of human existence. Judge Adams clearly identifies the nature of the questions which, if they are addressed by a set of beliefs, indicate the religious character of those beliefs. His Honour said 592 F2d (1979), at p 208

“One’s views, be they orthodox or novel, on the deeper and more imponderable questions—the meaning of life and death, man’s role in the Universe, the proper moral code of right and wrong - are those likely to be the most ‘intensely personal’ and important to the believer. They are his ultimate concerns. As such, they are to be carefully guarded from governmental interference. . .”⁸⁵

To attribute a religious character to one’s views by reference to the questions which those views address rather than by reference to the answers which they propound is to expand the concept of religion beyond its true domain. As the decision in *Welsh* illustrates, such an approach sweeps into the category of religious beliefs philosophies that reject the label of a religion and that deny or are silent as to the existence of any supernatural Being, Thing or Principle.⁸⁶ (at p139)

⁸¹ *Malnak v Yogi* 592 F2d 197 (1979).

⁸² *Malnak v Yogi* 592 F2d 197, 207 (1979).

⁸³ *Malnak v Yogi* 592 F2d 197, 207-8 (1979).

⁸⁴ The term “ultimate” seems to have been derived from the writings of Paul Tillich. Judge Adams said [592 F2d 197, 208 (1979)]: “Expectation that religious ideas should address fundamental questions is in some ways comparable to the reasoning of the Protestant theologian Dr Paul Tillich, who expressed his view on the essence of religion in the phrase ‘ultimate concern’. Tillich perceived religion as intimately connected to concepts that were of the greatest depth and utmost importance.”

⁸⁵ (1983) 154 CLR 139.

⁸⁶ (1983) 154 CLR 120 at 139.

Their Honours then went on to refer briefly to the other two indicia stated by Judge Adams in *Malnak*:

...The second of the indicia is the comprehensiveness of the set of ideas. No doubt a set of religious ideas will frequently be comprehensive, but we would not deny the character of a religion to a set of beliefs and practices which would otherwise qualify merely because its tenets aver or admit that knowledge of the supernatural is partial or otherwise imperfect or because its tenets offer no solution to some of the abiding and fundamental problems of man's existence. The third of the indicia is the existence of "any formal, external, or surface signs that may be analogized to accepted religions", such as formal services, a clergy or festivities. No doubt rituals are relevant factors when they are observed in order to give effect to the beliefs in the supernatural held by the adherents of the supposed religion. Thus ceremonies of worship are central to the Judaic religions manifesting their belief in and dependence on God. Mere ritual, however, devoid of religious motivation, would be a charade.⁸⁷

Their Honours were thus "unable to accept the corporation's submission that this Court should apply the indicia which found favour with Judge Adams in *Malnak v Yogi*".⁸⁸ As regards the second and third indicia enunciated by Judge Adams their Honours opined that they were not the criteria of a religion "though they may frequently be found in a religion".⁸⁹

Not only were their Honours unable to accept the test enunciated by Judge Adams in *Malnak* they were equally unable to accept "the narrower test which have been propounded in England".⁹⁰ In that regard, in *In re South Place Ethical Society; Barralet v Attorney General*⁹¹ Dillon J had said:

It seems to me that two of the essential attributes of religion are faith and worship; faith in a god and worship of that god. This is supported by the definitions of religion given in the *Oxford English Dictionary* (1914), although I appreciate that there are other definitions in other dictionaries and books. The *Oxford English Dictionary* gives as one of the definitions of religion: "A particular system of faith and worship." Then: "Recognition on the part of man of some higher unseen power as having control of his destiny, and as being entitled to obedience, reverence, and worship."⁹²

⁸⁷ (1983) 154 CLR 120 at 139.

⁸⁸ (1983) 154 CLR 120 at 140.

⁸⁹ (1983) 154 CLR 120 at 140.

⁹⁰ (1983) 154 CLR 120 at 140.

⁹¹ (1980) 1 WLR 1565.

⁹² (1980) 1 WLR 1565 at 1572. See also *In Re Tarnpolsk, Barclays Bank Ltd v Hyer* [1958] 3 All ER 479 at 481 per Danckwerts J: "It seems to me that 'religion' and 'faith' are interchangeable words." In *Baxter v Langley* (1868) 38 LJMC 1 at 5 Willes J said in the course of his argument: "What is 'religion'? Is it not what a man honestly believes in and approves of and thinks it his duty to inculcate on others, whether with regard to this world or the next? A belief in any system of retribution by an overruling power? It must, I think, include the principle of gratitude to an active power who can confer blessings."

Such a test was unacceptable to Mason ACJ and Brennan J because it “limits religion to theistic religions”.⁹³

Their Honours then turned to the beliefs, practices and observances the character of which was to be determined, referring to some of the findings of the trial judge Crockett J who had said:⁹⁴

According to the teachings of Mr Hubbard the existence of a Supreme Being is to be affirmed and life is to be looked at in the terms of eight dynamics. The first is self and the eighth is the Supreme Being. The person himself is not his body but a thetan - equivalent one might say to a soul or spirit. Man's immortality exists in the power of the thetan to undergo infinite reincarnations. . . . However, despite an occasional reference in Mr Hubbard's books to a 'Supreme Being', or 'Divine Being' or God and the placement of the eighth dynamic at the pinnacle of man's awareness of the other dynamics, it does seem apparent, as Winn L.J. observed in *Segerdal's Case* (1970) 2 QB 697, at p 708 that the doctrines of scientology are more concerned with 'the transmigration and education . . . of Thetans than they are with God in any shape or form, or any concept of a divine, superhuman, all powerful and controlling entity'.⁹⁵

However, Mason ACJ and Brennan J stated⁹⁶ that they did not understand that the belief in the thetan or its capacity for infinite reincarnation was consequential upon or bore any relationship to a belief in a Supreme Being. Further, they noted that although belief in a

⁹³ (1983) 154 CLR 120 at 140. Their Honours also noted that a similar test had been applied by the English Court of Appeal in *R v Registrar General; ex parte Segerdal* [1970] 1 WLR, at p 1572; (1980) 3 All ER, at p 924, where it was held that a chapel of the Church of Scientology was not a place of meeting for *religious worship*. “In that case, however, the statutory reference to worship suggested that Parliament had in mind a theistic religion. To restrict the definition of religion to theistic religions is to exclude Theravada Buddhism, an acknowledged religion, and perhaps other acknowledged religions. It is too narrow a test. We would hold the test of religious belief to be satisfied by belief in supernatural Things or Principles and not to be limited to belief in God or in a supernatural Being otherwise described.” [(1983) 154 CLR 120 at 140.] With respect, Lord Denning MR saw things quite differently in *Segerdal*, stating that “a place of meeting for religious worship” denoted a place that was used principally as a place where people assembled in order to offer reverence to God. His Lordship stated: “[I]t need not be the God which the Christians worship. It may be another God or an unknown God, but it must be reverence to a deity Turning to the creed of the Church of Scientology, I must say that it seems to me to be more of a philosophy of the existence of a man or life, rather than a religion. Religious worship means reverence or veneration of God or of a Supreme Being. I do not find any such reverence or veneration in the creed to this church.” [1970] 2 QB 697 at 707. More recently, the Charity Commissioners for England and Wales, re-affirming the English requirement that religion requires both belief in a supreme being as well as worship of that being, concluded that Scientology was not a religion for the purposes of English law in that, although Scientology did postulate belief in a supreme being, the practices of Scientology did not involve any worship: see *Decision of the Charity Commissioners for England and Wales Made on 17th November 1999: Application for Registration as a Charity by the Church of Scientology (England and Wales)* [Online version] viewed 29 January 2007, <<http://www.charity-commission.gov.uk/Library/registration/pdfs/cosfulldoc.pdf>>. See also *Missouri Church of Scientology v State Tax Commission of Missouri* 560 SW2d 837, 845 (MO banc 1977) in which the Supreme Court of Missouri concluded that Scientology appeared to be more an applied philosophy with a certain religious connotation than a religion *per se*.

⁹⁴ (1983) 1 VR 97 at 110 per Crockett J.

⁹⁵ (1983) 154 CLR 120 at 143.

⁹⁶ At 154 CLR 120 at 143.

Supreme Being was now a part of Scientology there was no tenet of Scientology which expressed any particular concept of a Supreme Being:

The name of the Supreme Being is left as a matter of individual choice. Each adherent must make up his own mind what his God is. It may be doubted whether a declaration that a Supreme Being exists is, without more, a mark of a theistic religion. But there is no doubt that a belief in the transmigration or infinite reincarnation of thetans is a belief in a supernatural principle. That belief does not require a concomitant belief in a Supreme Being before it qualifies as a religious belief. It is akin to the beliefs of Buddhism from which a large part of Mr Hubbard's ideas are said to be derived. The beliefs which, on Crockett J's finding, are accepted by members of the cult, satisfy the first criterion of a religion. But the second criterion is more troublesome. To satisfy the second criterion, the facts must show the acceptance of canons of conduct in order to give effect to a supernatural belief, not being canons of conduct which offend against the ordinary laws.⁹⁷

Their Honours referred⁹⁸ to a book entitled *The Scientology Religion* that had been tendered which contained chapters headed "Practices" and "Codes of Conduct: Ethics and Right Conduct" and in which it was stated:

Like the Buddhist system, the Church of Scientology has prescriptive moral codes intended for adherents; one is a Code of pastoral practice, the Auditor's Code; another is the Code of a Scientologist. The Code of a Scientologist is established to provide a covenant of right conduct for adherents of the Church with regard to matters involving the Church itself.

The Auditor's Code imposes definite regulations and ethical standards to be abided by in the counselling situation at all times.

A further Code, the Code of Honour has been written for each and every person to follow as he chooses.

Their Honours noted⁹⁹ that so-called "auditing" was an important aspect of Scientology practice.¹⁰⁰ According to *The Scientology Religion*¹⁰¹ the aim of auditing is as follows:

. . . it is to help the individual become aware of himself as an immortal Being and to help him achieve and attain the basic truths with regard to himself, his relationship to others and all Life, his relationship to the physical universe and the Supreme Being. Further, we want to erase his sin so that he can be good enough to recognise God.¹⁰²

⁹⁷ (1983) 154 CLR 120 at 143. The rituals of Scientology do not include prayer in the conventional sense nor do they contain any references to God: Petersen (1975:112).

⁹⁸ At 154 CLR 144.

⁹⁹ At 154 CLR 145.

¹⁰⁰ Auditing sessions are conducted in which a person called an "auditor" (literally "one who listens"), actually a trained Scientology minister-counsellor, uses inter-personal communication and carefully devised questions and drills which enable the person audited, called the "pre-clear", to discover and thereby remove his or her "self-imposed spiritual limitations" (eventually becoming "clear"): see 154 CLR 144-5. The method "[resembles] a combination of psychotherapy and the Catholic confession": Paulette Cooper, *The Scandal of Scientology*, cited in Petersen (1975:109).

¹⁰¹ At p 22.

¹⁰² (1983) 154 CLR 120 at 145.

Their Honours opined:

If auditing is an exercise in which the auditor and preclear engage in order to give effect to a belief in thetans or in the Supreme Being, it may be a religious exercise, and the "Auditor's Code" may thereby take on a religious character.¹⁰³

Their Honours also noted¹⁰⁴ that reference was made in *The Scientology Religion*¹⁰⁵ to "the Scientology confessional", a part of auditing, which enables an individual to reveal his transgressions against "his own moral codes in terms of the Eight Dynamics, and the mores of his society". There were also other factors to be considered such as the rites and ceremonies - weddings, namings and funerals - as well as training services for ministers.

Nevertheless, was there a sufficient nexus between the supernatural beliefs and the various practices and observances followed?

The seeming vagueness of the supernatural beliefs and the obscurity of their expression renders difficult the perception of any connexion between those beliefs and the practices and observances followed by the general group of adherents. Yet, as Crockett J found, adherents, who number between 5,000 and 6,000 people in Victoria, accord blind reverence to what Mr Hubbard has written and it may therefore be inferred that they perceive some unifying thread which makes the whole intelligible, or which assembles sufficient of a jigsaw to allow them to see themselves and what they do as part of a supernatural reality. We think an inference should be drawn - though the material to support it is not compelling - that the general group of adherents practice auditing and accept the other practices and observances of Scientology because, in doing what Mr Hubbard bids or advises them to do, they perceive themselves to be giving effect to their supernatural beliefs.¹⁰⁶

In conclusion, Mason ACJ and Brennan J concluded that the state of the evidence in the case required a finding that the general group of adherents had a religion:

The question whether their beliefs, practices and observances are a religion must, in the state of that evidence, be answered affirmatively. That answer, according to the conventional basis adopted by the parties in fighting the case, must lead to a judgment for the corporation.¹⁰⁷

Murphy J, while agreeing with the outcome proposed by the other judges, ultimately expressed a much broader view of what constituted a religion. In the course of his judgment his Honour made a number of insightful and polemic comments about religion

¹⁰³ (1983) 154 CLR 120 at 145.

¹⁰⁴ At 154 CLR 120 at 146.

¹⁰⁵ At p 46.

¹⁰⁶ (1983) 154 CLR 120 at 148 per Mason ACJ and Brennan J.

¹⁰⁷ (1983) 154 CLR 120 at 148.

which indicate his skeptical and secular humanist views.¹⁰⁸ However, as it was not the role of the courts to pass judgment on the validity of the beliefs of the adherents of a religion¹⁰⁹ his Honour ultimately recommended as follows:

The better approach is to state what is sufficient, even if not necessary, to bring a body which claims to be religious within the category. Some claims to be religious are not serious but merely a hoax (*United States v Kuch* 288 FSupp 439 (1968)), but to reach this conclusion requires an extreme case. On this approach, any body which claims to be religious, whose beliefs or practices are a revival of, or resemble, earlier cults, is religious. Any body which claims to be religious and to believe in a supernatural Being or Beings, whether physical and visible, such as the sun or the stars, or a physical invisible God or spirit, or an abstract God or entity, is religious. For example, if a few followers of astrology were to found an institution based on the belief that their destinies were influenced or controlled by the stars, and that astrologers can, by reading the stars, divine these destinies, and if it claimed to be religious, it would be a religious institution. Any body which claims to be religious, and offers a way to find meaning and purpose in life, is religious. The Aboriginal religion of Australia and of other countries must be included. The list is not exhaustive; the categories of religion are not closed.¹¹⁰

In other words, anything that claims to be religion and purports to provide a meaning or purpose to life ought to be regarded by the courts as being a religion.¹¹¹

Was Scientology a religion? His Honour, after referring to the organization's dogma concerning thetans and reincarnation and its various ceremonies, concluded that it was.¹¹²

¹⁰⁸ See, in particular, (1983) 154 CLR 149-50, 160-62. Lionel Keith Murphy was the 1983 Australian Humanist of the Year, an honour conferred by the Council of Australian Humanist Societies (Australian Humanists).

¹⁰⁹ See *Attorney General (NSW) v Grant* (1976) 135 CLR 587 and *Attorney General (Qld); Ex rel Nye v Cathedral Church of Brisbane* (1977) 136 CLR 353 at 377. "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect": *Watson v Jones* 80 US 679, 728 (1872).

¹¹⁰ (1983) 154 CLR 120 at 151. His Honour also referred at p 151 to Article One, s 2 and Article Two, s 2 of the appellant's constitution which stated "that Man's best evidence of God is the God he finds within himself, that the Author of this universe intended life to thrive within it, and that the Church is formed to espouse such evidence of the Supreme Being and Spirit as may be knowable to Man and that it is the hope of Man that the teachings of the Church will bring a greater tranquility to the State and thus the better order and survival to Man upon this Planet."

¹¹¹ Organizations that are anti-religion ought presumably to be held to be not religious. For example, in the South Australian case of *Re Jones* [1907] SALR 1990 an organization known as the Incorporated Body of Freethinkers of Australia, whose beliefs included that "science provides for life and that materialism can be relied upon in all phases of society", was considered not to have religious purposes because it worked against already established religions or against the idea of religion. The court stated that an organization with a purpose of campaigning against another religion or religion per se cannot itself be a religion. The Freethinkers in America were also held not to be a religion: see *Old Colony Trust Co v Welch* 25 FSupp 45 at 49 (1938). In *Bowman v Secular Society Ltd* [1917] AC 406 the objects of the society included to "promote...the principle that human conduct should be based upon natural knowledge, and not upon super-natural belief, and that human welfare in this world is the proper end of all thought and action" as well as other objects aimed at promoting a secular, non-religious government and education system among other things. One of the legal issues was the legality or otherwise at that time of an organization established with the object of subverting Christianity. Lord Parker stated that: "The abolition of religious tests, the disestablishment of the Church, the secularisation of education, the alteration of the law touching religion or marriage, or the observation of the Sabbath are purely political objects. Equity has always refused to recognize such objects as charitable."

¹¹² His Honour stated [at p 162]: "The applicant has easily discharged the onus of showing that it is religious. The conclusion that it is a religious institution entitled to the tax exemption is irresistible."

In the course of his judgment his Honour made it clear that belief in a god or gods was not necessary for there to be a religion:

Most religions have a god or gods as the object of worship or reverence. However, many of the great religions have no belief in God or a Supreme Being in the sense of a personal deity rather than an abstract principle. Theravadan Buddhism, the Samkhya school of Hinduism and Taoism, are notable examples. Though these religions assert an ultimate principle, reality or power informing the world of matter and energy, this is an abstract conception described as unknown or incomprehensible. Idols or symbols representing it are contemplated: Woodroffe "The Psychology of Hindu Religious Ritual" in Sakti and Sakta: *Essays and Addresses* (1969), p 303. This meditation (rather than prayer or worship) is said to stimulate an awareness of the divine peculiar to the individual concerned. However in practice many adherents worship these images, representations and symbols as personal deities.¹¹³

His Honour noted that in the United States of America

... belief in God or a Supreme Being is no longer regarded as essential to any legal definition of religion: *United States v Kauten* (1943) 133 F2d 703 (1943); *United States v Ballard* 322 US 78 (88 Law Ed 1148) (1944) and *Welsh v United States* 398 US 333 (26 Law Ed (2d) 308) (1970). There, it is now sufficient that a person's beliefs, sought to be legally characterized as religious, are to him or her of "ultimate concern": *United States v Seeger* 380 US 163, at p 187 (13 Law Ed (2d) 733, at p 749) (1965). Buddhism, Taoism, Ethical Culture and Secular Humanism have been held to be religions: see *Torcaso v Watkins* 367 US 488, at p 495, n 11 (6 Law Ed (2d) 982, at p 987, n 11 (1961)); *Washington Ethical Society v District of Columbia* 249 F2d 127 (1957); *Fellowship of Humanity v County of Alameda* 315 P2d 394 (1957).¹¹⁴

His Honour observed that "[m]ost religions have a holy book, sacred songs or stories, holy tablet or scroll containing a set of beliefs or code of conduct, often supposed to have been inspired by, or even given directly to a founder, by a god."¹¹⁵ He also made a number of other observations that may be useful in determining whether a particular belief system or organization is a religion:

There are many groups now recognized as religions which when they began claimed not to be.¹¹⁶

...

Many religions alter their beliefs to retain their social standing and acceptability.¹¹⁷

...

¹¹³ (1983) 154 CLR 120 at 155.

¹¹⁴ (1983) 154 CLR 120 at 155.

¹¹⁵ (1983) 154 CLR 120 at 156. Ever the secular humanist, his Honour remarked [at p 156]: "However, because the scriptures or writings of most religions are about the supernatural, mysteries and psychic events, as well as often obsolescent theories about nature, they are frequently contradictory. Thomas Paine exposed the numerous contradictions in the Christian Bible: *The Age of Reason - Being An Investigation of True and Fabulous Theology* (1938). Ambiguities, obscurities and contradictions are found in the holy books of many other religions."

¹¹⁶ (1983) 154 CLR 120 at 157.

¹¹⁷ (1983) 154 CLR 120 at 157.

Most religions are not static but evolve in belief and structure as a result of internal and external pressure. As science has advanced, many religious beliefs have been abandoned or reinterpreted. When followers become sceptical, dogma tends to be reinterpreted as allegory, religious fact as fantasy and religious history as myth.¹¹⁸

...

Most religions contain a code of principles regulating the spiritual and social activities of their members. Many codes confer sacred status on activities such as eating, sexual intercourse, marriage, birth and burial. Religious codes of conduct are usually so difficult to observe that the followers constantly infringe and must undergo some penance, either spiritual or financial, to placate the god, to overcome their feelings of guilt or to maintain their place within the religion.¹¹⁹

...

... [T]hroughout history new religions have adopted and adapted the teachings, symbols, rituals and other practices of the traditional religions.¹²⁰

...

... Blood sacrifices and other forms of propitiation by gift or worship were prominent in older religions. Modern religions however tend to replace actual with notional sacrifice and to replace propitiation or appeasement with concepts such as "making peace with one's soul".¹²¹

...

In the older religions propagation occurred in various ways, by natural increase amongst the adherents with which fertility rites were associated, and by conversion of non-believers. Indoctrination or "brainwashing" is typical of many religions. Often this takes place during an intense period of initiation. Adherence and conversion are also achieved in most religions by regular meetings, ceremonies and rituals. Special ceremonies may be held at times of physiological significance, such as puberty; times critically important for agriculture or natural food sources such as the onset of spring or midsummer; days historically important to the religion such as the founder's birth or death; or for astrological reasons.¹²²

His Honour noted that while "[m]ost religions seek if not to convert the public at least to secure its acceptance of their beliefs",¹²³ nearly all religions commence as "minority groups, often gathering around the teachings of one seemingly inspired individual".¹²⁴ "Their rise to public acceptance is normally very slow and difficult," his Honour said.¹²⁵

¹¹⁸ (1983) 154 CLR 120 at 157.

¹¹⁹ (1983) 154 CLR 120 at 157. However, his Honour noted [at p 157]: "The idea of a 'complete or absolute moral code' is however alien to the classical forms of religions such as Hinduism or Buddhism. In those, men and women do not offend against a set of principles but against themselves - reaping the karmic consequences of their actions.

¹²⁰ (1983) 154 CLR 120 at 158.

¹²¹ (1983) 154 CLR 120 at 158.

¹²² (1983) 154 CLR 120 at 159.

¹²³ (1983) 154 CLR 120 at 159.

¹²⁴ (1983) 154 CLR 120 at 159.

¹²⁵ (1983) 154 CLR 120 at 159. His Honour noted [at p 159] that the United States Supreme Court had stated that a test of public acceptability would create "a danger that a claim's chances of success would be greater

Wilson and Deane JJ, in a separate joint judgment, had this to say about the meaning of the word "religion":

The word "religion" is not susceptible of the type of definition which will enable the question whether a particular system of beliefs and practices is a religion to be determined by use of the syllogism of formal logic. As Young CJ pointed out in the Full Court of the Supreme Court, that question will ordinarily fall to be determined by reference to a number of indicia of varying importance. Before attempting to identify what we see as the more important of those indicia, it is appropriate to consider whether it is possible to isolate any essential characteristic or characteristics without which one cannot have a religion.¹²⁶

Their Honours noted¹²⁷ that in the Full Supreme Court Kaye J had seen the essence of religion as the relationship between the individual adherent of the religion and his God. In that regard his Honour had said:

In my opinion, what distinguishes the belief or feelings with which a religion is concerned, and is fundamental to it, is the recognition of the existence of a Superior or Supernatural Being or Power with whom an individual has a personal relation and upon whom his own existence depends. The 'Superior or Supernatural Being or Power' may be referred to by the individual by any of a number of names, including Allah, God, or Jehovah; but it is immaterial by what name the deity is known or called. Indeed, the Superior Being may be without name. Furthermore, it may not be a single identity; two or more gods may constitute the foundation of a man's belief. The belief or feeling of the individual in relation to the deity is a personal one; although he may recognize and respect that others have their own god, his relationship to his own deity is characterized by the belief that his is the true and only deity.¹²⁸

Their Honours went on to explain why, in their view, it would not be reasonable to confine the meaning of the word religion to theistic religion:

In the context of a Western community, there is plainly force in the view that man's recognition of, and his relationship with, a personalized god constitutes the essence and central concern of religion. That is certainly true of the three great prophetic and monotheistic religions or groups of religions - Judaism, Christianity and Islam whose origins can be traced, directly or indirectly, to Israel and the Old Testament. One finds in Scientology writings some acknowledgment of the existence of a Supreme Being or God. If, however, it be an essential requirement of a religion that it be centred upon recognition of the existence of a Supreme Being with whom an individual has a personal relationship and upon whom the individual's existence depends, Scientology does not satisfy it. As has been said, the central concern of Scientology is the delivery of the "thetan" or spirit, which is immortal, from the bondage of the body with little attention being paid to the identification or definition of, let alone any personal relationship with, the Supreme Being. The same can, however, be said of at least two of the immanentist religions or groups of religions which can be traced, directly or indirectly, to India

the more familiar or salient the claim's connexion with conventional religiosity could be made to appear":
Gillette v United States 401 US 437, 457 (1971).

¹²⁶ (1983) 154 CLR 120 at 171.

¹²⁷ (1983) 154 CLR 120 at 171.

¹²⁸ [1983] 1 VR 97 at 130. Wilson and Deane JJ noted [at 154 CLR 172] that the trial judge Crockett J had [at [1983] 1 VR 111] adopted a similar approach at first instance when, after referring to a number of authorities and definitions, he indicated his agreement with the statement of the majority of the US Supreme Court in *Davis v Beason* 133 US 333, 342 (1890) to the effect that "religion", as used in the First Amendment to the US Constitution, "has reference to one's views of his relations to his Creator and to the obligations they impose of reverence for his being and character, and of obedience to his will".

and the Upanishads. Buddhism is, broadly speaking, agnostic about a god while Theravada Buddhism and Jainism, at least in its original form, actually deny the existence of a personal creator. For that matter, classical Hinduism itself was more concerned with the non-personalized Brahman than with the recognition of, or man's relation with, any one or more of the Hindu gods.¹²⁹

Continuing, their Honours stated that they were “unable to accept, as an essential element of ‘a religion’, a characteristic which is, even arguably, not possessed by one or more of what are generally accepted as leading religions”.¹³⁰ After referring to what Latham CJ had said in *Adelaide Company of Jehovah's Witnesses Inc v The Commonwealth*¹³¹ about the difficulty, if not the impossibility, of framing an acceptable definition of religion for the purposes of s 116 of the Constitution¹³² their Honours stated:

Notwithstanding that there may be grounds for attributing a wider meaning to the word "religion" in the context of a constitutional guarantee against the establishment of a religion than in the context of a statutory exemption from a pay-roll tax, we are of the view that the above comment of Latham CJ, with which we respectfully agree, is in point in answering the question whether Scientology is a religion for the purposes of the present case. There is no single characteristic which can be laid down as constituting a formularized legal criterion, whether of inclusion or exclusion, of whether a particular system of ideas and practices constitutes a religion within a particular State of the Commonwealth. The most that can be done is to formulate the more important of the indicia or guidelines by reference to which that question falls to be answered. Those indicia must, in the view we take, be derived by empirical observation of accepted religions. They are liable to vary with changing social conditions and the relative importance of any particular one of them will vary from case to case. We briefly outline hereunder what we consider to be the more important of them. In so doing, we are conscious of the fact that we are, of necessity, venturing into a field which is more the domain of the student of comparative religion than that of the lawyer.¹³³

Their Honours noted¹³⁴ that there was no single characteristic which could be used to identify an organization as constituting a religion¹³⁵ and that the most that could be done was to formulate a range of indicia gleaned from past decisions. The indicia of religion as discussed by their Honours were the following:

One of the more important indicia of "a religion" is that the particular collection of ideas and/or practices involves belief in the supernatural, that is to say, belief that reality extends beyond

¹²⁹ (1983) 154 CLR 120 at 173.

¹³⁰ (1983) 154 CLR 120 at 173. Latham CJ stated that “it [was] not for a court, upon some a priori basis, to disqualify certain beliefs as incapable of being religious in character”: (1943) 67 CLR at p 124.

¹³¹ (1943) 67 CLR 116.

¹³² Latham CJ stated that “it [was] not for a court, upon some a priori basis, to disqualify certain beliefs as incapable of being religious in character”: (1943) 67 CLR at p 124.

¹³³ (1983) 154 CLR 120 at 173.

¹³⁴ At 154 CLR 174.

¹³⁵ The author of “The Law and the Definition of Religion” (1984) writes: “[Wilson and Deane JJ] could not come up with any conclusive tests for determining what is a religion: according to them, the most that can be done is ‘to formulate the more important of the indicia or guidelines by reference to which that question falls to be answered’.”

that which is capable of perception by the senses. If that be absent, it is unlikely that one has "a religion". Another is that the ideas relate to man's nature and place in the universe and his relation to things supernatural. A third is that the ideas are accepted by adherents as requiring or encouraging them to observe particular standards or codes of conduct or to participate in specific practices having supernatural significance. A fourth is that, however loosely knit and varying in beliefs and practices adherents may be, they constitute an identifiable group or identifiable groups. A fifth, and perhaps more controversial, indicium (cf *Malnak v Yogi* 592 F2d 197 (1979)) is that the adherents themselves see the collection of ideas and/or practices as constituting a religion.¹³⁶

Their Honours made it clear that "no one of the above indicia is necessarily determinative of the question whether a particular collection of ideas and/or practices should be objectively characterized as 'a religion'".¹³⁷

They are no more than aids in determining that question and the assistance to be derived from them will vary according to the context in which the question arises. All of those indicia are, however, satisfied by most or all leading religions. It is unlikely that a collection of ideas and/or practices would properly be characterized as a religion if it lacked all or most of them or that, if all were plainly satisfied, what was claimed to be a religion could properly be denied that description. Ultimately however, that question will fall to be resolved as a matter of judgment on the basis of what the evidence establishes about the claimed religion. Putting to one side the case of the parody or sham, it is important that care be taken, in the exercise of that judgment, to ensure that the question is approached and determined as one of arid characterization not involving any element of assessment of the utility, the intellectual quality, or the essential "Truth" or "worth" of tenets of the claimed religion.¹³⁸

Noting that the view which they had expressed as to the meaning of "religion" accorded broadly with the "newer, more expansive, reading of that term that has been developed in the United States in recent decades"¹³⁹ Wilson and Deane JJ made it clear that they saw merit in adopting the "definition by analogy" approach taken by Judge Adams in *Malnak v Yogi*.¹⁴⁰

The story of that development is described by Circuit Judge Adams in his concurring opinion in *Malnak v Yogi*. From his examination of three cases in particular, *Torcaso v Watkins* 367 US 488 (6 Law Ed (2d) 982) (1961), *United States v Seeger* 380 US 163 (13 Law Ed (2d) 733) (1965) and *Welsh v United States* 398 US 333 (26 Law Ed (2d) 308) (1970), his Honour concluded that the theistic formulation presumed to be applicable in the late nineteenth century cases (eg *Davis v Beason* 133 US 333 (33 Law Ed 637) (1890)) is no longer sustainable. "Religion" is not confined to the relationship of man with his Creator, either as a matter of law or as a matter of theology. Yet its definition remains unclear.

¹³⁶ (1983) 154 CLR 120 at 174. The author of "The Law and the Definition of Religion" (1984) (discussed elsewhere in the body of this chapter) notes that the "fifth indicium relied upon by Wilson and Deane JJ is of a *subjective* nature, whereas the judgments in the case almost entirely concentrated on *objective* criteria." Emphasis in the original.

¹³⁷ (1983) 154 CLR 120 at 174.

¹³⁸ (1983) 154 CLR 120 at 174.

¹³⁹ (1983) 154 CLR 120 at 174.

¹⁴⁰ (1979) 592 F2d 197.

"The modern approach thus looks to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted 'religions'" 592 F2d, at p 207 (1979).¹⁴¹

Wilson and Deane JJ ultimately came to the same conclusion as had Mason ACJ, Brennan and Murphy JJ, namely, Scientology was, for relevant purposes, a religion.¹⁴² However, as has been noted by the author of the article "The Law and the Definition of Religion" (1984:366):

The approach by Wilson and Deane JJ in their joint judgment was of a less positive nature than that of Mason ACJ and Brennan J. They could not come up with any conclusive tests for determining what is a religion

The "elements and characteristics of Scientology in Australia, as disclosed by the evidence, which cannot be denied"¹⁴³ that Wilson and Deane JJ said had led them to conclude as they did "with particular reference to the indicia which we have suggested"¹⁴⁴ were the following:

The essence of Scientology is a belief in reincarnation and concern with the passage of the "thetan" or the spirit or soul of man through eight "Dynamics" and the ultimate release of the "thetan" from the bondage of the body. The existence of the Supreme Being as the eighth "Dynamic" has been asserted since the early writings of Hubbard (see *Science of Survival*, Book I, pp 60 and 98, Book II, pp 244, 289). The ideas of Scientology satisfy the first two indicia: they involve belief in the supernatural and are concerned with man's place in the universe and his relation to things supernatural. Scientology in Australia also satisfies all of the other abovementioned indicia. The adherents accept the tenets of Scientology as relevant to determining their beliefs, their moral standards and their way of life. They accept specific practices and participate in services and ceremonies which have extra-mundane significance. In Australia they are numbered in thousands, comprise an organized group and regard Scientology as a religion. It was submitted that Scientology lacked comprehensiveness particularly as regards the nature of, and man's relationship with, the Supreme Being. It has been seen, however, that that is something which Scientology shares with the great Indian religions from which some of its ideas would appear to have been derived. It was also submitted that the fact that Scientology does not insist that its adherents disavow other religious affiliations indicates that it is not a true religion. That, again, is

¹⁴¹ (1983) 154 CLR 120 at 175. Their Honours then described the "three useful, though not essential, indicia" articulated by Judge Adams in *Malnak* by which to pursue the analogy to which he had referred: the first and most important of these indicia being "the nature of the ideas in question", ie whether they reflect those ultimate concerns which embody the fundamental problems of human existence; the second indicium being the element of comprehensiveness by which a set of ideas forms an integrated belief-system as distinct from a treatment of one or a number of isolated questions; and the third indicium relating to forms and ceremonies which are comparable to those adopted by accepted religions. "Although these indicia will be helpful, they should not be thought of as a final 'test' for religion. Defining religion is a sensitive and important legal duty. Flexibility and careful consideration of each belief system are needed. Still, it is important to have some objective guidelines in order to avoid ad hoc justice." (1979) 592 F2d 197, 210, per Judge Adams.

¹⁴² (1983) 154 CLR 120 at 175.

¹⁴³ (1983) 154 CLR 120 at 175.

¹⁴⁴ (1983) 154 CLR 120 at 175.

something which could be said of a number of religions including Hinduism, some types of Buddhism and Shintoism. Again, reference was made to some unusual features of membership in the organization and to the strong commercial emphasis in its practices. However incongruous or even offensive these features and this emphasis may seem to some of those outside its membership we cannot think that of themselves they can outweigh the other considerations to which we have referred.¹⁴⁵

In short, in the *Church of the New Faith* case four of the five High Court justices required, or at least strongly asserted the need for, a belief in the existence of a supernatural being and/or belief in the supernatural in order for there to be a “religion”. Having said that, as the New South Wales Law Reform Commission (1994:47) has pointed out, “a definitive test was not propounded by a majority of the Court”:

Mason CJ and Brennan J took the view that for the purposes of the law, the criteria are twofold: belief in a supernatural being, thing or principle along with the acceptance of canons of conduct in order to give effect to that belief. Canons of conduct which offend against ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion. Wilson and Deane JJ were of the view that there is no single characteristic that could constitute a formalised legal criterion for whether a particular system of ideas and practices constitutes a religion. In their Honours' view, all that can be done is to formulate indicia by reference to which the question is to be decided - they identified five indicia. Murphy J also did not propound a definite "test", but rejected the first criterion of Mason CJ and Brennan J as no longer essential to a definition of religion.¹⁴⁶

The Law Reform Commission went on to note that the judgments in the *Church of the New Faith* case had been criticised for their “minimisation of the subjective factor in the nature of religion” (1994:47). The Commission (1994:48) made a further comment on the judgments in the case:

They illustrate how the courts have not been at ease when faced with the issue of whether a particular set of beliefs constitutes a religion.

¹⁴⁵ (1983) 154 CLR 120 at 176. Wilson and Deane JJ stated that each case must be determined on the basis of the evidence adduced. Petersen (1975:112) cites a description of Scientology contained in an article in *Time* magazine: “a sort of religion of religions, combining parts of Hindu Veda and Dharma, Taoism, Old Testament wisdom, Buddhist principles of brotherly love and compassion, the early Greeks, Lucretius, Spinoza, Nietzsche, Schopenhauer, Spencer and Freud”. According to Petersen (1975:112) the strongest influence on Scientology was Hinayana (Theravada) Buddhism.

¹⁴⁶ With due respect to the Law Reform Commission Murphy J *did* propound a test, viz anything that claims to be religion and purports to provide a meaning or purpose to life should be regarded by the courts as being a religion.

The Law Reform Commission (1994:48) also expressed the view that it was “impossible to define ‘religion’ satisfactorily.”¹⁴⁷

Sadly, the more recent *Report of the Inquiry into the Definition of Charities and Related Organisations* (2001) did not recommend any change to the existing Australia judicial “definition”, rather Recommendation 14 of the report was as follows:

That the definition of religion be based on the principles established in the *Scientology* case, namely:

- belief in a supernatural Being, Thing or Principle; and
- acceptance and observance of canons of conduct in order to give effect to that belief.¹⁴⁸

Regrettably, the report provides no assistance with respect to what is “supernatural”, so we are thrown back to the *Church of the New Faith* case. However, we do not find in what is otherwise regarded as the most significant Australian judicial authority on the definition of religion any definitive statement on that matter. As has already been mentioned, whilst two justices in *Church of the New Faith* saw supernaturalism as being an essential prerequisite for there to be a religion, the other three justices did not, although two of those three justices recognized that “most or all leading religions”¹⁴⁹ did in fact postulate a belief in the supernatural. Thus, *Butterworths Australian Legal Dictionary* is undoubtedly correct when, in its definition of “religion” previously cited, it states that religion “usually involv[es] a belief in the supernatural” and that “[t]here exists no formularised legal criterion, whether of inclusion or exclusion, for determining whether a given system constitutes a religion.”¹⁵⁰ Further, as has also been noted, none of the justices provided any meaningful assistance as to how one is to recognise supernaturalism and distinguish between the natural and the supernatural. In short, the High Court’s landmark decision in *Church of the New Faith* raises more questions than it answers.

¹⁴⁷ The Law Reform Commission of England and Wales had come to the same conclusion. The NSW Law Reform Commission stated that the impossibility of defining “religion” satisfactorily was in itself “sufficient reason to abandon the offence of blasphemy”.

¹⁴⁸ [Online] http://www.cdi.gov.au/report/cdi_chap20.htm (viewed January 29 2007).

¹⁴⁹ (1983) 154 CLR 120 at 174.

¹⁵⁰ *Butterworths Australian Legal Dictionary* (Sydney: Butterworths, 1997), p 1007, emphasis added.

CHAPTER 3 PROBLEMS WITH THE AUSTRALIAN LEGAL POSITION

“The chief, and I think final, objection to any theory of higher and lower, or complete and incomplete, truth is that it is contrary to the very nature and possibility of discourse; that it is ‘unspeakable’.”

- John Anderson, “Empiricism”, in *Studies in Empirical Philosophy* (Sydney: Angus and Robertson, 1962), p 4.

Preview

1. The view expressed by the majority in the *Church of the New Faith* case is inadequate, misleading and unhelpful in a number of respects:
 - Firstly, the insistence, for all intents and purposes, on supernaturalism does not sit at all well with 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 High Court has provided little or no guidance as to how one determines whether a particular belief system involves a “supernatural” view of reality.
 - Thirdly, all talk of a supernatural order or level of reality is ontologically “unspeakable”.
2. One must look elsewhere for some more practical and legal guidance.

Introduction

It is the cornerstone of this thesis that the view expressed by the majority in *Church of the New Faith* is inadequate, misleading and unhelpful in a number of key respects.

First, there exist in the world 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 present judicial definition of what constitutes a religion is inadequate by reason of the fact that the High Court has, in any event, provided little or no guidance as to how one determines whether a particular belief system involves a “supernatural” view of reality.

Thirdly, the High Court “test” is unworkable in any event as any notion of there being different orders or levels of reality or truth is ontologically contrary to the very nature and possibility of logical discourse.

Naturalistic religions

Philosopher and naturalist John Dewey (*Living Philosophies* 1943:28) framed the underlying issue that it is vital to this thesis in the following terms:

How about religion? Does renunciation of the extra-empirical compel also an abandonment of all religion? It certainly exacts a surrender of that supernaturalism and fixed dogma and rigid institutionalism with which Christianity has been historically associated. But as I read human nature and history, the intellectual content of religions has always finally adapted itself to scientific and social conditions after they have become clear.

It is regrettable that the majority of the High Court Justices in *Church of the New Faith* (with the possible exception of Murphy J) did not undertake any sort of detailed study of the varieties of religious experience and of changes over time (for even long-established religion such as Judaism and Christianity have changed greatly over the years). Whilst paying lip-service to the wide panoply of world religions, their Honours for the most part were content to ignore the results of detailed studies of comparative religion and were content to articulate a view of religion that sat more comfortably with traditional Western

religion than with any other types of religion.

It is undeniably the case that there are in existence a number of belief systems that are ordinarily regarded as being religious which, when compared and contrasted with a religion such as what is known as conventional Christianity, are wholly or substantially naturalistic (non-supernaturalistic). Those belief systems include Buddhism, Confucianism, religious naturalism, religious humanism, much of modern day Judaism, modern day Unitarianism and Unitarian Universalism, and New Thought.¹ The adherents of these belief systems are men and women of faith, too. Their faith is activated belief and trust in the nature of the cosmos.

Buddhism

Humanist philosopher Corliss Lamont ([1965] 1979:48), referring to Buddha and Confucius, has written that “it seems most unlikely that either of them believed in supernaturalism in the sense of a personal God and personal immortality”.

Unitarian Universalist minister Mike Young (1998:Online) has aptly spoken of the elusive and highly variegated nature of Buddhism:

One of the first things that I need to say about Buddhism is that there is nothing that you are required to be, to be a Buddhist. There is nothing that you are required to believe to be a Buddhist. There is nothing that you are required to do to be a Buddhist. Indeed, the actions, the celebrations, the things that Buddhists do vary wildly from country to country.

In a similar vein, Leadbeater (2001:97) writes that Buddhism is “not a question of creed, but of life”, going on to say about his own decision to enrol himself as a Buddhist:

... I was not asked to accept any article of faith, but to try to live according to the precepts of the Lord [Buddha].

There are two main types or manifestations of Buddhism (as well as several other types). The two principal expressions of Buddhism are known as Theravada Buddhism² and

¹ Even Shinto has been described as a “naturalistic religion that grew out of the everyday life of the Japanese people in primitive times”: see *Nippon: The Land and Its People* (1982:253).

² Also known as Southern Buddhism and Hinayana (“The Little Vehicle”). Theravada means “The Teaching of the Elders”.

Mahayana Buddhism.³ As regards the former, Slater (as cited in Lewis and Slater 1966:74) notes that there is “not only a complete absence of any belief in God, or any approach to such a belief, but a complete absence of any experience or religious consciousness of transcendent Being”. More particularly, the belief system “looks back to the body of doctrine approved at an important conference held in India not long after the founder’s death” (Bentley-Taylor 1960:118). That body of doctrine comprises a set of important *ethical* teachings and standards. American theologian and Unitarian minister Charles Francis Potter (1955:35) has written:

This is the core of [Buddha’s] message - right thinking will bring peace of mind.⁴

In other words, Buddhism, insofar as the individual human being is concerned, is essentially a path of personal transformation, the motive being “self-culture” (Vines 1970:35), with the emphasis on *mettā* (loving-kindness), that is, “ridding oneself of hate and jealousy through infinite love” (*Nippon: The Land and Its People* 1982:255). In the words of one Buddhist centre (*Meditation & Buddhism* 2002):

It teaches us to look within ourselves for the inner peace and happiness we seek. By developing a more positive outlook, and in particular by deepening our wisdom and compassion, we can improve the quality of our life and gain great power to help others.

On a more formal side Potter (1955:45-6) has written:

There is no record of the Buddha’s ever praying or ever teaching his disciples to pray. The nearest to a prayer there is in Buddhism is the statement which must be made by a convert, which is called The Refuge, or The Buddhist Trinity:

I take refuge in the Buddha.
I take refuge in the Dharma.
I take refuge in the Sangha.

The Dharma is the Teaching or Doctrine of Buddhism, and the Sangha is the brotherhood of the Believers.⁵

³ Also known as Mahayana/Tantric or Northern Buddhism (“The Great Vehicle”), of which there are many sects and movements. In addition to Theravada and Mahayana Buddhism, there are other different kinds of Buddhism including Zen/Japanese/Chinese/Korean and Pure Land/Chinese/Japanese. (Pure Land Buddhism is prominent in Hawaii.)

⁴ Page references are to the British edition.

⁵ Dharma [Sanskrit] (or Dhamma), the word that Buddhism itself uses to describe its own belief system (there being no actual word in Buddhism for “religion” *per se*), is usually translated “law” but it is actually a multi-faceted concept that embraces nature, the law of nature, religious duty and its practice, the results or “good fruits” of religious belief and practice, and the teaching of the Buddha. The term Dharma has a much wider meaning than the term ‘God’.” Vines (1970: 35) refers to Dhamma as “the Truth, Wisdom, [and] Love which enfolds the Universe”. Leadbeater (2001:99) points out that Dharma is the Lord Buddha’s “statement of the universal laws under which the Universe exists, and consequently of the duties of men as part of that mighty scheme”.

It must, however, be kept in mind that the formulation, “I take refuge in the Buddha”, refers to an undertaking to follow Buddha’s instructions, that is, to walk in his steps.⁶ It does not denote accepting Buddha as one’s personal lord and savior as in evangelical Christianity (Bentley-Taylor 1960:126).⁷ There is, as Slater has pointed out, a complete “absence of any belief in divine grace, as man is bidden to work out his own salvation, dependent on his own effort” (Slater, as cited in Lewis and Slater 1960:75).⁸ The emphasis, particularly in Zen Buddhism but also in other forms of Buddhism as well, is very much on the actualities of *doing* and *being* as opposed to believing certain supposed metaphysical propositions about reality, as Teshima (1995:Online) points out:

In continuous acts of everyday-mindedness one forgets one's mind and circumstances. This self-oblivion is, however, not the same as the oblivion of reality. On the contrary, it is the full actualization of the Dharma, therefore the full manifestation of one's essence. The fact that one is engaged in continuous acts is nothing but proof of one's existence.

And what of the supernatural? As regards traditional Buddhism, Humanist philosopher Paul Kurtz (1994:70) has written:

One cannot find a doctrine of the supernatural in Buddhism, at least as understood in Western religion. There is no conception of God as a person, no cosmic plan, no idea of personal immortality or salvation. In the traditional sense Buddha was an atheist, for he rejected theism. ...⁹

Buddhism, at least as taught by its founder (who did not claim to be divine),¹⁰ was and remains a non-theistic ethical system, almost entirely devoid of faith and worship at least in the sense in which those words ordinarily are used. Its Four Noble Truths, Noble Eightfold Path and Ten Commandments (the latter so very different from those of Judaism and Christianity), along with the lists of the Four Intoxications and the Five Hindrances,

⁶ Dr Arnold Toynbee has written of what he calls the “oriental sense of selfless love”, which is intrinsically a religious disposition. “By ‘oriental sense of selfless love’ is meant a love directed not only to fellow human beings but to the whole universe. It is based on self-sacrifice and self-abnegation.” Tamotsu Sengoku, *Japanese View on Humanity*, as cited in *Nippon: The Land and Its People* (1982:261).

⁷ Admittedly, one of the later innovations of Mahayana Buddhism was an emphasis on faith in Gautama and the Bodhisattvas (Buddhist “deities” or “Wisdom Beings” who, as emanations of the Buddhas, are said to embody Buddha qualities and who supposedly work for the betterment of human beings). However, as Vines (1970:35) points out, although the Buddha is “reverenced and glorified by the various Mahayana Schools” and even worshipped by some adherents as “their loving Father”, he is not regarded as either omnipotent or the creator of the universe but “may be regarded as the incarnation of the Absolute, because he has realised it, as a man, within himself.”

⁸ Slater is referring, once again, to the Theravada tradition.

⁹ See also Gunasekara (2005:Online), a noted Australian secular humanist, who is in basic agreement with the view expressed by Kurtz except as regards Buddhist beliefs in the existence of non-human beings and the supposed existence of supernormal powers.

¹⁰ Another of the later innovations of Mahayana Buddhism was the deification of Gautama Buddha himself.

constitute an entirely naturalistic code of ethical standards devoid of any references to God.¹¹ As Bentley-Taylor (1960:126) points out, “God in the objective, personal, sense does not fit into the system.” Further, Buddhism is “devoid of the mythology of a supernatural, miraculous religion and the doctrine of salvation by grace ... [focusing] on achieving moral equanimity in this life” (Kurtz 1994:71).¹² Although the Buddha did not teach prayer as such (Vines 1970:35) meditation plays an important role in achieving this desirable state of moral equanimity but not in any supernatural sense (*Meditation & Buddhism* 2002):

Meditation is a way of calming the mind, making us more peaceful, balanced and focused in our daily lives. Ultimately, it enables us to awaken our spiritual potential and find lasting joy and contentment.

...

“When the turbulence of distracting thoughts subsides and our mind becomes still, a deep happiness and contentment arises naturally from within.”¹³

For the most part, Buddhism is naturalistic and psychological in its orientation, teachings and outlook, the ultimate goal being “self-enlightenment attained by awakening to the truth” (*Nippon: The Land and Its People* 1982:255) by choiceless awareness of what *is*. King (2005:Online) writes:

Legendary miracles did develop later within Buddhism which ascribe miracles to Buddha, yet the original accounts are completely devoid of any miraculous occurrences. Miracles are incompatible with Buddha's philosophy. Buddhism affirms a naturalistic view of the universe. This may also explain the sky-rocketing interest in Buddhism ... it offers a type of spirituality without the religious baggage of faith, accountability and absolute truths.

The Buddhist writer Hsu Heng Chi (1989:v, 26) has described the religious naturalism of his religion in these terms:

For us, Buddhism lies nowhere but rightfully in the phenomena of the world. ... Understanding Buddhism is understanding the mind and the self-nature. ... *Buddhism is NOT established on the basis of Theology.* [Original emphasis]¹⁴

There is no concept in Buddhism of “creation”, let alone doctrine of special creation (as in

¹¹ Potter (1955:45) points out that “the duties of man to man are much stricter” in Buddhism than in either Judaism or Christianity”.

¹² Even the notion of reincarnation itself is said to involve the evolution of *matter* through various *natural* cycles.

¹³ The oft-cited quotation comes from the Venerable Geshe Kelsang Gyatso.

¹⁴ Chi (1989:26) also asserts that “Buddhism is a rational belief, pure and simple, and also may be said to be a living practical knowledge of empirical metaphysics”.

Christianity), or, for that matter, any sense of there being a “Creator”, whether personal or otherwise. Similar to certain belief systems such as Christian Science and New Thought, the religion embodies a rather extreme form of objective idealism, as Chi (1989:13) points out:

A well-known Buddhist saying “Fundamentally uncreated is the mind but it exists through things” may be considered to be in line with Materialism.¹⁵

Even the doctrine of karma - the “Buddhist law of moral causation” (Thera 1993:ix) - with its associated doctrine of rebirth¹⁶ (more correctly, the *sansaric* hypothesis), does not postulate the existence of a supernatural order or level of reality as those words are understood in Western religion and philosophy. Bentley-Taylor (1960:123-4) provides an excellent exposition of these two important doctrines, making it clear that, even if it be the case that the doctrines cannot be substantiated empirically (something he does not pursue), the beliefs are not inherently supernaturalistic but are understood, rightly or wrongly, to operate in naturalistic spheres of human activity and mentality:

The doctrine of rebirth attempts to account for differences at birth which Buddhists attribute neither to chance, environment, nor Creator. The law of cause and effect is held to operate in the mental and moral domain no less than in the physical world. By its aid circumstances such as love at first sight are readily explicable; the individuals were associated in a former existence. Indeed there is no calamity met with or inherited, no event of life, whether favourable or otherwise, which this theory cannot readily explain. ...¹⁷

This process, based, as it is, on the presumption that more than one lifetime is required for the complete conquering of desire,¹⁸ does not involve any concept of transmigration of souls (or metempsychosis).¹⁹ The latter refers to the belief in Hinduism and certain other belief systems that the soul passes from one body to another, whether human, animal or inanimate, as Bentley-Taylor points out (1960:124):

¹⁵ Chi points out that the words “fundamentally uncreated” mean “fundamentally unborn”. There is, in Buddhism, no concept of a “soul”, nor is there any “self” to be found. In that regard, there is a well-known Buddhist saying, “All dharmas are without self”. This concept applies to *all* phenomena, no matter how described.

¹⁶ Note, rebirth, not reincarnation or transmigration. Vines (1970:31) writes: “People say the Buddha taught rebirth, not reincarnation. But Karma applies not only to one’s subsequent life. The fruit of one’s actions can ripen within a single lifetime, or even in a single day.”

¹⁷ In a similar vein Gunasekara (2005:Online) writes that, irrespective of whether or not one agrees with the doctrines, the Buddhist doctrines of rebirth and karma “do not come within the ambit of what could be considered as belonging to the supernatural”.

¹⁸ The Third Noble Path is that suffering will come to an end when all desires have been suppressed. Gunasekara (2005:Online) writes that some Buddhists, particularly in the West, “do not interpret karma and rebirth as requiring re-birth and post-mortem existence” but, instead, believe that the process is limited to a particular person’s own single physical life-time.

¹⁹ Greek, “change of soul”.

... Buddhism does not accept the theory of transmigration, for it rejects the idea of a soul existing in a body and thus forming the connecting link between successive incarnations. What lives on after death is simply Karma, the result of what has happened before, not some inward and invisible part of the individual. The true Buddhist doctrine is therefore rebirth without transmigration.²⁰

According to Buddhism there is no transmigration of souls for the reason that none of the five supposed “components” of an individual (one being physical, three being psychological, and the fifth being *sankhara*, namely, one’s karmic record) include or comprise a soul (*tman*) as such. Gunasekara (2005:Online) writes that “the express denial of [the existence of the soul] is one of the principal claims of Buddhism”.²¹ Indeed, Buddhism does not postulate the existence of any soul (Vines 1970:31-2) or, for that matter, any sort of “permanent substance in reality” (Teshima 1995:Online) or “abiding reality ... a substance that transmigrates” (Santina 1984:104).²² Further, there is, in Buddhism, a denial not only of any kind of self that is reborn but also a denial of the self itself - indeed, a denial of the very possibility of the self. Teshima writes (1995:Online):

Examining the body and psychology of man according to these physical elements and mental functions, Buddhists eventually ask a real question: What then is the essence of man? From one moment to another, the combination of these elements and components is never the same. A man’s whole being not only floats on the surface of transiency but also changes of itself. In such a state of flux how can man grasp himself? There is no permanent substance in reality. What he grasps one moment will be a phantom the next moment. ...

...

Realizing that no spiritual substance is found in our body or psyche, Buddhism flatly denies the possibility of the self.²³

Nibbāna (Nirvana) is itself a natural state - a “supramundane state that can be attained in this life itself” (Thera 1993:25) - the attainment of which is itself viewed as a natural evolutionary process. It is not a state of nothingness, but “the extinction of suffering ... the elimination of egoism ... [and] the eradication of lust, hatred and ignorance” (Thera 1993:26), none of which has *anything* to do with notions of supernaturalism. As Bentley-Taylor points out (1960:125):

²⁰ Bentley-Taylor makes the point that, nevertheless, “it is probable that many Buddhists in practice hold to the view of transmigration”.

²¹ This is confirmed by Christmas Humphreys (1951:80) who writes: “Buddhism denies the existence in man of an immortal soul.”

²² In Buddhism, one aims to “rid oneself of the tenacious idea that everything is everlasting, although all is transitory, that everything has substance, although all is insubstantial”: *Nippon: The Land and Its People* (1982:255). Santina (1984:105) refers to the “continuity of cause and effect, but not of permanence”.

²³ There is, however, something known as the “Buddha-nature” which, despite the constant and ever-changing state of flux, is said to be immanent in but otherwise concealed within all sentient beings. Once again, we are talking here about the possibilities of man, *not* some supernatural being.

Nirvana is an ethical state, a condition which eliminates any future rebirth, the extinction of all craving, the final release from suffering. ... It is a state of mind in which Karma comes to an end. It is the cessation of becoming, for when a process is not continued it simply ceases. It is remainderlessness. ...

The human spirit is not extinguished in this process of *samsara*, but is “merely freed from the limitations of earthly attachments and personality” so that it can “then enjoy transcendental bliss” (Potter 1955:46). Thera (1993:87) writes:

It is not correct to say that Arahants [those who have attained enlightenment] exist after death, or do not exist after death, for Nibbāna is neither eternalism nor nihilism. In Nibbāna nothing is eternalized nor is anything, except passions, annihilated.

Nirvana is simply “the extinction of that sinful, grasping condition of mind and heart which would otherwise ... be the cause of renewed individual existence” (Vines 1970:32). The only reason why Nirvana is sometimes called “Void” is because it is a state “void of lust, hatred and ignorance, not because it is nothingness or annihilation” (Thera 1993:87).

In short, Buddhism is “hardly a religion in the generally accepted sense of the word as connoting some contact between man and his Maker”, but rather an “ethico-philosophical system” (Thera 1993:ix) or a “moral philosophy and a Way” (Bentley-Taylor 1960:126). Thus, it is not at all surprising that Lord Denning MR in *R v Registrar General, ex parte Segerdal*²⁴ recognized that Buddhism was an “exceptional case” that needed to be treated as such as it did not otherwise come within the standard definition of “religion”.²⁵ However, with the greatest respect, to treat what is reportedly the sixth largest of the world’s religions in terms of followers²⁶ as an “exception” to the general rule strains credulity. Such an approach is unacceptable as it smacks of unfortunate overtones of Christian and western cultural supremacy and religious bias.

Confucianism

The teachings of the Chinese sage and philosopher Confucius,²⁷ who saw himself as “a social reformer, rather than a religious leader” (Ross and Hills 1965:94), are “almost

²⁴ [1970] 3 All ER 886.

²⁵ [1970] 3 All ER 886 at 890.

²⁶ See “Major Religions of the World Ranked by Number of Adherents” (Online). According to this source there are some 376 million followers of Buddhism in the world.

²⁷ K’ung Fu Tzu (commonly pronounced Confucius in English, and also known as Master Kung) was born in 551 BCE in the state of Lu (modern day Shantung Province) and lived during the Chou dynasty. He wandered through many states of China, giving advice to their rulers. Lamont notes that Confucius was “much more

entirely concerned with man's moral conduct and his social relations" (Baker 1960:161).²⁸ Further, the teachings, which are "essentially practical" (Strathern 1999:32), do not even amount to a philosophy in the Western sense of the word, let alone a religion in any conventional sense. As Strathern (1999:26-7) has pointed out:

Confucius' teachings do contain references to epistemology, logic, metaphysics, and aesthetics - the traditional categories of philosophy - but they are only passing references and form no system.

As to whether Confucianism is a religion, Strathern (1999:8) writes:

Confucius may have founded a religion (Confucianism), but his teachings were not religious *per se*. Nor, in fact, was his religion - and this Chinese puzzle has certainly contributed to its longevity.

Assuming for the moment that Confucianism is a religion, it is, as Potter (1955:51) points out, very much "the religion of self-help" - perhaps the first such religion - with a bare minimum of metaphysics.²⁹ Potter (1955:57) describes the belief system as the "simple humanistic ethical religion of Master Kung". In that regard, the ethical teachings of Confucianism relate for the most part to morals and standards of right behavior towards others encapsulating the following core values (Robinson 2005:Online):

- **Li**: includes ritual, propriety, etiquette, etc
- **Hsiao**: love within the family: love of parents for their children and of children for their parents
- **Yi**: righteousness
- **Xin**: honesty and trustworthiness
- **Jen**: benevolence, humaneness towards others; the highest Confucian virtue
- **Chung**: loyalty to the state, etc.

Potter (1955:55) lists the cardinal ethical virtues of Confucius' belief system as being the following:

Wisdom is the virtue Confucius liked to emphasize. The other four of his Five Cardinal Virtues are Humanity, Uprightness, Decorum, and Truth. He was the first to make Humanism a religion.

concerned with political and social life than Buddha and presented the idea of the noble man in the noble state". Lamont [1965] 1979:49.

²⁸ Luther Yung (as cited in Vines 1970:58) writes that Confucianism is essentially "an ethical programme for human relationships": However, Confucius's teachings also relate to the proper use of political power.

²⁹ Strathern (1999:9) writes that Confucius nevertheless appears to have believed that the universe contains a power for good".

Indeed, in a manner similar to much Humanist thought, there is an emphasis on the innate goodness of every human being, as Ross and Hills (1965:91) point out:

Confucianists often speak of “perfected humanity”. It can be achieved by a person because of something the Confucianists believe to be present within each person, even at birth. This is a native goodness or kindly love that can be developed through feelings of helpfulness toward others.

Tu Wei-ming (as cited in Strathern 1999:45), an eminent professor of Chinese history and religion at Harvard, has also written of the essential humanism of Confucius’ system of ethics:

If we have to choose one word to characterize Confucian ethics, that word would have to be humanity. The main concern of Confucian ethics is the whole process of learning to be human. This process involves a total commitment, a continuous effort of self-refinement or self-improvement and a holistic vision of the entire project of moral education.

This is not surprising given that Confucius himself, who, unlike the founders of most of the world’s religions, claimed no divine revelation from on high (Potter 1955:57),³⁰ was “usually reticent regarding the disciples’ enquiries about the supernatural and whatever transcends earthly existence” (Baker 1960:174)³¹ and avoided speaking about spirits, even going so far as to say, “While respecting spiritual beings, ... keep aloof from them.”³² He was evasive at times on the question of whether he was even religious (Strathern 1999:8-9) and “did not claim that what he was teaching was religion” (Ross and Hills 1965:94).

Accordingly, some scholars have queried whether Confucianism can properly be regarded as a religion (Baker 1960:161) as it contains “little speculation about the meaning and ultimate nature of life” (Strathern 1999:32). Perhaps the most that can be said on that matter comes from Ross and Hills (1965:94):

³⁰ Voltaire wrote that Confucius was “the first man who did *not* receive divine inspiration”: Strathern 1999:44. Although Confucius did not claim to be divine, he was given the title “Duke Ni, All-complete and Illustrious” in 1 CE. Further, in 1906 he was officially deified by imperial decree as the third God of China, the other two being Heaven and Earth (although the latter were not believed to exert any appreciable influence on humanity). Until the 1949 revolution, Confucianism and the Chinese way of life were virtually synonymous. Despite systematic attempts by the Chinese Communists to eliminate Confucianism there remains “a strong undercurrent of Confucianism in Chinese thought”: Strathern 1999:2.

³¹ Vines (1970:56) writes of Confucius’ “[r]eserve as to spiritual beings [and] the life after death” but also states that the “contention” that Confucius was an agnostic “seems to be not proven”.

³² *Analects*, Bk VI, 20. Luther Yung (as cited in Vines 1970:58) writes that Confucius “spoke little of the spiritual life”.

If what [Confucius] taught was not religion, it was at least religious. Confucius taught his beliefs because he believed they were backed by the nature of things. His teaching was an attempt to get man in line with reality.

If that be religious, it is religious in the naturalistic sense - that much is certain.

However, the term Confucianism can also be considered to embrace not just the actual teachings of Confucius and his leading disciples³³ but also so much of early Chinese religion as was adopted by Confucius or otherwise became incorporated into his teaching as well as the accompanying ritual that developed “around his name after his death” (Baker 1960:161). That includes such practices as ancestor reverence or worship and also the postulated existence of various kinds of spiritual beings.³⁴ Thus, Charles F Aiken (1912:Online), writing in the 1912 edition of the *Catholic Encyclopedia*, describes Confucianism in the following broad terms:

By Confucianism is meant the complex system of moral, social, political, and religious teaching built up by Confucius on the ancient Chinese traditions, and perpetuated as the State religion down to the present day [sic]. Confucianism aims at making not simply the man of virtue, but the man of learning and of good manners. The perfect man must combine the qualities of saint, scholar, and gentleman. Confucianism is a religion without positive revelation, with a minimum of dogmatic teaching, whose popular worship is centered in offerings to the dead, in which the notion of duty is extended beyond the sphere of morals proper so as to embrace almost every detail of daily life.³⁵

If one has regard to the religious conceptions at the time of Confucius one will certainly find, as Baker (1960:165) has pointed out, various forms of animism as well as ancestor worship. However, even if Confucianism is understood in these wider more inclusive terms, the fact remains that the religion *in itself* is highly rationalistic, possessing “no supernatural concept of the sacred or ideas about salvation and a future life” and “no doctrine of salvation” (Kurtz 1994:66),³⁶ certainly not as those terms are ordinarily understood in Western religion, and for the most part the sheer down-to-earth practicality

³³ During his lifetime a small group of students came to be associated with Confucius.

³⁴ Vines (1970:54-5) writes that in the religious world of the ancient Chinese one Being is pre-eminent under two names, Shang-ti and Thien (T'ien), with the former standing most pre-eminent as “almost a monotheism”: “To call it polytheism is doing more than justice to the spirits of hills and rivers which still fall within the natural system of things.”

³⁵ Confucianism is, of course, no longer the “State religion” of China.

³⁶ It should be noted that the *San Chiao* (“Three Religions”) of Confucianism, Taoism and Buddhism often intermingle and peacefully coexist. Confucianism provides the moral and social ethics, Taoism contributes a sense of communion with nature with concomitant duties and responsibilities, and Buddhism provides the notion of karma and the doctrine of rebirth. All three religions are “not regarded by the Chinese as mutually exclusive systems, but are recognized moods of China’s religious consciousness”: Baker 1960:161. According to Luther Yung (as cited in Vines 1970:58) Taoism would appear to be predominant: “From the dawn of Chinese history it seems that the Chinese have held but one religion, that of the TAO. This religious concept has permeated all Chinese culture, life and art and literature.”

of Confucius' teachings stands in objective contradistinction to the "puerile and profitless superstitions into which, in his day, the popular religion had sunk" (Baker 1960:174). Chinese author Lin Yutang (1935:101) has written that Confucius was a true Humanist and that Confucianism is "Chinese Humanism" (Lamont [1965] 1979:49) in which there is a total love of life and the things of *this* world. He further writes (1935:103):

For the Chinese the end of life lies not in life after death, for the idea that we live in order to die, as taught by Christianity, is incomprehensible; nor in Nirvana, for that is too metaphysical; nor in the satisfaction of accomplishment, for that is too vainglorious; nor yet in progress for progress's sake, for that is meaningless. The true end, the Chinese have decided in a singularly clear manner, lies in the enjoyment of a simple life, especially the family life, and in harmonious social relationships. ... There is no doubt that the Chinese are in love with life, in love with this earth, and will not forsake it for an invisible heaven. They are in love with life, which is so sad and yet so beautiful, and in which moments of happiness are so precious because they are so transient.

Religious naturalism

Stone (1993:Online) offers the following definition of religious naturalism:

Religious naturalism may be defined as the affirmation that there are one or more aspects of the world to which religious responses are appropriate.

Religious naturalism exists in its own right as a religious movement, and it also subsists in a number of the world's religions, including Judaism and Christianity. However, even in the case of those religions that are supernaturalistic in their orientation and thought forms, the natural world is by no means unimportant, and most religions in their earliest forms were naturalistic³⁷ in orientation and thought form. Indeed, as David Suzuki (1997:190) has pointed out:

All religions explore the place of people in the natural and social worlds around them. They provide explanations for mysteries such as death and disorder, and use myths and moral teachings to relate human and nonhuman spheres. The earliest forms of contemporary world religions, such as Hinduism, Christianity and Islam, presented an animated, integrated world similar to that of traditional worldviews. As Lao Tzu puts it in the *Tao Te Ching*:

The virtue of the universe is wholeness,
It regards all things as equal.

But some of those world religions have shifted ground over the past centuries, supporting the development of a very different picture of reality and our place in it.

³⁷ Naturalism takes various forms including but not limited to cosmological naturalism, methodological naturalism, ethical naturalism, scientific naturalism, social naturalism, and religious naturalism.

Beach (1998:144-5) writes that prominent theologian James Luther Adams saw Jesus as a leading exponent of naturalistic religion, at least as regards his teachings and his methods of teaching:

No appeal [need be] made to scriptural sanction or to supernatural revelation, and no fixed program is offered [by Jesus]. Instead Jesus uses a rational method of analogy [in the parables] appealing to empirical experience self-evident to Jew, gentile, or Samaritan.

For religious naturalists such as Ursula Goodenough (2000)³⁸ and Donald Crosby (2002, 2003) nature is both ultimate reality and a religiously ultimate object in and of itself. In the words of Crosby (2003:Online):

I regard nature as both ultimate reality and as religiously ultimate. There is nothing beyond it, outside of it, or over against it that is needed to explain its origin, continuing existence, or irrepressible creativity. Nature itself, without a God, Goddess, gods, or animating personal spirits of any kind, is for me an appropriate and, indeed, the most appropriate focus of religious commitment and concern especially for our ecologically conscious times. Thus, I am neither a monotheist, a polytheist, a pantheist, a panentheist, nor an animist, and yet I claim profound religious value and meaning for the immanent, self-contained powers of nature admittedly impersonal though they be that produce, suffuse, and sustain us and all other forms of being.

Religious naturalists are not all a bunch of godless pagans or earth worshippers. They may be “God people” or “non-God people”. As to the former, Goodenough (2004:Online), who, incidentally, belongs to the latter, has written:

There are two flavors of God people: those whose God is natural and those whose God is supernatural. Certainly there are a lot of people within religious naturalism who have no problem with God language - God as love, God as evolution, God as process. People see God as part of nature and give God-attributes to the part of nature that they find most sacred. I encounter people like that all the time.

However, few modern religious naturalists would view nature itself as “God”. Ericson (1988:98) has written that religious naturalism “does not deify the universe”. He further writes (1988:97):

The philosophical and religious naturalist refuses to divert human idealism and effort to the vain and untestable attempt to account for the existence of reality as a whole by postulating some external “divine” or “supernatural” power that, as popular religious supernaturalism contends, must be propitiated and worshipped. The naturalist sees no ground for supposing

³⁸ Goodenough, a scientist, is a professor of biology and director of a cell and molecular biology laboratory in St Louis MO. She is the author of many books including *The Sacred Depths of Nature* (2000).

such a being to exist, or for investing human resources in pursuit of a will-of-the-wisp so footless in logic or meaning.³⁹

Religious conservatives, and even a few religious liberals, sometimes object to claims by religious naturalists from time to time that the latter are “religious” and have “religious faith”, but the phenomenon of religious naturalism is nothing new. With its historical roots going as far back as Baruch (Benedict De) Spinoza in the second half of the 17th century - not to mention its long association with and embodiment in various eastern religions - the phenomenon now known as religious naturalism has a long, well-established and, for the most part, distinguished history, particularly in the United States of America. Its “spokespersons” include such notables as Ralph Waldo Emerson, Henry David Thoreau, Mordecai Kaplan, George Santayana, John Dewey, and Henry Nelson Wieman (who called his belief-system “naturalistic theism”). William James, although not a religious naturalist in the strict sense, nevertheless favoured empirically-based naturalistic reinterpretations of supposedly supernaturalistic phenomena (Robbins 1992).

Naturalistic religious faith involves all of the key elements of a supernaturalistic religious faith, such as piety, awe, reverence, devotion, mystery and surrender, contains elements of both immanence and transcendence (Crosby 2003:Online), and satisfies the tests of both ultimacy and intimacy. Further, religious naturalism is and can genuinely claim to be concerned about what is truly sacred. As Henley (2003:Online) points out:

Religious naturalists recognize that life is sacred because of the sheer improbabilities of existence. And they remind us that life is sacred because of the probabilities of extinction.

In short, any attempt to define or otherwise understand religion that does not take into account the phenomenon of religious naturalism is bound to be inadequate not to mention downright misleading. By including religious naturalism and naturalistic reinterpretations of supernaturalistic belief systems the study of religious beliefs and convictions “no longer need to be considered to be a separate domain from the rest of human thinking – immune from advances in scientific thinking, for instance” (Spearritt 2004:Online).

³⁹ In *Shinto*, all natural objects and phenomena were considered to have *kami* (gods), thus rendering them sacred (or set apart): see *Nippon: The Land and Its People* (1982: 253).

Religious humanism

Religious humanism, being a movement and belief system that focusing on human capabilities, is, in the words of Pat Hoertdoerfer, “as old as Buddhism, Confucianism and Taoism, all non-theistic faiths of the first millennium BCE ... as old as Jesus ... as old [as] the Reformation and Renaissance in 15th and 16th century Europe ... [and] as new as 19th and 20th century America” (Hoertdoerfer 2004:Online). As regards the latter, Hoertdoerfer writes:

It is as new as the Transcendentalists and the Free Religious Association; it's as new as John Dietrich, Curtis Reese, and Anna Garlin Spencer. Dietrich, for many years minister of the First Unitarian Society of Minneapolis, was a powerful preacher, theologian, and social radical. He proclaimed a new religious humanism, that evolved within our own denomination, although it was not confined to our denomination. He was highly iconoclastic and antitheistic. For him theism itself, or belief in God, was one of the idols that had to be shattered. He proclaimed a natural religion as over against the supernatural. In his classic statement on humanism, he said:

Humanism in religion is the shifting of emphasis from God to man [human], making the enrichment of human life ... the object of our allegiance and consecration Man [human] must by his [her] own effort carve out his [her] own destiny.

He continues:

If we live in a great impersonal universe ... it matters tremendously how we conduct ourselves, for we are actually the makers of human destiny. We are not simply individuals who have a beginning in life and an ending. We are links in the endless chain of life. To us has been committed all that life has won from chaos in all the ages past. Only through us can that trust from the past be transmitted to the future.

Our chief business, therefore, is to put beauty in place of ugliness, good in place of evil, laughter in place of tears; to dispel error with knowledge, hatred with love; displace strife and contention with peace and cooperation. And somehow within us is a voice which urgently calls us to these tasks. It is the life-urge. It is the aspiration after better things. It is man [human] at his [her] best and bravest. It is what many call divine. Some even call it God. In any case, it is religion.⁴⁰

Mason Olds ([1995] 1996:Online) has written:

The religious humanists were convinced that religion was created by humans, not gods, who always speak the words of humans. These humanists provided a functional interpretation of religion: it was created by humans to serve certain purposes. [A Eustis] Hayden spoke of religion as "the mother of dreams." The task is to impose human purpose upon the cosmic process, to shape the course of the flowing stream of life with its millions of conflicting drives, so that it will converge toward the practical expression of creative idealism. [Roy Wood] Sellars maintained the function of religion was to preserve and further human values.

⁴⁰ The interpolations are those of Hoertdoerfer. See also the views expressed by Dietrich (1929) in his address delivered before the First Unitarian Society of Minneapolis on April 14, 1929.

Generally, humanists thought of religion as intelligent participation in the human quest for the good life in a shared world.

Olds ([1995] 1996:Online) also makes the point that religious humanism is a non-theistic religion without any supernaturalism and with a system of morality that was entirely devoid of an appeal to external religious authority:

Theirs was a religion without God. True, [John] Dewey employed the word God to designate the process whereby the actual is transformed into the ideal, but his friend and colleague Corliss Lamont maintained that Dewey used the term to avoid offending the sensitivities of friends who were theists. However, the word caused such controversy that he repented of having used it. Several statements in *A Common Faith* about religion require no concept of God, for instance, "Any activity pursued in behalf of an ideal end against obstacles and in spite of threats of personal loss because of conviction of its general and enduring values is religious in quality." [A Eustis] Hayden used the pragmatic test to judge claims about the helpfulness of the gods: What the gods have been expected to do, and have failed to do through the ages, man must find the courage and intelligence to do for himself. More needful than faith in God is faith that man can give love, justice, peace and all his beloved moral values embodiment in human relations. Denial of this faith is the only real atheism. According to the religious humanists, people can be moral without belief in God. [Roy Wood] Sellars said, "Morality is primarily a group affair. It is a term for the customs which have grown up through the generations and which are absorbed by each new born individual in his term, much as he takes in the air he breaths." Conscience, rather than being the voice of God in the soul of the believer, was viewed by the religious humanists as a reproduction of tribal morality. To be moral, people do not need the supernatural sanction of a heavenly policeman. Morality must justify itself by its actual working in human life. It is primarily a social product, a historical achievement.

Religious humanism places much greater emphasis on the importance of the community and the centrality of the environment than does secular humanism, which tends to be more rationalistic in nature and sometimes overly optimistic, as Murray (2000:Online) points out:

[I]f the old humanism seemed closed to a sense of wonder and mystery and to any form of transcendence, the new humanism can be an open humanism - open to wonder and mystery and transcendence in a naturalistic framework. We can admit that there are limits to what human beings can know and understand, and that even things we think we understand can still call forth awe and wonder in us.

Religious humanism finds expression in a variety of religions both eastern and western including Buddhism, Judaism, Christianity and modern day Unitarianism and Unitarian Universalism.

Early in the 20th century Unitarian ministers⁴¹ in various parts of the United States of

⁴¹ In the United States of America the largest number of self-identified Humanists are members of Unitarian Universalist congregations. Smaller numbers of Humanists are associated with other bodies such as the American Humanist Association, the American Ethical Union, and the Society for Humanistic Judaism.

America began calling themselves humanists. In 1933 a group of 34 liberal humanists in the USA - mainly Unitarian ministers and also the philosopher John Dewey - attempted to enunciate the humanist principles that seemed to them fundamental. What has since become known as Humanist Manifesto I (see Kurtz 1973:7-11 and Online) first appeared simply as "Humanist Manifesto" in *The New Humanist* in May/June 1933. The document was drafted by philosopher Roy Wood Sellars, Unitarian minister Raymond Bragg, and others. Philosopher Paul Kurtz (Kurtz 1973:3) has referred to Humanist Manifesto I as being "for its time ... a radical document".

Humanism is referred to in Humanist Manifesto I as "religious humanism", a phenomenon which arose out of liberal religion in the early part of the 20th century. The Manifesto, which was the culmination of a movement among Unitarians that was already 2 decades old, made no attempt to define what is meant by religion or religious humanism *per se*. What the document sought to elucidate were what were seen by the authors to be the guiding principles or fundamentals of religious humanism.⁴² According to Humanist Manifesto I (Art 7):

Religion consists of those actions, purposes, and experiences which are humanly significant. Nothing human is alien to the religious." Examples given include labour, art, science, philosophy, love, friendship and recreation – all that is in its degree expressive of intelligently satisfying human living. The distinction between the sacred and the secular can no longer be maintained.

Whilst the expression "religious humanism" was used throughout the Manifesto, the document was still very much a secular one. It was made clear that religion had to be freed from doctrines and methods which had lost their significance and which were powerless to solve the problem of human living in the 20th century. The introduction to the document referred to the "changefulness" of religions throughout the centuries. Nevertheless, there were certain "abiding values, an inseparable feature of human life". Further, religion must be "vital, fearless and frank" and it must meet the needs of the times. "To establish such a religion is a major necessity of the present."

Humanist Manifesto I was grounded in religious naturalism. The universe was said to be "self-existing and not created" (Art 1). What was needed was an organic view of life.

⁴² See Ellis-Jones (2004b) for a critical analysis of Humanist Manifesto I and its successors.

The document referred to the "naturalness and probability" of things (Art 11).⁴³ There was an express rejection of the traditional dualism of mind and body as well as an express rejection of any distinction between the sacred and the secular. Belief in the supernatural was dismissed or, rather, seen as inappropriate and outmoded (Arts 5-6). An anthropological view of religion was espoused: religion is the product of a gradual development due to humans' interaction with the natural and social environments (Art 4).

There was an express rejection of theism, deism, modernism, and the movement and ideas known as New Thought (Art 6), as well as the "old attitudes involved in worship and prayer" (Art 9). In the place of the old religious attitudes the humanist's religiosity is expressed in "a heightened sense of personal life and in a cooperative effort to promote social well-being" (Art 9).

And what of the purpose of religion? It "must work increasingly for joy in living" (Art 12), for ultimately we are concerned with "the fulfillment of human life" (Art 13), that is, "the quest for the good life" (final para).

In many ways, the humanism embodied in Humanist Manifesto I is "post-Christian Unitarianism without a creed or supernaturalism" (Ellis-Jones 2004b). Humanist Manifesto I signatory John Dewey (1934:27), who considered his own espousal of humanism as "religious", defined religion in the following way:

Any activity pursued in behalf of an ideal end against obstacles and in spite of threats of personal loss because of convictions of its general and enduring value is religious in quality.⁴⁴

If religious humanism advances any theology at all, it is very much a "theology of man". In the process, the rise of religious humanism has made it easier to think in new

⁴³ If there is a deity in all of this, it is nature.

⁴⁴ Some 40 years later Humanist Manifesto II (1973) was published. That document had been prepared by the philosopher Paul Kurtz and Unitarian minister Edwin H Wilson (the latter being a signatory to the original 1933 Manifesto and one of the principal founders of the American Humanist Association). Unlike the first Humanist Manifesto, humanism is not referred to in this document as being "religious humanism". It is secular humanism; the claim to being a religion had been dropped. In more recent years there have been several other "official" declarations including *A Secular Humanist Declaration* (1980), the IHEU *Minimum Statement on Humanism* (1996), *Humanist Manifesto 2000*, the *Amsterdam Declaration 2002*, *Secular Humanist Values and Beliefs* (2002), and *The Affirmations of Humanism: A Statement of Principles*. The most recent declaration is *Humanism and Its Aspirations: Humanist Manifesto III* (2003).

thoughtforms concerning God and religion. In the words of Jewish humanist Erich Fromm ([1966] 1967:56-7):

At this point we arrive at a central question. Is religious experience necessarily connected with a theistic concept? I believe not; one can describe a “religious” experience as a human experience which underlies, and is common to, certain types of theistic, as well as nontheistic, atheistic, or even antitheistic conceptualizations. What differs is the conceptualization of the experience, not the experiential substratum underlying various conceptualizations. This type of experience is most clearly expressed in Christian, Moslem, and Jewish mysticism, as well as in Zen Buddhism. If one analyzes the experience rather than the conceptualization, therefore, one can speak of *a theistic as well as of a nontheistic religious experience*. [Original emphasis]

Modern Jewish Religion

Much of modern day Judaism,⁴⁵ in particular the non-Orthodox⁴⁶ movements known as Reconstructionist Judaism⁴⁷ and Humanistic Judaism,⁴⁸ but also to some extent Reform Judaism,⁴⁹ is for all intents and purposes devoid of notions of supernaturalism. This should not come as a surprise, as there has always been much less emphasis on the supernatural in Judaism than in, say, the religion of Christianity which sprang from it. There is more supernaturalism in the Christian New Testament than in the Hebrew Bible. The Jesus of the New Testament reportedly wrought countless miracles which are

⁴⁵ As opposed to what is often referred to as “classical Judaism”.

⁴⁶ Orthodox Judaism “follows most strictly the full tenets and regulations of the Halachah [*halaka*], Jewish religious law”: Isaacson (1979:124). Non-Orthodoxy refers to Reform/Progressive Judaism, Conservative Judaism, Liberal Judaism, Reconstructionist Judaism, and Humanistic Judaism.

⁴⁷ Reconstructionism, which formally became a distinct denomination within Judaism in the USA with the foundation of the Reconstructionist Rabbinical Seminary in 1968, was founded by Rabbi Mordecai Kaplan (1881-1983). The denominational movement sees Judaism as the natural product of the Jewish people and their history and life experiences, as opposed to it being the supposed result of divine intervention or supernatural revelation. Reconstructionist theology is devoid of all notions of supernaturalism and otherwise has much in common with Humanistic Judaism. The so-called classical view of God is absent, if not rejected. See Cohen (1958).

⁴⁸ Humanistic Judaism, in its modern form, was established in the early 1960s by one Rabbi Sherwin T Wine. The first congregation of Humanistic Judaism, The Birmingham Temple, was formed in Birmingham, Michigan in 1963 by Rabbi Wine. Most congregations of Humanistic Judaism in the United States are members of the Society for Humanistic Judaism, which was established in 1969 by Rabbi Wine and others. The Society for Humanistic Judaism is affiliated with the Congress for Secular Jewish Organizations as well as the International Federation of Secular Humanistic Jews, with affiliates in many other parts of the world including Israel, North and South America, Europe and Australia.

⁴⁹ The Reform movement in Judaism dates back to the mid-19th century, mostly in Germany and the USA, in response to “the new discoveries in science, history and comparative religion” (Rosenberg 1966:56). There is also a non-Orthodox movement known as Conservative Judaism, which sits in the centre and “values much in Reform, to its left, and in Orthodoxy, to its right” (Rosenberg 1966:62). In the UK, in addition to the Orthodox and Reform movements and a small Conservative movement known as the Masorti (the Assembly of Masorti Synagogues, established in 1991), there is also a separate movement known as the Liberal movement, the latter being generally more traditional than the US Reform movement but more liberal than the UK Reform movement. Reform/Progressive synagogues (“temples”) in Australia, some of which (like Temple Emanuel Woollahra) offer both Progressive and Conservative services, are generally more traditional than both their US Reform and British Liberal counterparts.

accounted by many of his followers as evidence not only of his supposed divine status but also of the supernatural activity of God Himself. Insofar as the Jewish scriptures are concerned, Baptist minister Geoff Thomas (2004:Online) has aptly noted:

There were just three periods of miraculous activity during the Old Testament dispensation. There were virtually no wonders wrought by Abraham and the patriarchs, or the judges, nothing during the reign of David, in the period of Isaiah and Jeremiah, or at the time of Ezra and Nehemiah. The first period of miracles was during the exodus from Egypt, and the second was under the prophesyings of Elijah and Elisha, and finally in the Old Testament during the time of Daniel in Babylon there were some extraordinary signs.

Even the prophecies contained in the Hebrew Bible were “not about *fore*-telling but about *forth*-telling (ie about speaking out on issues immediately at hand)” (Harpur 2004:159).⁵⁰

Judaism, which, like all religions, is the result of natural human development,⁵¹ has often being referred to as a religion of ethical monotheism. However, as a result of a number of changes wrought by Reform Judaism and, in the United States of America, Reconstructionist Judaism, as well as such events as the *Shoah* (the Holocaust), Judaism is becoming more and more “a way of life based upon a Jewish system of *monotheistic ethics*”.⁵² As Felix Adler (1913:26), the founder of the Ethical Culture movement has pointed out, “the Hebrew view of life is essentially the ethical view”. Jews accept the “Kingdom of God” (*malchut shamayim*) by building it here on earth, for Judaism is “not a religion of personal salvation but of social justice” (Brasch 1955:5). Thus, the Kingdom of God is not some supernatural event that will supposedly come to pass when this world comes to an end but a kingdom of this world in which there is justice, equality and freedom for all. In that regard, Rabbi Mordecai Kaplan (1962:55)⁵³ spoke of the dangers of “other-worldliness” in the following terms:

⁵⁰ Harpur is a former Anglican priest and professor of New Testament and Greek at the University of Toronto. Alvin Boyd Kuhn (2005:Online) has written: “[W]e have incontestably shown that so-called Bible “prophecy” is not permissibly taken as prophecy in the sense of foretelling future objective event. The word itself is composed of *pro*, the prefix meaning ‘forth,’ and the *phe* stem of the Greek word *phemi*, meaning ‘to speak.’ The word therefore simply carries the signification of ‘speaking forth,’ ‘uttering,’ in fact ‘preaching.’ There is evidence to show that it did not originally in Scriptural literature carry the connotation of predicting future events, at any rate not events of objective history.”

⁵¹ However, as Kaplan (2002:19-20) points out, Judaism, unlike almost all other religions, was not founded by a single individual such as Jesus, Muhammad, Buddha, Confucius or Lao-tze but by “an entire nation [who] heard G-d introduce Himself”. Shintoism, which is much older than Buddhism, is another religion which was not founded by a single individual. It also started among the people. Hinduism also had no personal founder: see Vines (1970:15).

⁵² That is the description offered by Rosenberg (1966:136) [original emphasis]. For example, even on Yom Kippur (the Day of Atonement) the primary focus of almost all of the prayers is moral and ethical behaviour, as opposed to ritual observance.

⁵³ In addition to being the founder of Reconstructionist Judaism Kaplan was a religious naturalist who rejected all traditional forms of theism as well as all notions of supernaturalism. He asserted that God was the sum of all natural processes that allowed a person to become self-fulfilled as a human being. For Kaplan, personal

[R]eligion owes a genuine debt to those who have called attention in our own day of drugging the human with the opiate of other-worldliness. The effect of such an opiate ... is to keep us from the attainment of salvation on earth.

Judaism forever emphasizes our tasks and responsibilities in the here and now; we must all labour together to bring about the Kingdom of God on earth.⁵⁴ The notion of the Messianic Age, although variously interpreted in Judaism, is nevertheless very much associated with world peace:

[The] thread that runs throughout these interpretations is that it will be tied to peace, and we're helping by doing works of reparation – repair of our shattered world by doing good.⁵⁵

Further, it is the position of Jews, not just Humanistic Jews, that it was *Jews* who created the religion of Judaism - they are not converted to it. Reform Rabbi Rudolph Brasch (1955:3), the author of the first book to be published in Australia on Judaism, *The Star of David* (1955), has aptly written:

Judaism is rational, logical and moral. It is not a creed, but a way of life. It demands righteous living and not acceptance of dogma. Beliefs as such are only significant if they serve as a means to foster goodness and holiness.⁵⁶

Indeed, it is permissible in Judaism to break all of the commandments, to save a human life. Felix Adler (1913:18) has alluded to Judaism's propensity for re-inventing itself:

"There is a time to act for the Lord by breaking his commandments" was a saying current among the ancient Hebrew. This means there is a time to act for religion by protesting against what passes for religion; there is a time to prepare the way for a larger morality by shattering the narrow forms of dogma whereby the progress of morality is hindered.

The roots of Judaism in its more humanistic forms go way back to Biblical times, when, for example, Micah, who has been described as "the great prophet of ethical conduct and personal integrity" (Marshall 1970:46), set out what he saw as *real* religion:

"Wherewith shall I come before HaShem, and bow myself before G-d on high? Shall I come before Him with burnt-offerings, with calves of a year old?"

salvation was understood as the "worthwhileness of life". God is "the sum of all the animating organizing forces and relationships which are forever making a cosmos out of chaos" (as cited in Sonsino and Syme (2002:111)). Kaplan also created the ceremony of bat mitzvah. See Ellis-Jones (2003b and 2005g).

⁵⁴ *Laborare est orare* ("To work is to pray").

⁵⁵ Rabbi Aviva Bass (of Temple Beth Israel, Melbourne VIC), as quoted in Manners (2002:25). Even the Sabbath - as understood in Judaism - which has links back not only to Creation but also to revelation (viz the giving of the Ten Commandments), is "a taste of what the future world will be like, with an emphasis on peace and wholeness" (Manners 2002:25).

⁵⁶ According to a Hasidic saying, "God requires no synagogue - except in the heart."

Will HaShem be pleased with thousands of rams, with ten thousands of rivers of oil? Shall I give my first-born for my transgression, the fruit of my body for the sin of my soul?"

It hath been told thee, O man, what is good, and what HaShem doth require of thee: only to do justly, and to love mercy, and to walk humbly with thy G-d.⁵⁷

Marshall (1970:46) has written:

These three verses from the sixth chapter of the book of Micah have been called by many liberal religious persons the high point of Old Testament religion because they turn religion from the external forms to the internal faith which propels and guides a man. There is nothing more required than to do justly, to love mercy, and to walk humbly. In this sense Micah gives us an adequate definition of religion.

Felix Adler (1913:26-7) has written that Judaism is the only true ethical religion:

There are moral traits in all religions, but, as a rule, they are subordinated. Morality is subordinated to *beauty* and *harmony* in the Greek ideal. It is the accompaniment and consequence of *order* in the Confucian scheme. It is but one form of the *brightness* of things, as opposed to darkness and evil, in Zoroastrianism. But to the Hebrew thought, moral excellence is the supreme excellence to which every other species of excellence is tributary.

The Hebrew religion and its descendants are the only ethical religions, strictly speaking, because in the Hebrew religion the moral element is constitutive and sovereign.

That the moral "ought" cannot be explained as the product of physical causation, is the greatest contribution which the Hebrew people have made to the religious and moral history of mankind. [Original emphasis]⁵⁸

In many ways, and increasingly so as time goes by, Judaism is the most *humanistic* of all the world's religions, even more so than Buddhism.⁵⁹ In the Jewish Bible, God was the very first humanist, who created humanity and everything else, "and, behold, it was very good".⁶⁰ God considered human beings so sacred that he issued a commandment that they not be murdered.⁶¹ Further, there is no doctrine of original sin in Judaism, nothing of the "total depravity" of man that is so much a part of certain versions of Christianity. There is an evil inclination (*yetzer ha'ra*) as well as a good inclination (*yetzer ha'tov*), but

⁵⁷ Mi 6:6-8 [Jewish Publication Society ed, 1917]. *HaShem* ("The Name" in Hebrew) is commonly used by Orthodox Jews to refer to God. The contracted expression "G-d" is commonly used by Orthodox Jews (and occasionally by other Jews as well) as a means of respect and to avoid any suggestion of using the Lord's name in vain.

⁵⁸ Arguably, morality in Buddhism is subordinate to, and the accompaniment and consequence of, the evolutionary cycle of order in the overall Buddhist scheme of things.

⁵⁹ Rosenberg makes the point in many of his writings that Jewish theology is "inevitably earthbound". Cohen (1970:51) writes that Judaism is a "realistic humanism", in which man, "the *benoni*, neither saint nor monster", is "neither evil beyond measure nor good beyond credibility".

⁶⁰ Gen 1:31 [Jewish Publication Society ed, 1917]. Rabbi Abraham Joshua Heschel (1907-1972), for many years professor of ethics and mysticism at Conservative Judaism's Jewish Theological Seminary in New York, and the author of many scholarly books, wrote that God is the question put to each of us at birth to which we live our lives as an answer.

⁶¹ See Ex 20:13 [Jewish Publication Society ed, 1917].

throughout Judaism in all of its forms there is a solid emphasis on the human capacity for doing good.⁶²

Judaism teaches the three very *human* virtues of self-reliance, self-giving, and living and acting in the *now*:

If I am not for myself, who will be for me? And if I am only for myself, what am I? And if not now – when?⁶³

Modern liberal Jewish theology - very much a “theology of man”, that is, a “humanistic theology” (Bush 2003a:47) - owes a great debt to what is known as “predicate theology”. This school of theology, which has contributed to a new understanding of the nature of God and religion not only in Judaism but also in liberal Christianity, was initially developed by Rabbi Mordecai Kaplan and has been popularized and further developed by one of Kaplan’s former students Rabbi Harold M Schulweis.⁶⁴ In predicate theology God, as opposed to the “qualities” of God, is essentially unknowable; the emphasis must therefore be on “godliness” and those qualities or virtues that are “godlike” or “divine”. Schulweis (1984:122-3) has written:

the religious contention [therefore becomes] ... that the humanly comprehensible qualities of goodness, love, intelligence and creativity are godly: that they themselves are worthy or adoration, cultivation, and emulation in the lives of the believers. In Feuerbach's formulation [in *The Essence of Christianity*], God does not love, He is himself love, He does not live, He is life, He is not just but justice itself, “not a person, but personality itself.”

Mordecai Kaplan’s Reconstructionist theology has been described as “a historic compromise with humanism” (Bush 2003a:47). For Kaplan (1962:26) God had no meaning apart from humanity:

Godhood can have no meaning for us apart from human ideals of truth, goodness, and beauty, interwoven in a pattern of holiness.

Kaplan (Kaplan 1956:103 and Liebman 1946:170-1 excerpted and adapted] spoke in terms of God, not as a person, but as “the Power”, “the Process”, and the very life of Nature:

God is the Process by which the universe produces persons, and persons are the process by which God is manifest in the individual.

⁶² “Prayer may not save us but makes us worth saving.” Rabbi Abraham Joshua Heschel.

⁶³ Rabbi Hillel, in *Sayings of the Fathers*, I:14.

⁶⁴ Rabbi Schulweis is the emeritus rabbi at a Conservative congregation in Southern California.

God is the Oneness ... the sameness ... the unity of all that is ... the uniformity of all that moves ... the rhythm of all things ... the mystery of life ... the creative flame ... God is in the face by which we overcome the fear of loneliness, of helplessness, of failure and of death ... God is in the love which creates, protects, forgives.⁶⁵

In a similar vein, Rabbi Joshua Loth Liebman (1946:171) wrote:

I believe that God is the Power for salvation revealing Himself in nature and in human nature, in networks of relationships, in countless situations and fields of operation where evil is vanquished and goodness triumphs. God is in the pain of growth, in the seed of sorrow, in the lure of thought, and in all the laws of fulfillment which bind men and stars together.⁶⁶

Writing from a kabbalistic point of view, Rabbi David A Cooper (1997:65), like many other “modern” religious leaders and teachers, has challenged contemporary views as to the nature of God:

What is God? In a way, there is no God. Our perception of God usually leads to a misunderstanding that seriously undermines our spiritual development.

God is not what we think It is. God is not a thing, a being, a noun. It does not exist, as existence is defined, for It takes up no space and is not bound by time. Jewish mystics often refer to It as *Ein Sof*, which means Endlessness.

Ein Sof should never be conceptualized in any way. It should not be called Creator, Almighty, Father, Mother, Infinite, the One, Brahma, Buddhamind, Allah, *Adony*, *Elohim*, *El*, or *Shaddai*; and It should never, never be called He. It is none of these names, and It has no gender.⁶⁷

Cooper (1997:69) goes on to say:

The closest thing we can come to thinking about God is as a process rather than a being. We can think of it as “be-ing,” as verb rather than noun. Perhaps we would understand this concept better if we renamed God. We might call It God-ing, a process, rather than God, which suggests a noun.

One of predicate theology’s modern exponents is Rabbi Harold S Kushner (1989:203-4)⁶⁸ who has written:

⁶⁵ Observant Orthodox Jews, along with most Conservative Jews as well as some Reform Jews, generally hold to a more traditional “theistic” concept of God.

⁶⁶ Joshua Loth Liebman (1884-1988) was for many years rabbi of Temple Israel, Boston. A famous radio broadcaster and best-selling author, Dr Liebman was reputedly the first rabbi to become a member of a Christian theological seminary (Andover-Newton Theological Seminary) in order to teach Judaism to Christian ministers. The publication of *Peace of Mind* in 1946 is said to have ushered in the modern era of the “self-help” book or the so-called “cult of re-assurance”: see Broadhurst (1963:54 [World’s Work ed]).

⁶⁷ *Ein Sof* means “without end” and refers to the Infinite God which is said to be involved in a constant process of self-creation. All forms of Judaism (and, in particular, the teachings of Kabbalah) stress that God, in any event, is essentially unknowable.

“Predicate theology” means that when we find statements about God that say, for example, “God is love, God is truth, God is the friend of the poor,” we are to concentrate on the predicate rather than on the subject. Those are not statements about God; they are statements about love, truth and befriending the poor, telling us that those are divine activities, moments in which God is present.... They are not things that God does; they are things that we do, and when we do them, God is present in our lives.

For example, Erich Fromm,⁶⁹ “one of the most respected humanists and social philosophers of the twentieth century” (Sonsino and Syme 2002:119), saw God as standing for “the highest value, the most desirable good” (Fromm 1956:63), a “symbol of man’s own powers which he tries to realize in his life” (Fromm 1959:37), the “image of man’s higher self, a symbol of what man potentially is or ought to become” (Fromm 1959:49). In other words, God was only an image, an idea, a symbol of what human beings can ultimately become.⁷⁰

There *must* surely be some limits to this seemingly endless process of redefining God. As Corliss Lamont ([1965] 1979:143) has written:

Unless we insist on limiting in some manner the acceptable meaning of God, it is easy, as Professor [Max C] Otto maintains, to prove the existence of God by “dilution into vagueness”; through reducing the definition of the term “until it means no more than everyone, even the confessed atheist, will have to admit to exist. Thus the definition of God virtually proves his existence. ... The word *God* is made to stand for so much that it loses all distinctive meaning. ... Belief bought at this price costs too much. It not only impoverishes the religious life ... but it tends to dissipate the mental discipline so laboriously and slowly achieved by men.”⁷¹

Hardon (1952:Online) makes the point that most redefinitions of God are tantamount to a “doctrine of atheism” pursuant to which “God does not exist except as the projection by our imagination of those non-objective ideals which guide our human conduct”. Nevertheless, redefining God is not something new. It is inherent in all the major religions. However, there may be an even worse problem. As John Anderson would point out if he were still alive, predicate theology - despite its laudable attempts to de-mythologize and de-supernaturalize religion - suffers from the fatal error of relativism, that is, the “confusion of

⁶⁸ Kushner, the Rabbi Laureate of Temple Israel in Natick MA, is the author of many popular books including *When Bad Things Happen to Good People* (1981), *When All You’ve Ever Wanted Isn’t Enough* (1986), *Who Needs God* (1989) and *Living a Life That Matters* (2001).

⁶⁹ Frankfurt-born Erich Fromm (1900-1980), who attended the Psychoanalytic Institute of Berlin, was the author of the all-time best-seller *The Art of Loving* (1956), *Psychoanalysis and Religion* (1959) and *You Shall Be as Gods* (1969).

⁷⁰ Gilman (2001) makes the point that the only way we can think and talk of God is metaphorically, and the metaphors inevitably change over time as the Jewish people come to understand God in new and different ways.

⁷¹ Lamont cites Wieman, MacIntosh & Otto (1932:36). Lamont ([1965] 1979:143) also writes that “for the sake of clarity and truth there must be a line drawn somewhere, beyond which a word cannot properly be used”.

a thing with its relations or things related to it" (1982:32). The statement "God is love" is not a logically acceptable definition of God at all, for nothing can be meaningfully defined by reference to the relations it has to us or to other things.⁷² It tells us nothing about who or what God *itself* supposedly is (Emilsen 1991:276).⁷³

Be that as it may, both Reconstructionist Judaism and Humanistic Judaism were created by cultural Jews who wanted a Judaism that was relevant, rational and humane which at the same time would affirm their identity as members of the Jewish people. Both movements and organizations view Judaism as the natural "outcome of the religious experience of the Jewish people in their search for meaning and sacred living throughout history rather than revelation from a supernatural God" ("What is Reconstructionism?":Online). Both movements exist in their own right in congregations that have been formally constituted as congregations of Reconstructionist Judaism and Humanistic Judaism, respectively. The latter also exists as a palpable presence that can be felt in other Jewish congregations, most notably in some Reform congregations throughout the world.⁷⁴

In various cities and towns throughout the United States of America there are congregations of Reconstructionist Judaism and Humanistic Judaism. Congregations of Reconstructionist Judaism are almost invariably presided over by rabbis affiliated with the Reconstructionist Rabbinical Association whereas some congregations of Humanistic Judaism are lay-led while others are presided over by rabbis. Ordinarily, there are services for Shabbat as well as for High Holidays, using a non-theistic ritual drawing upon ancient and modern materials.

One Reconstructionist congregation⁷⁵ describes itself in these terms:

As Reconstructionist Jews, we seek the beauty and power of Jewish tradition without abandoning a commitment to intellectual integrity. Other liberal branches of Judaism try to change the way in which Jews are Jewish; the rituals and observances of being Jewish.

⁷² This is the stance taken by those who embrace philosophical realism as opposed to idealism. The Andersonian/Aristotelian position is not, however, accepted by all philosophers and other thinkers.

⁷³ "Under Anderson's rubric, the biblical statement 'God is love', was not tenable as a definition of God. Anderson's view, according to [John] McIntyre [of the Presbyterian Theological Hall, Sydney NSW], 'compelled us to rethink what we were saying when we spoke of God in that particular way'." Emilsen (1991:276), quoting McIntyre.

⁷⁴ Congregations of Humanistic Judaism are not, however, affiliated with The World Union for Progressive Judaism which serves congregations and communities in nearly 40 different nations, embracing more than 1,200 Reform, Progressive, Liberal and Reconstructionist congregations throughout the world.

⁷⁵ Congregation Shalom Rav, Austin TX.

Reconstructionism changes the why of being Jewish – the meaning!⁷⁶

The Society for Humanistic Judaism states on its website:

Humanistic Jews find meaning in the celebration of life through the historic Hebrew calendar and seek to interpret this calendar in a naturalistic way.⁷⁷

In addition, in a manner altogether similar to Conservative, Orthodox, Reform and Reconstructionist congregations, congregants of Humanistic Judaism meet for Shabbat dinners and other social activities. Many congregations have regular educational programs throughout the year, and ordinarily there is a Sunday School as well in which children learn about their Jewish heritage and culture, the Hebrew language, and the State of Israel. Some of the congregants are atheists in the traditional sense while others are not, but all would see themselves as humanists who have rejected supernatural views of reality. The website of the City Congregation for Humanistic Judaism in New York City contains a very good summary of the aims and objectives of Humanistic Judaism:

Humanistic Judaism offers secular Jews a nontheistic philosophy of life that integrates the value of Jewish identity with a belief in the importance of human reason and human power. It declares that reason, rather than faith, is the source of truth, and that human intelligence and experience are capable of guiding our lives. And it offers an opportunity to practice Judaism in ways that are consistent with our humanistic outlook.

Humanistic Jews understand Judaism as the human-centered history, culture, civilization, ethical values and shared fate of the Jewish people. Encompassing many languages and a vast body of literature, art, dance, music, and food, Judaism is much more than a set of religious beliefs and practices. It is the cumulative cultural and historical experience of the Jewish people.⁷⁸

Similar to religious humanism and religious naturalism, supernaturalism is rejected by Humanistic Judaism, as it is in Reconstructionist Judaism, the emphasis being on the celebration of Jewish holidays, life cycle events, and traditions and practices from a secular cultural and historical point of view (Cohen 1962). Spirituality, of a non-supernatural kind, is valued. Many, including exponents of Humanistic Judaism, see the

⁷⁶ "About Us: A Reconstructionist Community", Congregation Shalom Rav, Austin TX, viewed May 31 2005, <<http://www.main.org/shalomrav/aboutus.html>>.

⁷⁷ "SHJ Philosophy: What Do Humanistic Jews Do?", The Society for Humanistic Judaism, viewed May 17 2005, <<http://www.shj.org/do.htm>>.

⁷⁸ "Our Beliefs, Our Values, Our Identity" [Philosophy], The City Congregation for Humanistic Judaism, New York City, viewed May 17 2005, <<http://www.humanistjew.org/>>.

movement as “a natural development in the evolution of Judaism which was the principal force in the creation of humanitarian values in Biblical times and later”.⁷⁹

Finally, there is Jewish Renewal, a worldwide, transdenominational, even postdenominational movement - although it dislikes the word “movement” - with roots in Judaism’s prophetic and mystical traditions including Hassidism and the Kabbalah. Religiously pluralistic, Jewish Renewal also draws on the spiritual traditions of other world religions, especially Buddhism as well as religious naturalism.⁸⁰ There is a heavy emphasis on meditation, yoga, chanting, creating a sacred space (*HaMakom*)⁸¹ earth-centered spirituality, soul-breathing, mysticism (in particular, Kabbalistic mystical traditions), spiritual self-help, and holistic healing. In various parts of the United States of America, and in other countries (including Australia), one finds Jewish Renewal congregations as well as Jewish Renewal services in other synagogues.

These changes in the practices and belief systems of Judaism are not an aberration and must not be underestimated. They are far-reaching and unstoppable. Any concept or definition of religion for legal purposes that does not recognize both their ongoing existence and right to exist is inadequate and unacceptable.

Unitarianism and Religious Liberalism

Theologically, a Unitarian affirms that God is *one*. With its historical roots in early Judaism and Christianity, the religious philosophy and movement known as Unitarianism came out of the Protestant Reformation when many people began to claim the right to read and interpret the Bible for themselves and the right to set their own conscience as a test of the teachings of religion. The theological roots of Unitarianism may be found in 16th century Europe (in particular, Hungary, Poland and Romania) when some biblical scholars rejected the idea of the trinitarian Christian God (“Father, Son, and Holy Ghost”), claiming that a

⁷⁹ Personal Views of Humanistic Judaism / “What is Humanistic Judaism?”, viewed October 5 2004, <<http://home.teleport.com/~hellman/whatishj.html>>.

⁸⁰ See eg Kaplan (1982), Borowitz (1991), Cooper (1994), Kamenetz (1994), Lerner (1995), Fisdell (1996), Boorstein (1998), Gelberman (2000 and 2001) and Sautter (2002). In the lastmentioned article Sautter examines the not inconsiderable extent to which American Judaism has been influenced by Buddhism.

⁸¹ *HaMakom* (“the Place”), one of the names for God in rabbinic literature, refers to the physical, immanent (even panentheistic) aspect of God’s presence that is capable of being felt in the beauty of nature, in music, meditation, and so forth. *HaMakom* is the space one creates to invite the sacred. God is understood not as in the world; rather, the world is in God. *Baruch HaMakom* (“Blessed is The Place”).

single God was more consistent with the Bible.⁸² Hence, the name Unitarian. However, as the 8th edition of the *Chambers Dictionary* points out, a Unitarian is "a member of a religious group originally comprising Christians who believed God to be a single entity rather than a trinity, [but] now including members holding a broad spectrum of beliefs".⁸³ Indeed, Contemporary Unitarianism is a religiously liberal, nondogmatic and creedless faith - post-Christian, for the most part - that draws on the wisdom of all world religions, as well as the insights of science, philosophy and literature and affirms the oneness and unity of all life and its essential divinity.

Professor William James ([1902] 1958:85), in his *Varieties*, wrote of the rise of religious liberalism within Christianity:

The advance of liberalism, so-called, in Christianity, during the past fifty years, may fairly be called a victory for healthy-mindedness within the church over the morbidness with which the old hell-fire theology was more harmoniously related. We have now whole congregations whose preachers, far from magnifying our consciousness of sin, seem devoted rather to making little of it. They ignore, or even deny, eternal punishment, and insist on the dignity rather than on the depravity of man. They look at the continual preoccupation of the old-fashioned Christian with the salvation of his soul as something sickly and reprehensible rather than admirable; and a sanguine and "muscular" attitude, which to our forefathers would have seemed purely heathen, has become in their eyes an ideal element of Christian character. I am not asking whether or not they are right, I am only pointing out the change.

In the United States of America, beginning in the mid to late 1800s and continuing into the first 2 or 3 decades of the twentieth century, religious liberals such as Unitarians and Universalists were not only promulgating their views to their congregants, they were also engaging in a number of important and highly publicized interfaith activities intended to emphasize what they saw as being the essential unity of all the major religions. In more recent times, Unitarian Universalist minister Forrest Church (2003:Online) has spoken in a similar vein:

The acknowledgement of essential unity is a central pillar, the central pillar, of Unitarian Universalism. In contrast, fundamentalists, perceiving the Light shining through their own window, conclude that theirs is the only window through which it shines. They may even incite their followers to throw stones through other people's windows. Secular materialists make precisely the opposite mistake. Perceiving the bewildering variety of windows and worshippers, they conclude there is no Light. But the windows are not the Light; the windows are where the Light shines through.

⁸² "Hear, O Israel: the Lord our God is one Lord." Dt 6:4.

⁸³ *Chambers Dictionary*, 8th ed (Chambers Harrap, 1998).

Modern day Unitarianism, which, particularly in the United States of America, had become extremely humanistic by the 1920s, may or may not involve a belief in the supernatural. Much depends upon the beliefs of individual members and adherents. For example, the Unitarian Universalist Association of Congregations,⁸⁴ known as the UUA, comprises over 1,000 congregations across the United States of America,⁸⁵ and works closely with other similar organizations in many other areas of the world many of which belong to an umbrella organization known as the International Council of Unitarians and Universalists (ICUU) which is a world council bringing together Unitarians, Universalists and Unitarian Universalists. Although Unitarianism, Universalism and Unitarian Universalism originally moved within the orbit of Christianity the churches and fellowships that exist today have as their members persons who are theists, nontheists, atheists, agnostics, humanists, Christians, Buddhists, Wiccans, religious naturalists and many others. Although there remains something that may be referred to as “Christian Unitarianism” or “Biblical Unitarianism” the churches and fellowships represented in the movement are for the most part “post-Christian”. Typically, one finds a very broad spectrum of beliefs. Belief in the supernatural is non-obligatory, not expressly or even implicitly affirmed, and generally absent, yet the churches and fellowships represented still see themselves as a “religious community” providing “models of liberal religious response”.⁸⁶

Now, as regards Unitarian Universalism itself, as practised under the auspices of the UUA, some persons associated with that movement, including some Unitarian Universalist ministers themselves, do not see their movement as a religion *per se*. For example, UU minister Beverley Boke (2003:Online) has said:

Is Unitarian Universalism a religion? Originally it was - rather they [ie the Unitarians and the Universalists] were. We come from two distinct and different root stalks. Grafted onto the Mosaic faiths - Judaism, Christianity and Islam - are branches of many denominations.

⁸⁴ In 1961 the American Unitarian Association (established in Boston MA in 1825) and The Universalist Church of America (first organized in Gloucester MA 1779) merged to form the Unitarian Universalist Association. In the late 18th century many Congregationalist churches in New England had turned Unitarian. Jacoby (2004:49) writes: “The ministers who led this transformation were American originals, men of great passion and moderation, combining a philosophical commitment to natural rights with a pragmatic reliance on empirical knowledge.” Unitarianism and Universalism were very similar in theology except that most Universalists, at least initially, still accepted the divinity of Jesus, a doctrine ordinarily rejected by most Unitarians. Said Thomas Starr King (1824-1864), Universalist *and* Unitarian minister: “The Universalists think God is too good to damn them forever; the Unitarians think they are too good to be damned forever.”: cited in “Unitarianism in America - Thomas Starr King 1824-1864” (Online).

⁸⁵ The association is governed by a board of trustees which is elected by member congregations. A general meeting of the association, called “General Assembly”, is held annually.

⁸⁶ See “Preamble to the Constitution of The International Council of Unitarians and Universalists” (Online).

Judaism has many. Islam has many. And Christianity has many - many more than either Judaism or Islam.

Two of those branches were Universalism and Unitarianism. In their infancy they could be summarized like this: Universalists disagreed with Christians who said some people would go to Heaven and some to Hell when they died. Universalists believed that all people would be saved. They believed that through the atonement of Jesus all sins could be forgiven. They did not believe that you'd go straight to Heaven if you had a lot to answer for. Universalists were smarter than that. But they did believe that you would, ultimately, be saved. God, they believed, was too good to send his children into everlasting torment.

Unitarians believed that God had but one aspect, one nature. They disagreed with the doctrine of the Trinity. Jesus was a human being sent by God to teach human beings about love. Jesus showed us how to live. Anyone could attain the level of goodness Jesus had attained. That's why God sent Jesus to dwell among men and women, so that he would provide the model for our conduct. Human beings, they believed, were too good for God to send into everlasting torment.

In 1962 [sic], the American Unitarian Association and the Universalist Church of America merged to form the Unitarian Universalist Association.

Not, mind you, the Unitarian Universalist Church of America. Not church, at all. And since that time the traditional language of church has struggled to stay alive in this denomination, this association. Sin... faith... religion... church... prayer... God... salvation, saved! All these words and others were so laden with what people *didn't* believe in that we stopped using them.

By way of comment, the two denominations merged in the United States of America in 1961, not 1962. Also, the fact that the combined body is known as an “associations” does not rule out a religion. For example, there is a Baptist Union of New South Wales to which most, but not all, Baptist congregations belong. The fact that these otherwise separate, autonomous and independent congregations choose to belong to a “union”, and that there is no such thing as the “Baptist Church of New South Wales”, does not mean that the Baptist faith does not constitute a religion. As regards the UUA, whilst there may be no such thing as the “Unitarian Universalist Church of America” there *are* Unitarian churches, Universalist churches and Unitarian-Universalist churches. The UUA is a voluntary association of autonomous and independent Unitarian, Universalist and Unitarian Universalist *churches* and *fellowships* scattered across the United States of America. In any event, Boke's assertion that Unitarianism was, prior to the merger, a religion is self-contradictory, because the Unitarians were already organized in an “association” known as the American Unitarian Association, which was formed as long ago as 1825.⁸⁷ Further, while Unitarians and Universalists seldom talk about sin in the traditional sense, it is

⁸⁷ The Universalist Church of America was first organized in 1793.

incorrect to say that none of the other ideas are the subject of discussion in member churches and fellowships.

Perhaps Boke's (2002:Online) strongest argument against Unitarian Universalism being a religion is this:

First of all, Unitarian Universalism does not have a set of behaviors it prescribes for its members. It has no first premises any more [T]here are many Unitarian Universalists who don't even believe in a god of any kind or number, and many who don't believe in any sort of life, consciousness or continuation after bodily death. In its insistence on individual freedom, this religion cannot provide a prescription of prayer, fasting, witness, confession, almsgiving, dietary regulations, pilgrimage, meditation, song, dance or drumming. Each person is free to choose her own spiritual discipline, and free to choose none at all.

.....

Hinduism, Buddhism, Judaism, Christianity, and Islam each prescribe a unique lifestyle. Unitarian Universalism does not. It makes suggestions. It is open to the wisdom of other traditions, and it is a place where we may question our own thoughts, doubts, traditions, habits and beliefs. But it does not give us a spiritual practice to follow to help us find inner truth and transcendent meaning. That, we must find for ourselves. ... This is a religion [sic] in which we have faith in ourselves first. Our first premise is that each of us has our own "streak of God"

Note Boke's conclusion - "a religion in which we have faith in ourselves first". One cannot have it both ways. In any event, one can well argue that the stated principles and purposes of the Unitarian Universalist Association⁸⁸ do encapsulate or otherwise seek to foster a distinctive life stance although the exact manner in which it will be given expression will, of course, vary from individual to individual. Further, as Boke (2003:Online) herself acknowledges, Unitarian Universalists are concerned with things *religious*:

Religion is what we believe about ultimate reality, what we believe about deity. Religion is about ultimate things. Ultimate means final, last. It means the most remote in space and time but it also means basic, fundamental. Religion is about the fundamentals of life - birth, death, joy, grief, mystery and meaning. Religion is the system by which we attempt to understand our world and our place in it.

Certainly, Unitarian Universalism is concerned with such "ultimates". Perhaps it is semantics, for according to Boke (2003:Online):

Unitarian Universalism is not a religion. It is, however, a community of people gathered for religious purposes. It is a community of people who dare not to know. We dare to *not* know, and we dare to seek. We dare to reject the claims of others and stand in the void,

⁸⁸ See "Unitarian Universalist Association Principles and Purposes" (Online).

where we recognize that we do not *know* but that we are still *all right!* That we are strong enough to live in uncertainty about ultimate things. That we are a community of seekers after justice and compassion, sometimes timid about the search, sometimes frightened and in need of comfort. But searching together and separately for the answers to life's persistent questions.

However, Unitarians, Universalists and Unitarian Universalists *do* know some things. As religious liberals, they know that life is a wonder, that human beings are essentially good, that life *can* be meaningful, that the sacred lies in the everyday, that truth must be tested by its consequences, that a rational faith is possible, that there are no external props, and that “the genuine test of religion ... is in terms of courageous moral and social responses by individuals to daily life” (Marshall 1970:191).

Of course, religious liberalism (“modernism”)⁸⁹ has never been confined to Unitarianism and Universalism. The respective forces of modernism and fundamentalism in Christianity came to blows in the United States of America during the 1920s and 1930s in many of the mainstream Christian churches. The Baptist minister Harry Emerson Fosdick (1878-1969)⁹⁰ was perhaps modernism’s most powerful and eloquent exponent. Fosdick, along with other religious liberals, abandoned traditional Christian doctrines such as the virgin birth, the infallibility and inerrancy of the Bible, and the vicarious atonement and bodily resurrection of Jesus Christ in favour of what has been referred to as “a reconstruction of orthodox Christianity” (Hordern 1955:83). In the words of Hordern (1955:83):

Although the fundamentalists saw the liberals as subversives of the faith, liberals saw themselves as the saviors of the essence of Christianity. For the liberal, it was the fundamentalists who were destroying Christianity by forcing it into the molds of the past and making it impossible for any intelligent man to hold it. Typical of the attitude of liberals was the oft-quoted statement of Fosdick that, for him, it was not a question of new theology or old but a question of new theology or no theology.

In Australia religious liberals such as the Presbyterian Samuel Angus sought to redefine Protestant Christianity (Ellis-Jones 2005a). Angus, who was Professor of New Testament and Historical Theology at St Andrew’s College, University of Sydney, contrasted the “religion of Jesus” with the “religion about Jesus”. For Angus, the humanity of Jesus was

⁸⁹ Also known as “neo-Protestantism”.

⁹⁰ Fosdick taught homiletics and practical theology at Union Theological Seminary for 35 years and wrote many books including *The Modern Use of the Bible* (1925). He also pastored a Presbyterian church, which attempted to remove him from office, and was minister of the Park Avenue Baptist Church (later the nondenominational Riverside Church) in New York City for 20 years. His famous sermon “Shall the Fundamentalists Win?” (May 21 1922) “served notice that fundamentalist rigidities in biblical interpretation and doctrinal platform could not flourish without rebuttal” (*Dictionary of Religious Biography*, p 164). See also Miller (1985).

God's personality. The personality of the Living Jesus of Galilee was central to Angus's religion; Jesus was "our only Lord", primarily because of his preeminent moral leadership. His was a de-supernaturalized version of Christianity. In *Jesus in the Lives of Men* (1934a:98-9) Angus had this to say about the matter:

Jesus is not accredited to us today by his miracles, or by a virgin birth, or by a resurrection from an underworld, or by a reanimation of his body from the grave, or by fulfillment of prophecies; he is accredited by his long train of conquests over the loyalties of men, and chiefly by the immediate, intimate and inevitable appeal made by him to everything that is best and God-like in each of us, and by his ability to "make men fall in love with him", and "to win the world to his fair sanctities".

Like a good Biblical Unitarian of yesteryear,⁹¹ Angus spoke for all intents and purposes in terms of salvation by character. In *Christianity and Dogma* (1933:9) he wrote:

The world realizes that character is the supreme possession of man and believes that religion should steady man in his purposes and guide him in the arduous task of character-building; whereas this controversy has given the impression that the Church exists not primarily to promote Christian character but to produce and conserve dogmas.

Professor Angus, who spoke and wrote of a "unitive Christianity" (Angus 1939:81) that celebrated religious diversity in a manner not at all dissimilar to Biblical Unitarianism, was committed to the task of establishing and presenting the "reasonableness" of Christianity and its relevance to the whole of life. He had a love of truth for truth's sake, expressed in his total willingness and commitment to bring rationality to bear on all the doctrines of the Christian faith. In *Essential Christianity* (1939:116) he wrote:

There is a very real danger of *believing too much and being too little and doing too little*. A religion shines better in its simplicity than dressed in metaphysics. It can be better apprehended in action than in theological formulation ...

True religion is not adherence to any particular dogma or loyalty to any church standard. True religion is the daring faith in the reality of the things that are unseen and eternal, and the devotion of life to these things, for the enlargement of our personalities and the ennoblement through us of other personalities. ... [Original emphasis]

Some 20 years after Angus's death, some Christian theologians were even proclaiming that God was actually dead. Actually, it was not so much God who was dead, but theism itself, particularly theistic Christianity.

⁹¹ There was, in the United States of America, a common formulation of Unitarian faith from roughly 1870 until the late 1920s which was known as The Unitarian Covenant: "We believe in: The Fatherhood of God; The Brotherhood of Man; The Leadership of Jesus; Salvation by Character; The Progress of Mankind, onward and upward forever."

The “Death of God” movement in Christian theology - also known as “secular theology” - went in a similar Unitarian-like direction. This movement sprang into public prominence in England in the early 1960s with the publication of Bishop John Robinson’s⁹² highly influential little book *Honest to God* (1963). Robinson did not invent “Death of God” theology.⁹³ The movement had already been in existence for a number of years, but he was for many years its most visible exponent.⁹⁴ Further, what was “dead” was not so much God *per se* but certain ideas concerning the nature of God. It was traditional theism that was declared to be not only irrelevant but dead. The Death of God theologians sought to reconstruct and repackage Christian belief for the increasingly secular modern world.⁹⁵ Robinson (1963:13) had this to say about the matter:

In place of a God who is literally or physically “up there” we have accepted, as part of our mental furniture, a God who is spiritually or metaphysically “out there”.

But Robinson (1963:15-6) then went further:

But the signs are that we are reaching the point at which the whole conception of a God “out there,” which has served us so well since the collapse of the three-decker universe, is itself becoming more of a hindrance than a help.

Anglican bishop Tom Frame (2005:47) has written:

Robinson wanted to abolish “supranaturalism” in favour of “naturalism” which “identifies God, not indeed with the totality of things, the universe, *per se*, but with what gives meaning and direction to nature”. He was conscious that this meant the traditional stress on God’s transcendence “may well collapse into meaninglessness”. Rather than placing God above or beyond the world, Robinson located God deep in the human person. Yet, he claimed that God was still radically “other” or transcendent but not as a being that resided beyond human experience.

Ultimately, the good bishop presented us with a God that is the “Ground of our Being” (coining Protestant theologian Paul Tillich’s phrase). In *Systematic Theology* (1957:v II:12) Dr Tillich writes:

I have written of the God above the God of theism In such a state [of self-affirmation] the God of both religious and theological language disappears. But something remains, namely,

⁹² John A T Robinson PhD (Camb) was many years the Anglican Bishop of Woolwich, England and later Dean of Trinity College, Cambridge. He died in 1983.

⁹³ “What Robinson did in his million-copy bestseller was extract from the opaque scholarship of academia the best of Paul Tillich, Rudolf Bultmann and Dietrich Bonhoeffer and share it with a wider world.”: see “John A T Robinson Surprising Views on the Shroud of Turin” (Online).

⁹⁴ See also Ronald Gregor Smith’s *The New Man* (1956), which was probably the first significant piece of what is known as “secular theology” in the British tradition.

⁹⁵ The Holocaust led a number of Jewish thinkers to redefine God as well. See Halachmi (2004:Online).

the seriousness of that doubt in which meaning within meaninglessness is affirmed. The source of this affirmation of meaning within meaninglessness, of certitude within doubt, is not the God of traditional theism but the "God above God," the power of being, which works through those who have no name for it, not even the name God.

In more recent years, other theologians such as John Shelby Spong, Lloyd Geering and Don Cupitt have continued in the "Death of God" tradition. Bishop John Shelby Spong,⁹⁶ a former American Humanist of the Year and controversial non-theist, has written (2004:Online):

[I]f ... one can begin to envision God in some way other than in the theistic categories of the traditional religious past, then perhaps a doorway into a religious future can be created. That is to identify what I regard as the most pressing theological issue of this generation. ...

Can there be Christianity without theism?⁹⁷ Why not just go all of the way and embrace secular humanism as many have done? Surely that is more intellectually honest? Spong's answer is that you can't really properly attempt an honest answer to the question without first grappling with the full range of the issues involved in the question, something that both the fundamentalist Christian and the secular humanist each fail to do in their own way. Spong (2004:Online) writes:

The "religious right" does not understand the issues involved here. On the other hand, the secular society, where God has been dismissed from life, has also answered this question by living as if there is no God. Only those who can first raise this question into consciousness and who then refuse to sacrifice their sense of the reality of God when all theistic concepts fail will ever wrestle with these issues.

It would surprise many pew sitters in our churches to know how deeply this debate already rages in the theological academy. In this world of scholarly dialogue God has not been spoken of as an external Supernatural Being who periodically invades the world in decades. Yet the experience of God as a divine presence found in the midst of life is all but universally attested. Jesus as a revelation of this divine presence is the heart of the Christian claim. The normative language of theism by which this experience has traditionally been processed and transmitted is, however, today all but universally rejected by the academy.

⁹⁶ Born in 1931 in Charlotte, North Carolina, Bishop Spong was Protestant Episcopal Bishop, Diocese of Newark, 1976-2000. His many publications include *Living in Sin? A Bishop Rethinks Human Sexuality* (1988), *Rescuing the Bible from Fundamentalism: A Bishop Rethinks the Meaning of Scripture* (1991), *Born of a Woman: A Bishop Rethinks the Birth of Jesus* (1992), *Resurrection: Myth or Reality? A Bishop's Search of the Origin's of Christianity* (1994), *Liberating the Gospels: Reading the Bible with Jewish Eyes* (1996), *Why Christianity Must Change or Die: A Bishop Speaks to Believers in Exile* (1998) and *The Sins of Scripture: Exposing the Bible's Texts of Hate to Reveal the God of Love* (2005).

⁹⁷ Professor Thomas Altizer, who was Associate Professor of Bible and Religion at Emory University in Atlanta, who claimed that the death of God was an historical event "in our cosmos, in our history, in our [existence]", has written, quite passionately, of "atheistic Christianity": see Altizer and Hamilton (1968). He is by no means the only one to have done so. Presbyterian theologian Lloyd Geering (2002:97) has written that "Death of God" theology is nothing but the inevitable and progressive humanization of Christian theology and doctrine concerning God building upon the "orthodox" doctrinal foundations of the Incarnation and the Trinity - two doctrines that, in themselves, were a "radical departure from pure theism in the early centuries".

So perhaps the major theological task of our times is to seek a new language of faith or at the very least a new way to translate those pre-modern theistic categories into the post-modern, non-theistic language of tomorrow. ...

Unitarian Christians and other “free Christians” and religious liberals have been doing just that for many decades now (Ellis-Jones 2005b).

What is known as “process theology” has also played a very important part in opening up new ideas about God and the role and nature of religion. Similar to predicate theology in Judaism, process theology presents us with a de-supernaturalized religious vision. This school of theology, which has been popular in the United States for over 60 years, asserts that the reality of God is not fixed and that God, whose mind may change though it can never contradict itself, is still developing. In Whitehead's “doctrine of the ultimate” God did not create the world on one occasion *ex nihilo*; creation is ongoing, never finished. The world, which is characterized by process and constant change, goes on forming itself forever, always rising anew out of chaos, a process of “[p]erpetual perishing, endless becoming” (Strauss 2003:Online) of which we are inextricably part. Whitehead's concept of God is panentheistic, not pantheistic; God is not the same as the world, and nor is the world a part of God. God contains the world but is not identical with it. Both are forms within the process of enjoyment and desire. Process destroys everything except form which comes from God and endures forever, for process theology offers us “an engaged dynamic idea of God as Creative Interchange” (Strauss 2003:Online):

The unfolding present is not yet concrete...it is changeable, and we can affect it.

In process theology, divine energy or life spirit or God participates in time. God is not a separate, eternal, transcendent being, but is an energy, a mystery that lures us toward the good, inviting us to be present and participate. God is not otherworldly or supernatural. God or divine energy is in the cosmos, in the world, in our lives, luring us to life!

And, process theology goes a step further to suggest that we live in a participatory universe. We do not leave things up to God or spirit. We act with the divine. We too create out of the mystery. We share the opportunity and responsibility. We are all artists...creators of “what is”...and what is becoming.

Process theology was first adopted by some liberal Protestant Christians but has had an important impact on Jewish theology.⁹⁸ Charles Hartshorne,⁹⁹ the intellectual father of

⁹⁸ Process theology influenced to varying degrees the views of Rabbis Max Kaddushin, Milton Steinberg, Levi A Olan, Harry Slominsky, Abraham Joshua Heschel and Harold Kushner.

⁹⁹ Charles Hartshorne (1897-2000) taught for many years at Chicago Divinity School (which became world-famous for its association with process theology). At the time of his death he was Ashbel Smith Professor

process theology, challenged “orthodox” concepts about the nature of God. Faulkner and Durbin (2000:Online) provide a concise description of Hartshorne’s theology:

God is conceived ... as all-inclusive - affected by and thus related to all that exists. Hartshorne thus rejected central tenets of classical theism which denied that God is affected in any way by creatures; and he denied the classical view that God is wholly necessary and the world wholly contingent and that God is wholly timeless and unchanging. If God knows and interacts with a contingent and changing world, then God must be in some respects contingent and changing. Hartshorne rejected the idea that God is an "unmoved mover." "A God who loves and is loved by creatures," he said, "is anything but unmoved." He approvingly quoted and amended Fritz Rothschild's description of Rabbi Herschel's God: God is the most [and best] moved mover. But God, though contingent, in these works, is also necessary. Hartshorne distinguished between the existence and the actuality of God. God's existence is necessary, but the actuality of God's life is contingent and evolving. These are central tenets of what has come to be known as "process theology" or "process theism." Hartshorne's own name for his view was "panentheism" (literally "all in God"): God is (omnipresent) in the world, and the world is present in (though not identical with) God.

Professor Charles Birch,¹⁰⁰ Emeritus Professor of Biology at the University of Sydney, and 1990 winner of the Templeton Foundation Prize for Progress in Religion, is Australia’s leading exponent of process theology. Birch (1990:91-3) writes:

In panentheism or the ecological model of God, God is not introduced to save the collapse of the model of the universe and all that is in it. God is not introduced to fill the gaps left over from science. God is not supernatural. God is natural. What is, is natural. ...

...

God is thus the ground of order. But this is a changing and developing order. Order involves the many becoming one, else ours is a multiverse and not a universe. The creative activity of God involves the creation of novelty that itself adds to the existing unity. Nothing creatively novel is unattached. The whole is immanent in the part. The parts are members of one another. The novel becomes one with the many. This is the meaning of creative advance. ...

All of these recent developments, occurring as they have within the orbit of Judaism and Christianity, admittedly in their more liberal forms, reflect an altogether different view of Judeo-Christian thought. The High Court’s insistence on the need for there to be belief in the supernatural for there to be a religion does not accommodate such

Emeritus at The University of Texas at Austin. Hartshorne constructed process theology on the foundational ideas of Alfred North Whitehead, whose student he was.

¹⁰⁰ Dr Charles Birch (born 1918), biologist and theologian, who has written numerous books including *On Purpose* (Kensington NSW: New South Wales University Press, 1990) and over 60 other published works, has been an Emeritus Professor at the University of Sydney since 1983. He was honored as a Fellow of the Australian Academy of Science in 1961, and as a Fellow of the American Association for the Advancement of Science in 1980. Birch, who became a member of the Club of Rome in 1980, is an Honorary Life Fellow of the British Ecological Society, an Honorary Life Member of the Ecological Society of America, and a member of the Center for Process Studies, the American Center for a Post Modern World, and the World Council of Churches. He received the Eminent Ecologist Award in 1988.

naturalistic and even de-supernaturalized belief systems which manifest themselves in the religious practices of thousands, if not millions, of people throughout the world.

New Thought and the “science religions”

One of the most important religious movements in the United States of America in the 20th century was the non-creedal and *very* liberal New Thought movement,¹⁰¹ which developed throughout the United States and, shortly thereafter, Great Britain towards the end of the 19th century. Finding the space for “alternative religion” the movement was particularly strong in the 1920s, 1930s and 1940s and had an enormous influence on religion and religious thinking in the United States. New Thought, which has “no creed or dogma” (Sanders [1962] 1973:166), has been defined by one of its leading exponents Ernest Holmes (1991:99) as:

A system of thought which affirms the unity of God with man, the perfection of all life, and the immortality and eternity of the individual soul forever expanding.

Ralph Waldo Emerson (1803-1882), Unitarian and transcendentalist, is regarded by many as the *spiritual* father of New Thought, a form of “objective idealism”. Cooper-Mathieson (1916:46) writes that New Thought made its appearance in New England about 1800-1825 “in the form of a revival of neo-Platonism” which can be traced to a renewed interest in the ideas of Arminianism¹⁰² and Arianism among New England thinkers.¹⁰³ Cooper-Mathieson goes on to say:

One Branch bore fruit which is now known as Unitarianism, and the other brought into revival Neo-Platonism, which later evolved into what was then known as the Transcendental Movement, which brought renewed interest in Mysticism, Idealism, and the idea of the Immanent God.

New Thought took form in 1830 under the name of Transcendentalism, and was originally named and founded by Ralph Waldo Emerson [and certain other] awakened New Englanders.

¹⁰¹ Not to be confused with the “New Age” movement, with which it has many features in common. The term “New Thought” came into vogue in 1895 and was used as the title of a magazine published for a time in Melrose MA to describe a “new thought” about life. See Ellis-Jones (1991:1).

¹⁰² The belief, named for Jacob Arminius (1560-1609), that a Christian believer can accept grace by the exercise of free will, in contradistinction to the belief in strict predestination and election.

¹⁰³ The belief, proposed by Arius (c256-336 BCE), that Jesus, although divine, was created by, and is not co-eternal with, God the Father.

However, if any one person may be said to have been the founder of the movement it was, according to Braden¹⁰⁴ (1949:131 and 1963:49) and Anderson (1997:Online), Phineas P Quimby (1802-1866), a Maine clockmaker, inventor and hypnotist. He is generally recognized as the “Father of New Thought”. Known as a metaphysical healer, his experiences and practices of mental healing were the real beginnings of and foundation for New Thought.

Quimby then transmitted his ideas and methods to a number of his patients, among them:

- Warren Felt Evans (1817-1889), a Swedenborgian minister of religion, who was “the first real philosopher of New Thought” (Laughlin 1998:75) as well as being the first person to give literary form to New Thought (Anderson 1997:Online),¹⁰⁵
- Mary Baker Eddy (1821-1910), whom Quimby treated in 1862, and who would become the author of *Science and Health with Key to the Scriptures* (1st ed, 1875), founder of the Church of Christ, Scientist (Christian Science) in 1879, and founder of the non-denominational daily newspaper *The Christian Science Monitor*, and
- Julius A (1838-1893) and Annetta (Seabury) (1843-1935) Dresser, who continued more directly in the tradition of Quimby himself, who were the first to formally organize what was to become known in time as the “New Thought Movement”, and whose son Horatio W Dresser (1866-1954) continued their work, becoming the first “historian of the New Thought Movement” (Braden 1949:135), publishing many books on New Thought as well as editing *The Quimby Manuscripts* (1921).

Insofar as New Thought is concerned, it was primarily Warren Felt Evans and Julius A Dresser who gave systematic form to Quimby’s ideas.¹⁰⁶ They are generally regarded today as being the *intellectual* founders of New Thought and its allied movements (Dresser 1919, 1921) and the “most influential figures in the actual organization of the movement which came to be known as New Thought” (Braden 1949:135).

¹⁰⁴ Charles S Braden (1887-1970), who had been ordained to the ministry of the Methodist Episcopal Church in 1914, was for many years professor of the history and literature of religion at Northwestern University. He was highly regarded as an authority on minority religious movements.

¹⁰⁵ Braden (1963:89) calls Evans the pioneer writer of New Thought. Evans wrote 2 books on “Quimbyism” before Eddy published her *Science and Health* in 1875 (Braden 1949:134).

¹⁰⁶ The opinion of Sanders ([1962] 1973:166) is that New Thought had its origin with Evans.

Both Christian Science and New Thought in all of its various forms have their origins in Quimby's ideas,¹⁰⁷ although Mary Baker Eddy developed her own highly individualistic, indeed idiosyncratic, version of Quimby's ideas and methods of which she would later claim to have been the "discoverer" and "founder".¹⁰⁸ Be that as it may, there is a very real connection between Eddy and the New Thought Movement in that much of New Thought filtered down through Eddy by reason that one of her former pupils, Emma Curtis Hopkins (c1853-1925) (known as the "Teacher of Teachers"), after breaking from Eddy, then transmitted her ideas and methods to certain students who would later become the founders of all of the major New Thought denominations, centres and schools, including the following:

- Malinda E Cramer (c1846-1906) and Nona L Brooks (1861-1945), who founded Divine Science,
- Charles (1854-1948) and Myrtle (1845-1931) Fillmore, who founded the Unity School of Christianity (now the "Unity Institute" or, simply, "Unity"),¹⁰⁹ and
- Ernest Holmes (1887-1960), who founded what is now known as the United Church of Religious Science.¹¹⁰

The optimistic and ever evolving New Thought movement, which "affirms the supremacy of mind over matter" (Sanders [1962] 1973:166), came to embrace not only the abovementioned denominations Divine Science, Unity and Religious Science ("Science of Mind"),¹¹¹ but also many other New Thought groups as well as many groups and

¹⁰⁷ Quimby used the phrase "Christian Science" as early as 1863 (Dresser 1921:388; Sanders [1962] 1973:44). In fact, Presbyterian minister William Adams had previously used the term "Christian Science" before Quimby in his book *The Elements of Christian Science* (1st ed, 1850; later ed, 1857). See article "Church of Christ, Scientist" (Online).

¹⁰⁸ Eddy claimed to have "discovered" Christian Science in 1866. The matter went to the courts, the suit being won by Eddy but only because Quimby's son George would not permit the Quimby Manuscripts to be taken to court because the other party to the proceedings (a former student of Eddy's) was impecunious. When the Quimby manuscripts were eventually published it became perfectly clear - to almost everyone except most Christian Scientists - that Eddy not only got all of her essential ideas from Quimby she was also guilty of plagiarism. See Martin & Klann ([1954] 1955) and the article "Mary Baker Eddy (1821-1910) *Founder of Christian Science*" (Online).

¹⁰⁹ The Unity movement was founded in Kansas City MO in 1889, in which year the Fillmores commenced the publication of their magazine *Modern Thought*. According to *Confusion of Tongues* author C W Ferguson (as cited in Sanders [1962] 1973:56) "Unity is undoubtedly joined to the New Thought by an umbilical cord and sired by Christian Science."

¹¹⁰ Christian Science, Divine Science, Religious Science, Unity and New Thought generally are often collectively, and usually disparagingly, referred to as the "science religions": see eg Harm (1981). George Bernard Shaw reportedly said, about Christian Science, that it was "neither Christian nor scientific".

¹¹¹ Since 1954 there have been 2 separate "Religious Science" denominations, viz the United Church of Religious Science, and the Religious Science International Church. Popular New Age author Louise Hay began her career as a Science of Mind minister in 1981.

individuals including some within mainstream Christianity.¹¹² Indeed, many adherents of the more orthodox Christian churches hold New Thought-type views and some may also be actual members of New Thought churches or centres, as New Thought does not ordinarily demand exclusive membership in its groups (Braden 1949:141).

William James ([1902] 1958:76-111) referred to the movement as “the Religion of Healthy-Mindedness” in his *The Varieties of Religious Experience*. There are New Thought churches and centres all throughout the United States of America and in many other countries as well including Australia and New Zealand. The umbrella organization of the New Thought Movement is the International New Thought Alliance,¹¹³ which has adopted the following Declaration of Principles¹¹⁴ (International New Thought Alliance 2000):

1. We affirm God as Mind, Infinite Being, Spirit, Ultimate Reality.
2. We affirm that God, the Good, is supreme, universal, and everlasting.
3. We affirm the unity of God and humanity, in that the divine nature dwells within and expresses through each of us, by means of our acceptance of it, as health, supply, wisdom, love, life, truth, power, beauty, and peace.
4. We affirm the power of prayer and the capacity of each person to have mystical experience with God, and to enjoy the grace of God.
5. We affirm the freedom of all persons as to beliefs, and we honor the diversity of humanity by being open and affirming of all persons, affirming the dignity of human beings as founded on the presence of God within them, and, therefore, the principle of democracy.
6. We affirm that we are all spiritual beings, dwelling in a spiritual universe that is governed by spiritual law, and that in alignment with spiritual law, we can heal, prosper, and harmonize.
7. We affirm that our mental states are carried forward into manifestation and become our experience in daily living.

¹¹² The Rev Dr Norman Vincent Peale (1898-1993), whose many books including *The Power of Positive Thinking* (1952) sold millions of copies throughout the world, was for many decades the leading exponent of New Thought ideas and practices within mainstream Protestant Christianity (George 1993). See also Ellis-Jones (2006d). Fellow Reformed Church in America minister the Rev Dr Robert H Schuller (1926-), of the Crystal Cathedral in Garden Grove CA, continues in the same tradition.

¹¹³ The umbrella organization the International New Thought Alliance (“INTA”) was established by a convention in St Louis MO in 1915. It had been preceded by the International Divine Science Association of 1892, the International Metaphysical League of 1900, the New Thought Federation of 1903, and the National New Thought Alliance of 1908. Although the Unity School of Christianity officially withdrew from INTA in 1922 (it had previously withdrawn from the abovementioned New Thought Federation in 1906, then rejoined the Alliance in 1919), the Association of Unity Churches is a member of INTA as are many individual Unity churches and centres belonging to the Unity School of Christianity. See generally Braden (1963) and Larsen (1987:312).

¹¹⁴ INTA’s Declaration of Principles was first adopted in 1917 and was most recently revised in January 2000.

8. We affirm the manifestation of the kingdom of heaven here and now.
9. We affirm expression of the highest spiritual principle in loving one another unconditionally, promoting the highest good for all, teaching and healing one another, ministering to one another, and living together in peace, in accordance with the teachings of Jesus and other enlightened teachers.
10. We affirm our evolving awareness of the nature of reality and our willingness to refine our beliefs accordingly.

In an INTA publication *Mind Remakes Your World* (Holmes & Lathem 1942:xi), which contains articles by over 60 New Thought leaders of the day, New Thought is described as being a metaphysical religion, meaning

a practical idealism, which emphasizes spiritual sensation and the accessibility of spiritual mind power, acting in accord with law and available to all people. From this standpoint “Christian Metaphysics” means the philosophy of the New Testament, practical as a science.

The “New Thought outlook” (Braden 1949:129), in which scripture is interpreted allegorically and spiritually rather than literally (see Braden 1949:141, 172-3, is quintessentially American: it is both idealistic, having affinities to the idealistic philosophical traditions of all ages and places and practical. It is obliquely Christian in background and terminology but it has become allied to various philosophical and religious ideas including reincarnation as a result of more than a nodding association with the thought forms of Eastern religion.¹¹⁵

New Thought is “not so much an organization as it is a point of view” (Braden 1949:143). As such, it is a practically oriented metaphysical spirituality that promotes fullness of all aspects of living, through constructive thinking (Fox 1940),¹¹⁶ meditation and various other ways of practising or realizing the presence of God, whilst affirming “the possibility of curing disease by purely mental means” (Sanders [1962] 1973:166).

¹¹⁵ See eg Fox, *Reincarnation Described and Explained* (1939), also included in *Power Through Constructive Thinking* (1940). *Unity's Statement of Faith* states [at para 22]: “We believe that the dissolution of spirit, soul, and body, caused by death, is annulled by rebirth of the same spirit and soul in another body here on earth. We believe in the repeated incarnations of man to be a merciful provision of our loving Father to the end that all may have opportunity to attain immortality through regeneration, as did Jesus. ‘This corruptible must put on incorruption.’”

¹¹⁶ Divine Science minister Dr Emmet Fox (1886-1951), one of New Thought's leading exponents, was pastor of the Church of the Healing Christ in New York City from 1931-51. He addressed some of the largest audiences ever assembled to hear one person's thoughts on the religious meaning of life. See biographies by Gaze (1952), Wolhorn (1977) and Corsiatto (2004).

There is within the movement a broad range of theological positions including forms of more-or-less traditional supernaturalistic theism (at least in more orthodox Christian expressions), panentheism (“all is *in* God”), pantheism (“all is God”) and monism (“there is one and only one substance”). More recently, there is something called “Process New Thought” which combines elements of the “process theology” (or “process philosophy”, or “process thought”) of Alfred North Whitehead and Charles Hartshorne, panentheism and “personalism”.¹¹⁷ In personalism the basic reality is “personal” (L Harold deWolf, cited in Warren 2001:120):

Briefly, personalists believe that the basic reality is personal. The supreme Person, God, is the source of all that process which we call the physical universe and the creator of all other persons. Since human personality is the likeness of God and the object of God’s own love, every human being, however humble or wicked, must be treated of inestimable dignity and worth. In metaphysics the personalists believe that the physical universe exists only by the energizing of God in the experience of persons, including himself. ...

However, in New Thought, as in the related but more dogmatic organization Christian Science,¹¹⁸ God is for the most part conceived rather impersonally as Mind, Spirit, Cause, the Law of Being, Life, Truth, Love, Principle, and so forth. Fox (1942:26) sees God as being Life, Truth, Love, Intelligence, Soul, Spirit, and Principle, writing, “Is God a person? No, God is not a person in the usual sense of the word. *God has every quality of personality except its limitation*” (original emphasis). New Thought affirms that “God is spirit and spirit is principle” (Sanders [1962] 1973:166). H Emilie Cady ([1896] 1925:18), a Unity writer and teacher of great renown, writes:

God is not a being or person having life, intelligence, love, power. God is that invisible, intangible, but very real, something we call life. God is perfect love and infinite power. God is the total of these, the total of all good, whether manifested or unexpressed.

New Thought, for the most part, is a form of “objective idealism”, which rejects the notion that there are higher and lower orders or levels of reality.¹¹⁹ Objective idealism postulates

¹¹⁷ Process New Thought sees personality in one form or another as the characteristic category of reality, as did Borden Parker Bowne (1847-1910) of Boston University, the founder of American [Boston] Personalism), recognising “God” as the supreme, but not anthropomorphically conceived, person. Bowne and his successors in Boston Personalism (“personal idealism”) influenced many candidates for the Christian ministry, including Norman Vincent Peale (see George 1993) and Martin Luther King, Jr (see Warren 2001 and Baldwin 2002). The writings and public addresses of both religious leaders focused on the intrinsic value, worth and dignity of the individual person and on the theme of personal power.

¹¹⁸ Unlike Christian Science, New Thought does not, however, oppose medical science, nor does New Thought regard the material world as illusory (as does Christian Science). New Thought does not deny the existence, as experience and fact, of the material world; it simply does not see it as being an “ultimate” reality (that is, part of God’s reality).

¹¹⁹ Christian Science, which asserts that Mind is the only reality, is more properly construed as a form of subjective idealism.

the existence of an objective world - "matter" - but which is mental (ie non-materialistic). Unlike "subjective idealism" (which includes "phenomenalism"), objective idealism asserts that the objective world is *independent* of the human knower, because it "belongs" (for want of a better word) to *one* Absolute Mind ("Mind"), *the* absolute knower. All individual minds are simply manifestations of Mind.

Just as the materialist affirms that there is only one order of level of reality, namely, *matter*, the movement known as New Thought, along with Christian Science and other similar mental healing movements, also affirms that there is only one order of level of reality, and one substance of Being ... *Mind*. This is also known as "monism", and, strictly speaking, whilst New Thought may be "non-materialistic" it is certainly not "anti-materialistic" in nature. Further, to describe this belief system as "supernaturalistic" is inappropriate if not nonsensical.

As is the case with Brahmanism and, to some extent, Buddhism, there may well be sound empirical objections to such a belief system, but with its unabashed monism there is no real doctrine of the supernatural in New Thought or Christian Science, at least as understood in Western religion. Carus (1902:544) writes that this belief system is "not materialistic, not spiritualistic, not agnostic":

Not agnosticism, but positive science, not mysticism, but clear thinking, not supernaturalism, not materialism, but a monistic view of the world, not a dogma, but religion, not creed, but faith.

The High Court's insistence on belief in the supernatural would effectively disenfranchise any belief system, organization or community that had parted company with supernaturalism. It is the author's thesis that, having regard to the defining matters discussed in Chapter 1 of this thesis, the abovementioned belief systems, organizations and communities are indeed religions and should be recognized to be so. Furthermore, it is this author's submission that we must pay due regard to the abovementioned belief systems, theologies and movements if we are to establish a definition of religion that is suitably inclusive of the varieties of religious experience that exist in the world today.

Problems with supernaturalism

A second problem with the High Court's formulation in *Church of the New Faith* is that the

Court has provided little or no guidance as to how one determines whether a particular belief system involves a “supernatural” view of reality. It would appear that when the majority justices used the term “supernatural” they had in mind the purported existence of something supposedly exempt from, or not otherwise bound by, natural law, the latter referring to the regularity, uniformity and non-random activity observable in nature and the universe. In that regard, Wilson and Deane JJ in their joint judgment defined “supernatural” as “belief that reality extends beyond that which is capable of perception by the senses”.¹²⁰ However, what their Honours are describing is not supernaturalism but parapsychology which is “[t]he scientific study of supernormal phenomena by experimental or other systematic means”.¹²¹ Note, supernormal (or, as it is more commonly described, “paranormal”) phenomena, not supernatural phenomena, the difference being that whilst paranormal phenomena¹²² may approach the supposedly supernatural in the sense of the experiences do not appear to be explainable in terms of our current understanding of known scientific laws and principles, there is ordinarily¹²³ no implication of the phenomena otherwise being inconsistent with or amounting to an actual violation of natural law. The paranormal may be “beside” the normal or go “beyond” the normal, but are not said to be “miraculous” in the sense in which that word ordinarily is used. The paranormal are said to be attributable to *psi* which, as Rhine and Brier (1968:271) point out, is “a general term to identify extrasensorimotor exchange with the environment”. Surely this is not what Wilson and Deane JJ had in mind, but, regrettably, that is more-or-less how they “defined” the supposedly supernatural.

Merriam-Webster Online Dictionary defines “supernatural” in the following terms:

1: of or relating to an order of existence beyond the visible observable universe; *especially:* of or relating to God or a god, demigod, spirit, or devil
2a: departing from what is usual or normal especially so as to appear to transcend the laws of nature **b:** attributed to an invisible agent (as a ghost or spirit).¹²⁴

¹²⁰ In their separate joint judgment Wilson and Deane JJ defined “supernatural” as “belief that reality extends beyond that which is capable of perception by the senses”: 154 CLR 120 at 174.

¹²¹ James Drever (rev by Harvey Wallerstein), *A Dictionary of Psychology* (Penguin Books, 1975), p 203.

¹²² Examples of alleged paranormal phenomena include extrasensory perception, telepathy, clairvoyance and clairaudience, psychometry, precognition and premonitions, psychokinesis, psychic photography and poltergeist activity.

¹²³ Admittedly, some parapsychologists do study such alleged phenomena as mediumship, reincarnation, “past-life memories”, “miracles”, and even the occult generally. Such phenomena would seem to require the existence of more than one order or level of reality, as they clearly go beyond what can otherwise be fairly and reasonably described as “supernormal” or “paranormal”.

¹²⁴ *Merriam-Webster Online Dictionary*, viewed June 1 2006, <<http://www.m-w.com/dictionary/supernatural>>.

The Australian High Court's purported definition of "supernatural" accommodates the second entry in the above definition but not the first, the result being, as mentioned above, that the High Court has simply equated parapsychology and supernaturalism. Now, whilst supernaturalism *may* be said to include supernormal phenomena, it certainly involves a lot more.

Supernaturalism, as Sir Edward Bulwer-Lytton (1834:Online) was aware and made clear, is predicated upon the possibility of the occurrence of miracles which, of necessity, involve a violation of natural law:

The history of the origin of one supernatural religion will, with slight alterations, serve to describe them all. Their claim to credence rests on the exhibition of so-called miracles - that is, on a violation of the laws of nature, - for, if religions were founded on the demonstrated truths of science, there would be no mystery, no supernaturalism, no miracles, no skepticism, no false religion. We would have only verified truths and demonstrated facts for the basis of our belief. But this simple foundation does not satisfy the unreasoning multitude. They demand signs, portents, mysteries, wonders and miracles for their faith and the supply of prophets, knaves and impostors has always been found ample to satisfy this abnormal demand of credulity.

Dr N T Wright, an eminent Anglican bishop, is one of many current religionists who seek to avoid altogether notions of supernaturalism because he is acutely aware of their inherent problems. He writes (1992:80):

The great divide between the "natural" and the "supernatural", certainly in the way we use those words today, comes basically from the eighteenth century, bringing with it the whole debate about "miracles".

Wright goes on to say (1992:81):

But what if the God who made the world has remained active within the world? What is the word "God" itself might refer, not to this distant, remote, occasionally-intervening Being, but to a God who breathed with the breath of the world? ... This is a very different picture from the eighteenth-century one; it is much more Biblical. It puts the question of "God" acting within the world into quite a different dimension.

In other words, *if* the God of the bishop's understanding does, in fact, exist, and is active in our world, then anything done by that God would not be supernatural at all. With the greatest respect, this is Christian presuppositionalism at its very worst. It commits the informal fallacy of *petitio principii*, or begging the question. Further, it is no more than a "conditional statement" ("*If* the God of the Bible does in fact exist ...") which is not an argument at all, as it doesn't specify the premises that are needed to support the bishop's

conclusion.

In any event, the whole concept of there being a realm of existence that is "supernatural" is incomprehensible and ontologically self-contradictory, for it is impossible to conceive of there being, let alone describe, any existence, or other order or level of reality, other than "natural" existence, that is, the way in which ordinary things exist in space and time. Professor John Anderson would refer to this as the "problem of commensurability", that is, that any notion of there being different orders or levels of reality or truth is "contrary to the very nature and possibility of discourse" (Kennedy 1995:191-2). In Anderson's (1962:4) own words:

The chief, and I think final, objection to any theory of higher and lower, or complete and incomplete, truth is that it is contrary to the very nature and possibility of discourse; that it is 'unspeakable'.

Thus, any concept of there being some "unnatural" order or level of reality is strictly meaningless and, as Anderson (1962:4) points out, unspeakable:

If there were anything either above or below the proposition, it would be beyond speech or understanding.

In short, we can have no conception of "unnatural" existence, nor any conception of what it might possibly be like. As Chris Cogan (2000:Online) has pointed out:

... It is not possible to validate supernaturalism empirically, because supernaturalism has no special empirical traits that would enable us to distinguish it from naturalistic alternatives. ...

... It is not possible to validate supernaturalism philosophically because any attribute that it might be posited to have that is supposedly necessary to account for some naturalistic fact is either attributable to the natural world itself or it is not necessary. ...

Watts (1951:138-9) points out the inherent meaninglessness in calling things "supernatural" while at the same time answering the charge often levelled at religious naturalists:

... We shall therefore be told, by religious critics, that we are reducing religion to "naturalism," that we are identifying God with nature, and making a mockery and travesty of religion by taking away "its essential supernatural content."

But when you ask theologians what they mean by the "supernatural," they burst immediately into scientific language. They talk about a God having "concrete reality distinct from this universe," and speak of him in terms of past history and future pre-

dictions. They insist that the supernatural world is not of the same "order" as the universe studied by science, but exists on another plane of being invisible to our natural senses. It begins to sound like something psychic, something of the same order as the phenomena of telepathy, clairvoyance, and clairaudience.

Yet this is naturalism pure and simple; it is even pseudo-science. For science and naturalism are not necessarily concerned only with things visible to the senses. No one has seen electrons or quanta, nor been able to construct a sensual image of curved space. If psychic phenomena exist, there is no reason to suppose that they cannot be studied scientifically, and that they are not simply another aspect of "nature." Indeed, science is concerned with immeasurable things which cannot be experienced with the senses, and which are not present to immediate experience – for example, the entire past, the process of gravity, the nature of time, and the weights of planets and stars. These invisible things are inferred from immediate experience by logic. They are hypotheses which seem to give a reasonable explanation of observed events. The theological God is exactly the same thing – a hypothesis accounting for all experiences.

Further, to say that something is "supernatural", that is "not natural", says nothing. It is simply stating what the supposed entity is *not*. It says nothing about what it supposedly *is*. There is a still further problem, in that we cannot know that something exists without some knowledge of what it is that supposedly exists. To say that some supposed supernatural, but essentially unknowable, entity exists is simply saying nothing. If the supposed entity cannot be known - as must be the case - how can it be known to exist in the first case? This is running a philosophically very vicious circle indeed (Ellis-Jones 2005e).

Now, there is no doubt that certain belief systems *do* postulate the existence of a *supernatural* Being, Thing or Principle, but the word itself is fraught with difficulties and, regrettably, their Honours have not made it any easier by too readily invoking a concept that presents enormous practical problems when one seeks to apply it as a supposed litmus test of what is a religion for legal purposes.

Now, if supernaturalism has any meaning at all, it must refer to the belief that there exists more than one order or level of reality, and, in particular, that there are "higher" and "lower" levels of reality, the higher level of levels supposedly being exempt from, or not otherwise bound by, natural law, the latter referring to the regularity, uniformity and non-random activity observable in nature and the universe. Thus, the General Assembly of the Presbyterian Church of New Zealand affirmed, in a quite orthodox manner, that the term "supernatural", when used in Christian teaching, sought to imply that the existence of God was independent of both nature and humanity (1968:9). However, the Presbyterian Church recognized that the term "supernatural" was "misleading", having this to say about the matter (1968:9):

The term “supernatural” has been and may be used in Christian teaching to refer to the mystery and transcendent sovereignty of God. It is avoided in the Assembly affirmation because, if used without qualification, it may be misleading. For instance, the term “supernatural” may carry a wide, everyday reference to a variety of superstitious beliefs. If [the Christian] uses the word “supernatural” the Christian should take care to safeguard the truth of God’s relation to His world and the unity of His creation.

United States judicial authority supports the view that supernaturalism means belief in higher and lower orders or levels of reality. For example, in *United States v Meyers*¹²⁵ the Tenth Circuit Court of Appeals stated:

Religious beliefs are often “metaphysical”, that is, they address a reality which transcends the physical and immediately apparent world. Adherents to many religions believe that there is another dimension, place, mode, or temporality, and they often believe that these places are inhabited by spirits, souls, forces, deities, and other sorts of inchoate or intangible entities.¹²⁶

It is respectfully submitted that it is not doing violence to the court’s opinion to substitute the word “supernatural” for the word “metaphysical”. Be that as it may, the whole concept of there being a realm of existence that is “supernatural” is not only misleading, it is incomprehensible and ontologically self-contradictory, for 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 High Court in the *Scientology* case.

One must look elsewhere for some more practical and legal guidance and arguably the best place to look is the United States of America, arguably the most religious nation on earth and certainly the country where the matter of religion has been litigated the most.

¹²⁵ 95 F3d 1475 (10th Cir 1996).

¹²⁶ 95 F2d 1475, 1483 (10th Cir 1996), per Senior Circuit Judge Barrett. It should also be noted that the court did not state that all religions were metaphysical in nature.

CHAPTER 4

THE UNITED STATES LEGAL POSITION

“The idea that ‘God’ represents a unification of ideal values that is essentially imaginative in origin when the imagination supervenes in conduct, is attended with verbal difficulties, owing to our frequent use of the word ‘imagination’ to denote fantasy and doubtful reality. But the reality of ideal ends as ideals is vouched for by their undeniable power in action. An idea is not an illusion because imagination is the organ through which it is apprehended.”

- John Dewey, *A Common Faith* (New Haven: Yale University Press, 1934), pp 42-3.

Preview

1. The United States of America has a non-sectarian Constitution. The Founding Fathers of the country were far from being fundamentalist evangelical Christians. For the most part, they were deists, freethinkers, rationalists and secularists. Nevertheless, religion has always been important to most Americans, and the topic of religion has been often before the courts.
2. Over the years, the US Supreme Court, and various other superior courts, have enunciated various tests to determine whether a particular belief system is a religion for constitutional or certain other specified legal purposes. Those tests include the *Davis v Beason* test, the *Macintosh* test, the *Torcaso* test, the *Seeger* test, the *Seeger-Welsh* test, the *Yoder* test, and the *Africa* test.
3. The earliest test was the *Davis v Beason*¹ test in which Field J opined that “religion” had reference to a person’s view of his or her relations to their Creator, and to the obligations they imposed of reverence for the Creator’s being and character, and of obedience to the Creator’s will.
4. In *United States v Macintosh*² Hughes CJ in a dissenting judgment (the dissent involving another issue) stated that the essence of religion was belief in a relation to God involving duties superior to those arising from any human relation.

¹ 133 US 333 (1890).

² 283 US 605 (1931). Overruled, *Girouard v United States* 328 US 61, 69 (1946).

5. These tests failed to acknowledge the existence of nontheistic religions and it was not until 1961, in *Torcaso v Watkins*,³ that the US Supreme Court formally recognized that religion could be theistic or nontheistic, although certain other courts had done so earlier. The *Torcaso* test laid the foundations for the future development and application of even broader tests.
6. In *United States v Seeger*⁴ a new test - the *Seeger* test – was enunciated, with far-reaching consequences, although admittedly for the purposes of the construction of a particular federal statute. Under the *Seeger* test religion does not include essentially political, sociological, philosophical or economic views or considerations nor a merely personal code (that is, a personal belief in no way related to a Supreme Being) but, subject to the foregoing, provided a belief is sincere and meaningful and objectively occupies a place in a person's life parallel to that filled by an orthodox belief in God it is "religious". Put simply, a religious belief is one based upon a power or being or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent.
7. In *Welsh v United States*⁵ the US Supreme Court elaborated upon the *Seeger* definition of religion, holding that if a person deeply and sincerely holds beliefs that are purely ethical or moral in source and content but that nevertheless impose upon him or her a duty of conscience, those beliefs certainly occupy in the life of that person a place parallel to that filled by God in the lives of traditionally religious persons and, accordingly, are "religious" on that basis.
8. In *Wisconsin v Yoder*⁶ the US Supreme Court retreated somewhat from the *Seeger-Welsh* test, holding that beliefs that were "philosophical" and "personal" rather than religious - in the sense of a way of life based on "purely secular considerations" not rooted in religious belief - were not entitled to First Amendment protection.

³ 367 US 488 (1961).

⁴ 380 US 163 (1965)

⁵ 398 US 333 (1970).

⁶ 406 US 205 (1972).

9. In addition to the *Seeger-Welsh* and *Yoder* tests, there is what is known as the *Africa* test, which has been much applied. In *Africa v Pennsylvania*⁷ the 3rd Circuit Court of Appeals, in a unanimous decision authored by Adams J, applied the "three useful indicia" guideline previously proposed by his Honour in his *Malnak* concurrence⁸ in which it was stated that one must look to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted "religions" (in other words, definition by analogy). In an attempt to determine when a belief "occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption" (cf *Seeger-Welsh*) Adams J identified three indicia of religion: first, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters; secondly, a religion is comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching; and thirdly, a religion often can be recognized by the presence of certain formal and external signs (eg formal services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation, observance of holidays and other similar manifestations associated with the traditional religions).

Introduction

Thomas Jefferson,⁹ the author of the United States Declaration of Independence,¹⁰ and third President of the United States of America (from 1801 to 1809), regarded freedom of

⁷ 662 F2d 1025, 1031 (3rd Cir 1981), cert denied, 456 US 908 (1982).

⁸ *Malnak v Yogi* 592 F2d 197 at 207-10 (3d Cir 1979) ["Malnak II"].

⁹ A non-practising Episcopalian, Jefferson was a naturalist and a Deist, that is, "[o]ne who believes in God but denies supernatural revelation" (Funk & Wagnalls *New Standard Dictionary* (1952)). The first four presidents of the USA (George Washington, John Adams, Jefferson, and James Madison), despite (in some cases) being nominal members of Christian congregations, were all freethinkers and deists. Washington was also a Freemason, as were many of the Founding Fathers and signers of the Declaration of Independence who, in the tradition of the Great Enlightenment, advocated natural religion based on human reason as opposed to divine revelation and notions of supernaturalism. Madalyn Murray O'Hair, who instituted the action in *Murray v Curlett* 374 US 203 (1963) wherein the court declared unconstitutional coercive prayer and Bible recitation, writes (1969:7): "[O]ur forefathers were really not *that* concerned with the opinion of god [sic] and his agents. They respected first the opinion of 'We the People' or of 'mankind'."

religion as “the most inalienable and sacred of all human rights” (Virginia Board of Visitors Minutes, 1819, in Jefferson 1904:416).¹¹ In *Engel v Vitale*,¹² in which the United States Supreme Court outlawed state-sponsored prayer in public schools, it was said:

The history of man is inseparable from the history of religion. And ... since the beginning of that history many people have devoutly believed that “More things are wrought by prayer than this world dreams of.”¹³

In *Abington School District v Schempp*,¹⁴ in which the United States Supreme Court declared unconstitutional State-sponsored daily Bible readings in public schools, Justice Clark stated:

The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind.
...¹⁵

In *United States v Seeger*¹⁶ the United States Supreme Court recognized “the richness and variety of spiritual life in our country” and the diverse forms of expression these religions encompass.¹⁷ The Baptist Joint Committee on Public Affairs has written (“A Critique of David Barton’s ‘America’s Godly Heritage’”:Online):

There can be not doubt that we are a “religious people.” ... However, that is not the same thing as declaring that Christianity has been legally privileged or established to the exclusion of other religions or to the exclusion of irreligion. Moreover, the Constitution, which is our civil compact, is decidedly non-sectarian and ... mentions religion only to disallow religious tests for public office.¹⁸

¹⁰ The Declaration of Independence, of July 4, 1776, was, from the standpoint of religion, anything but a “Christian” document. With its references to the “the Course of human events”, “the Powers of the earth”, “the Laws of Nature and of Nature’s God”, not to mention “a decent respect to the opinion of mankind (cf notions of monarchical theocracy)”, it is a document that smacks of deism and religious naturalism, also making it clear that those in government derived their “just powers” from “the consent of the governed” (cf God).

¹¹ Contrary to popular belief and much misstatement Thomas Jefferson (1743-1826) did not write the US Constitution; cf “[o]ne of the draftsmen of the United States Constitution” (*New Century Developments Pty Limited v Baulkham Hills Shire Council* [2003] NSWLEC 154 (30 July 2003) per Lloyd J at [65]).

¹² 370 US 421 (1962).

¹³ 370 US 421, 434 (1962) per Black J.

¹⁴ 374 US 203 (1963).

¹⁵ 374 US 203, 226.

¹⁶ 380 US 163 (1965).

¹⁷ 380 US 163, 174 (1965).

¹⁸ To their great credit, Baptists, of all the Christian denominations, have been traditionally the strongest contenders for a strict separation of church and state (a distinctive Baptist doctrine): see Jarrel (1894) and Woolley (1964:385). In colonial America, Baptists were persecuted by newly formed “established churches” in some colonies. In fact, true religious freedom in colonial America was to be found only in Rhode Island and Pennsylvania. In the colony of Virginia Baptist pastors were beaten, driven out of town, and even imprisoned for their nonconformist faith, Baptists were wrongly accused of child abuse, and Baptist marriages were not

The United States of America, despite having been founded by religious refugees, has, as Robert Green Ingersoll (1900:v9:74) delighted in pointing out, “the first secular government that was ever founded in this world”.¹⁹

Throughout American legal history the meaning of the word “religion” has received considerable judicial attention over the years, and the courts have proposed different definitions of religion, broadening their definitions as the country has increased in religious diversity. *Black’s Law Dictionary* recognizes this development, offering the following definition of the term “religion”:

religion. A system of faith and worship usu. involving belief in a supreme being and usu. containing a moral or ethical code; esp., such a system recognized and practiced by a particular church, sect, or denomination. • In construing the protections under the Establishment Clause and the Free Exercise Clauses, courts have interpreted the term religion quite broadly to include a variety of theistic and nontheistic beliefs.²⁰

Religion means theism

In *Reynolds v United States*,²¹ which concerned an indictment found in the district court for the third judicial district of the Territory of Utah, charging one George Reynolds, a Mormon, with bigamy in violation of s 5352 of the Revised Statutes, it was held²² unanimously that it was constitutional for federal statute to punish criminal activity regardless of religious

recognized. In more recent years, commencing in the late 1970s, a strong minority of highly politicized and committed Southern Baptists have abandoned their historic position of separation of church and state ostensibly with a view to establishing their version of fundamentalist Protestant Christianity as some sort of de facto established church of the United States. Other Southern Baptists, such as the Rev John Buchanan (also a former Republican congressman), have been active in the organization *People for the American Way* [website: <<http://www.pfaw.org/pfaw/general/>>], a vigilant liberal watchdog on the Religious Right. As a sidelight, it was a Baptist minister, one Francis Bellamy, who wrote the US Pledge of Allegiance in 1892. Consistent with the Baptist principle of separation of church and state, Bellamy made no reference to God or religion in his version of the pledge, but in 1954 the US Congress added the words “under God” after pressure by the Knights of Columbus and other religious groups (Ellis-Jones 2004a).

¹⁹ Ingersoll (1900:v9:76) also wrote that the opening words of the preamble to the US Constitution (“We the People”) “did away forever with the theological idea of government.”

²⁰ *Black’s Law Dictionary*, 7th ed (St Paul MN: West Group, 1999), pp 1293-4. A more fulsome but much more theistic and traditional definition was contained in the 6th edition (1990) of the dictionary (on p 1292), as follows: “Man’s relation to Divinity, to reverence, worship, obedience, and submission to mandates and precepts of supernatural or superior beings. In its broadest sense includes all forms of belief in the existence of superior beings exercising power over human beings by volition, imposing rules of conduct, with future rewards and punishments. Bond uniting man to God, and a virtue whose purpose is to render God worship due him as a source of all being and principle of all government of things. *Nikulnikoff v Archbishop, etc, of Russian Orthodox Greek Catholic Church* 142 Misc 894, 255 NYS 653, 663.”

²¹ 98 US 145 (1879).

²² Chief Justice Waite J for the court, Field J concurring. The decision in *Reynolds* was relied upon by the High Court of Australia in *Adelaide Company of Jehovah’s Witnesses Incorporated v The Commonwealth* (1943) 67 CLR 116.

belief. More particularly, religious beliefs and practices that impaired the public interest were held not to be protected by the First Amendment.²³

Although there was little discussion in the case of the meaning of the word "religion", a very traditional view of religion was certainly implicit in the judgment. Chief Justice Waite had this to say about the matter:

Congress cannot pass a law for the government of the Territories which shall prohibit the free exercise of religion. The first amendment to the Constitution expressly forbids such legislation. Religious freedom is guaranteed everywhere throughout the United States, so far as congressional interference is concerned. The question to be determined is, whether the law now under consideration comes within this prohibition.

The word "religion" is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the times in the midst of which the provision was adopted. The precise point of the inquiry is, what is the religious freedom which has been guaranteed....

Before the adoption of the Constitution, attempts were made in some of the colonies and States to legislate not only in respect to the establishment of religion, but in respect to its doctrines and precepts as well. The people were taxed, against their will, for the support of religion, and sometimes for the support of particular sects to whose tenets they could not and did not subscribe. Punishments were prescribed for a failure to attend upon public worship, and sometimes for entertaining heretical opinions.

This brought out a determined opposition. Amongst others, Mr Madison prepared a "Memorial and Remonstrance," which was widely circulated and signed, and in which he demonstrated "that religion, or the duty we owe the Creator," was not within the cognizance of civil government. At the next session the proposed bill was not only defeated, but another, "for establishing religious freedom," drafted by Mr Jefferson, was passed. In the preamble of this act religious freedom is defined; and after a recital "that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty," it is declared "that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order." In these two sentences is found the true distinction between what properly belongs to the church and what to the State.....

... [A]t the first session of the first Congress the amendment now under consideration was proposed with others by Mr Madison. It met the views of the advocates of religious freedom, and was adopted. Mr Jefferson afterwards, in reply to an address to him by a committee of the Danbury Baptist Association, took occasion to say: "Believing with you that *religion is a matter which lies solely between man and his god*; that he owes account to none other for his faith or his worship; that the legislative powers of the government reach actions only, and not

²³ On the question of what constitutes "religious freedom" *Black's Law Dictionary* (6th edition, 1990) states: "Within Constitution embraces not only the right to worship God according to the dictates of one's conscience, but also the right to do, or forbear to do, any act, for conscience sake, the doing or forbearing of which is not inimical to the peace, good order, and morals of society. *Barnette v West Virginia State Board of Education* DWVa 47 FSupp 251, 253, 254; *Jones v City of Moultrie* 196 Ga 526, 27 SE2d 39." Contrary to popular belief and myth, the US Constitution contains no reference to any form of deity. The only reference to religion in the original document is a rather negative one, prohibiting religious tests for public office.

opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between church and State ...” Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured. Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order. [Emphasis added]²⁴

The Chief Justice’s invocation of Thomas Jefferson’s statement that “religion is a matter which lies solely between man and his god”,²⁵ and his Honour’s comment that Jefferson’s remarks constitute “almost ... an authoritative declaration of the scope and effect of the amendment”, strongly suggest that the Court was endorsing a fairly traditional theistic, or at least deistic, concept of religion.

Davis v Beason,²⁶ which again concerned the criminal prosecution of a member of the Mormon church under an Idaho statute disenfranchising persons from voting or holding elected office if they advocated or practised plural marriage (bigamy or polygamy) or belonged to any organization advocating or practising plural marriage, was almost certainly the first occasion on which the United States Supreme Court actually attempted to formulate a definition of “religion” for legal (in particular, constitutional) purposes.

The plaintiff and a number of nonpolygamous Mormons, after trying unsuccessfully to vote in the 1888 election,²⁷ sued. However, their disenfranchisement was treated by the Idaho court solely as a political question. On appeal to the United States Supreme Court, the court upheld the statute's constitutionality against a Free Exercise²⁸ challenge.

²⁴ 98 US 145, 162-4 (1879), emphasis added. James Madison’s famous *Memorial and Remonstrance Against Religious Assessments* (8 *Papers* 298-304, Je 20 1785, reprinted in Kurland & Lerner 1987:v5:82) described free exercise as a way for each person to best serve their God. President Jefferson’s oft-quoted letter in which he declared that it was the purpose of the First Amendment to build “a wall of separation between Church and State” was written on January 1 1802 to the Danbury Baptist Association in Danbury CT: see Jefferson 1904:v16:281. For an Online copy of the full text of the oft-cited letter, viewed December 1 2004, see <<http://www.lonang.com/exlibris/misc/danbury.htm>>.

²⁵ *Weatherhead* (1951:412) writes: “Recalling the etymology of the word ‘religion,’ I should define it as *man’s conscious link with God (or the gods) and his response thereto.*” Original emphasis.

²⁶ 133 US 333 (1890). Argued 9-10 December 1889. Decided 3 February 1890 by a vote of 9 to 0; Field J for the court. Overruled on other grounds, *Romer v Evans* (1996) 517 US 620, 634.

²⁷ The statute required electors to swear an oath that they were not polygamists.

²⁸ “Congress shall make no law ... prohibiting the free exercise [of religion].” US Const Amend I. The religion clauses of the First Amendment (which is made applicable to the US states through the Fourteenth Amendment: *Abington School Dist v Schempp* 374 US 203, 215 (1963)) forbid the making of laws “respecting an establishment of religion, or prohibiting the free exercise thereof.” Commonly referred to as the Establishment and Free Exercise clauses, they together permit and require that government maintain a “benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.” *Walz v Tax Commission* 397 US 664, 669 (1970).

The court held that religion was a matter of *belief*²⁹ and refused to recognise that belief in bigamy or polygamy, which was *conduct*, could be a tenet of a bona fide religious faith, stating:

To call their advocacy a tenet of religion is to offend the common sense of mankind.³⁰

Religion was seen “as an organized body of believers employing religious ceremony and having a faith in and commitment to a supernatural Supreme Being” (Beckwith 1995:Online). Using a theistic definition of religion, and otherwise distinguishing between “religion” on the one hand and “the *cultus* or form of worship of a particular sect” on the other, Justice Stephen J Field³¹ in an oft-cited dictum stated:

The term “religion” has reference to one's view of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. It is often confounded with the *cultus* or form of worship of a particular sect, but is distinguishable from the latter.³²

²⁹ The court made the point that it was “belief” that was constitutionally protected by the First Amendment, not “conduct”.

³⁰ 133 US 333 at 341-42(1890).

³¹ Stephen Field (1816-1899), who served on the US Supreme Court from 1863 to 1897, was a committed Episcopalian. His father was a Congregationalist minister and he had a sister who was a Christian missionary. Prior to his elevation to the Supreme Court, Field had been Chief Justice of the California Supreme Court. Both on that Court, and on the US Supreme Court, Field upheld the constitutional validity of “blue laws” (Sunday closing laws) by treating them as civil rather than religious legislation, asserting that public health and welfare benefits would result from a weekly day of rest. He wrote in *Soon Hing v Crowley* 113 US 703, 710 (1885): “Laws setting aside Sunday as a day of rest are upheld, not from any right of the government to legislate for the promotion of religious observances, but from its right to protect all persons from the physical and moral debasement which comes from uninterrupted labor. Such laws have always been deemed beneficent and merciful laws, especially to the poor and dependent, to the laborers in our factories and workshops and in the heated rooms of our cities; and their validity has been sustained by the highest courts of the States.” See “Religious Freedom in the USA” (Online). (Years later, in 1961, the US Supreme Court ruled (Douglas J dissenting) that Maryland’s Sunday closing laws had evolved into furthering secular ends and accordingly did not violate the First Amendment’s Establishment Clause: see *McGowan v Maryland* 366 US 420 (1961).) Field became active again in church matters in his last years, after resigning from the US Supreme Court in 1897.

³² 133 US 333, 342 (1890). Samson (2004:Online) writes: “The Court was here acknowledging a practical dimension to religion that may not be invaded, even though particular cultic practices, like polygamy or suttee, might be prohibited.” His Honour’s theistic definition of religion is consistent with at least a substantial part of the more fulsome definition contained in *Webster’s Third New International Dictionary*, 1971 ed, vol 2, p 191: “1. The personal commitment to and serving of God or a god with worshipful devotion, conduct in accordance with divine commands especially as found in accepted sacred writings or declared by authoritative teachers, a way of life recognized as incumbent on true believers, and typically the relating of oneself to an organized body of believers ... 6. A personal awareness or conviction of the existence of a Supreme Being or of supernatural powers or influences controlling one’s own, humanities, and all nature’s destiny.”

In addition to belief in a “Creator” his Honour also required a certain conformity between the group’s teachings and the prevailing morality of “all civilized and Christian countries”.³³

Further:

With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with. However free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as properly the subjects of punitive legislation.³⁴

Penalver (1997:Online) has stated:

Adherence to this narrow definition was facilitated by the religious homogeneity of the United States before the twentieth century.

Justice Field’s definition, or something very similar to it, has been applied in many US states. For example, some years later, the Oklahoma Court of Criminal Appeals in *McMasters v State*³⁵ defined religion as comprising:

All forms of belief in the existence of superior beings, exercising power over human beings by volition, imposing rules of conduct with future rewards and punishments.³⁶

Similarly, in the New York case of *Nikulnikoff v Archbishop and Consistory of Russian Orthodox Greek Catholic Church*,³⁷ decided one year after the United States Supreme Court decision in *Torcaso v Watkins*³⁸ which supposedly “expressly repudiated” the *Davis* definition (Penalver 1997:Online), Justice Hammer could still describe religion as

a bond uniting man to God and a virtue whose purpose is to render God the worship due him as the source of all being and the principle of all government of things.³⁹

Further, in 1970 the Supreme Court of Kansas in *Board of Trustees of the Kansas East Conference of the United Methodist Church v Cogswell*,⁴⁰ a case in which the court was

³³ 133 US 333, 341 (1890). See also *Late Corp of the Church of Jesus Christ of Latter-Day Saints v United States* 136 US 1, 50 (1890) in which it was held that the charter of the Mormon Church was repealed because it was not a religious corporation on the ground that, according to “the enlightened sentiments of mankind”, polygamy was a “pretense”.

³⁴ 133 US 333, 342-3 (1890).

³⁵ 21 Okl Cr 318, 207 P 566 (1922).

³⁶ 21 Okl Cr 318, 323. *Webster’s New Twentieth Century Dictionary of the English Language Unabridged* (Cleveland & New York, The World Publishing Company, 1950) lists, first, the following definition of religion: “A system of rules of conduct and laws of action based upon the recognition of, belief in, and reverence for a superhuman power of supreme authority.”

³⁷ 142 Misc 894, 255 NYS 653 (1962).

³⁸ 367 US 488 (1961).

³⁹ 142 Misc 894, 255 NYS 653 (1962).

called upon to decide a rather narrow question as to whether an administrative building used by the church was exempt from state property tax,⁴¹ adopted and applied the definition of religion enunciated in *Davis* as that intended by the Kansas constitutional and statutory provisions permitting tax exemption for "all property used exclusively for . . . religious purposes".⁴²

Seven years later, the Supreme Court of Missouri in *Missouri Church of Scientology v State Tax Commission of Missouri*⁴³ was still unwilling to deviate from the *Davis* insistence upon the need for there to be theistic belief in order to comprise a religion. The court rejected what it saw as a "loose concept" pursuant to which any organization "espousing moral principles, without theistic foundation, to which the membership openly express belief"⁴⁴ might qualify as a religion, saying:

We are unwilling to ascribe such meaning to the expression "religious worship" in Missouri's tax law. Instead we conclude that the constitutional and statutory term religious worship ... embod[ies] as a minimum requirement a belief in the Supreme Being.⁴⁵

The court went on to affirm the decision of the respondent that Scientology appeared to be more an applied philosophy which had a certain religious connotation, but which nevertheless fell short of being devoted to "the worship of the Supreme Being".⁴⁶ In so doing, the court upheld a supposed distinction between an "applied religious philosophy" on the one hand and an "organized religion devoted to religious worship" on the other.⁴⁷ This was despite the appellant's assertion that Scientology "acknowledges the existence of God and recognizes and espouses devotion to a Supreme Being"⁴⁸ and the fact that the appellant conducted regular ceremonies or services, presided over by ministers, on Sunday afternoons.⁴⁹

⁴⁰ 205 Kan 847, 473 P2d 1 (1970).

⁴¹ The court stated: "The administrative offices of such institutions, although perhaps a step removed from the performance of the ultimate beneficial act, are no less an integral, essential and absolutely necessary part of the act itself." 205 Kan 847, 859.

⁴² See KSA 79-201 *Third* (Weeks 1969) as well as Article 11, §1 of the Kansas Constitution.

⁴³ 560 SW 2d 837 (MO banc 1977).

⁴⁴ 560 SW2d 837, 842, fn 4 (MO banc 1977) per Rendlen J.

⁴⁵ 560 SW2d 837, 842, fn 4 (MO banc 1977) per Rendlen J.

⁴⁶ 560 SW2d 837, 843, fn 4, 845 (MO banc 1977).

⁴⁷ 560 SW2d 837, 845 (MO banc 1977).

⁴⁸ 560 SW2d 837, 843 (MO banc 1977).

⁴⁹ 560 SW2d 837, 844 (MO banc 1977). Judge Seiler, although concurring in the result, did not believe that the court should restrict the definition of religion to "conventional orthodox religions". See 560 SW2d 837, 845 (MO banc 1977).

However, by the early 1900s at least some US courts were making earnest endeavours to avoid the adoption of a too narrow concept of “religion”. For example, in *State of Iowa v Amana Society*⁵⁰ the court opined:

Surely a scheme of life designed to obviate [man's inhumanity to man], and by removing temptations, and all the allurements of ambition and avarice, to nurture the virtues of unselfishness, patience, love, and service, ought not to be denounced as not pertaining to religion when its devotees regard it as an essential tenet of their religious faith.⁵¹

The slow and gradual emergence of a broader view

Notwithstanding the view expressed in the *Amana Society* case, the “official” position was that the United States of America was still very much a Christian nation. In *Church of the Holy Trinity v United States*⁵² the United States Supreme Court undertook an exhaustive study of the historical, cultural and socio-political connections between Christianity and United States history in which regard was had to various “pre-Constitutional documents, historical practice, colonial charters and the like” (Baptist Joint Committee on Public Affairs 2005:Online). The court per Justice Brewer concluded that the nation was a “Christian nation” whose people were “a religious people”.⁵³ Admittedly, this statement was mere dicta - the case itself related to a narrow question concerning a contract to hire a minister of religion from England under an act of Congress that limited immigration - but it would be several more years before the Supreme Court would broaden its general approach to the topic area.

⁵⁰ 132 Iowa 304, 109 NW 894 (1906).

⁵¹ 132 Iowa 304 at 315, 109 NW 894 at 898.

⁵² 143 US 457 (1892).

⁵³ 143 US 457, 471 (1892) per Justice David J Brewer. This is at odds with Article 11 of the *Treaty of Tripoli* (1797), one of the first treaties ever signed by the United States of America, which was unanimously passed by Congress, in which it is expressly and not incidentally stated, "... the Government of the United States of America is not, in any sense, founded on the Christian religion". Walker (1997:Online) has written: "Unlike the Declaration of Independence, this treaty represented US law as all treaties do according to the Constitution (see Article VI, Sect 2)." See also O'Hair (1969:9). In any event, what Brewer, a Protestant, wrote was strictly dicta, being no more than his own personal opinion at that time (offered only after the court had already decided the real legal issue before it), for he would later write (see Walker 1997:Online): "But in what sense can [the United States] be called a Christian nation? Not in the sense that Christianity is the established religion or the people are compelled in any manner to support it. On the contrary, the Constitution specifically provides that 'Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.' Neither is it Christian in the sense that all its citizens are either in fact or in name Christians. On the contrary, all religions have free scope within its borders. Numbers of our people profess other religions, and many reject all."

In *Jacobson v Massachusetts*⁵⁴ the US Supreme Court, speaking of the liberties guaranteed to the individual by the Fourteenth Amendment,⁵⁵ said:

... And yet he may be compelled, by force if need be, against his will and without regard to his personal wishes or his pecuniary interests, or even his religious or political convictions, to take his place in the ranks of the army of his country, and risk the chance of being shot down in its defense.⁵⁶

However, in *United States v Macintosh*⁵⁷ an applicant for naturalization was unwilling to become a citizen with that understanding. He was unwilling to leave the question of his future military service to the wisdom of Congress. Instead, he offered to take the oath of allegiance only with the qualification that the question whether a war was necessary or morally justified must, so far as his support was concerned, be conclusively determined by reference to his opinion.

Justice Sutherland,⁵⁸ who delivered the opinion of the court, stated:

It is not within the province of the courts to make bargains with those who seek naturalization. They must accept the grant and take the oath in accordance with the terms fixed by the law, or forego the privilege of citizenship. There is no middle choice. If one qualification of the oath be allowed, the door is opened for others, with utter confusion as the probable final result. As this Court said in *United States v Manzi* 276 US 463, 467, 48 S Ct 328, 329 [1928]:

'Citizenship is a high privilege, and when doubts exist concerning a grant of it, generally at least, they should be resolved in favor of the United States and against the claimant.'⁵⁹

His Honour also stated:

We are a Christian people (*Church of the Holy Trinity v United States* 143 US 457, 470, 471 S, 12 S Ct 511), according to one another the equal right of religious freedom, and acknowledging with reverence the duty of obedience to the will of God. But, also, we are a nation with the duty to survive; a nation whose Constitution contemplates war as well as peace; whose government must go forward upon the assumption, and safely can proceed upon no other, that unqualified allegiance to the nation and submission and obedience to the laws of the land, as well those made for war as those made for peace, are not inconsistent with the will of God.⁶⁰

⁵⁴ 197 US 11, 25 S Ct 358, 3 Ann Cas 765 (1905).

⁵⁵ In *Cantwell v Connecticut* 310 US 296, 303 (1940), the Supreme Court held that the First Amendment was incorporated by the Fourteenth Amendment and, thus, applicable to the states.

⁵⁶ 197 US 11 at 29, 25 S Ct 358 at 362.

⁵⁷ 283 US 605 (1931). Overruled, *Girouard v United States* 328 US 61, 69 (1946).

⁵⁸ George Sutherland (1862-1942), an Episcopalian, served on the US Supreme Court from 1922 to 1938.

⁵⁹ 283 US 605, 626 (1931).

⁶⁰ 283 US 605, 626 (1931).

Hughes CJ,⁶¹ in what was otherwise a dissenting judgment⁶² (the dissent involving another issue), stated:

The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation. As was stated by Mr Justice Field, in *Davis v Beason* 133 US 333, 342, 10 S Ct 299 300: 'The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will.' One cannot speak of religious liberty, with proper appreciation of its essential and historic significance, without assuming the existence of a belief in supreme allegiance to the will of God.⁶³

So, according to the Chief Justice, the essence of religion was “belief in a relation to God involving duties superior to those arising from any human relation”. Who could argue that was not “the kind of religion the Framers had in mind when they wrote the First Amendment” (Price 1998:3 Online)? Indeed, the Chief Justice’s definition of religion was (Palmer 1993:202):

the same definition the Congress subsequently adopted for the conscientious objector exemption and used in the Senate Report on the 1948 Act [being an amending Act that defined the expression “religious training and belief” as “an individual’s belief in relation to a Supreme Being involving duties superior to those arising from any human relation ...”].

Although such a definition fails to take into account nontheistic belief systems such as Buddhism and Confucianism Justice Hughes’ “isolation and identification of the indispensable ingredient of religion remains a basic guide in this area of the law”.⁶⁴ When considering the exemption provisions of the *Selective Training and Service Act* of 1940 for those conscientiously opposed to participation in war “by reason of religious training and belief” the 9th Circuit in *Berman v United States*,⁶⁵ after citing with approval the above quoted phrase of Hughes CJ on the essence of religion from *Macintosh*, stated:

It is our opinion that the expression, “by reason of religious training and belief” is plain language, and was written into the statute for the specific purpose of distinguishing between a

⁶¹ Charles E Hughes (1862-1948), a Baptist, served on the US Supreme Court from 1910 to 1941, and was Chief Justice from 1930 to 1941.

⁶² Joining in the dissent were Justices Holmes, Stone and Brandeis. Justice Oliver Wendell Holmes Jr, a Unitarian (one of 9 such Unitarian justices of the US Supreme Court), was a practical atheist. According to O’Hair (1969:253) Holmes once wrote in *Time* magazine: “I can’t help an occasional semi-shudder as I remember that millions of intelligent men think that I am barred from the face of God unless I change. But how can one pretend to believe what seems to him childish and devoid alike of historical and rational foundations?”

⁶³ 283 US 605, 633-4 (1931). In similar theistic terms, the *Concise Catholic Dictionary* (Broderick 1944:137) defines religion in these terms: “(1) the union of man with God; the active realization of man’s relation to God. The doctrines, precepts, and practices by which man joins himself to God. The science treating of all degrees of faith and practice. (2) The virtue by which we give to God the honor which is due to Him; the performance of acts honoring God by which we show our love for God. It is of obligation for everyone.”

⁶⁴ *Missouri Church of Scientology v State Tax Commission of Missouri* 560 SW 2d 837, 841, fn 4 (MO banc 1977) per Rendlen J.

⁶⁵ 156 F2d 377 (9th Cir 1946).

conscientious social belief, or a sincere devotion to a high moralistic philosophy, and one based upon an individual's belief in his responsibility to an authority higher and beyond any worldly one. . . . We are not saying that man's comprehension of religion is static and remains today the same as a short hundred and fifty odd years ago in the area of our constitution-making. . . . Nature and God seem so close to Oneness that some thinkers blend them inseparately.⁶⁶

Commenting on the nature of religion the court cited academic authority to the effect that religion involved a process of vital and reciprocal interplay “between the human and the supernatural”.⁶⁷ However, despite an assertion by Palmer (1993:202) to the contrary, the *Berman* court did not actually indicate whether it expressly approved of such a formulation for legal purposes.

The modern judicial trend toward a broader view of religion began in 1943 in the Second Circuit Court of Appeals case, *United States v Kauten*.⁶⁸

Section 6(j) of the *Universal Military Training and Service Act* excepted from combatant service in the armed forces those who were conscientiously opposed to participation in war by reason of their “religious training and belief”.⁶⁹ (Importantly, those words were not defined by Congress until the enactment of the Selective Service Act of 1948, when the words “religious training and belief” were defined to mean “belief in a relation to a Supreme Being involving duties superior to those arising from any human relation”).

In *Kauten* the court was called upon to decide whether a conscientious objector, who was an atheist, was entitled to the benefit of the exception in s 6(j). Although the court held that Kauten was entitled to the benefit of the exception because his refusal to serve in the military was based exclusively on political grounds, Hand J, in dictum, dismissed the notion that belief in a Supreme Being in a conventional sense was a necessary element of

⁶⁶ 156 F2d 377 at 380 (9th Cir 1946).

⁶⁷ 156 F2d 377, 382, citing the article “Religion”, by A Bertholet, in *Encyclopedia of Social Sciences*, vol 13, p 229, the article itself quoting a definition by C A Bernoulli in *Theologie und Wissenschaft* (Basel 1933).

⁶⁸ 133 F2d 703 (2d Cir 1943).

⁶⁹ “The specified objection must have a grounding in ‘religious training and belief,’ but no particular sectarian affiliation or theological position is required. The Draft Act of 1917, 4, 40 Stat 78, extended relief only to those conscientious objectors affiliated with some ‘well-recognized religious sect or organization’ whose principles forbade members’ participation in war, but the attempt to focus on particular sects apparently broke down in administrative practice, *Welsh v United States* 398 US at 367 n 19 (concurring in result), and the 1940 Selective Training and Service Act, 5(g), 54 Stat 889, discarded all sectarian restriction. Thereafter Congress has framed the conscientious objector exemption in broad terms compatible with ‘its long-established policy of not picking and choosing among religious beliefs.’ *United States v Seeger* 380 US at 175.” *Gillette v United States* 401 US 437, 450-1, fn omitted (1971) per Marshall J. See *Krygger v Williams* (1912) 15 CLR 366 in which the High Court of Australia dismissed a constitutional objection that the Defence Act, which required certain persons to submit to military training, was a law prohibiting the free exercise of the appellant’s religion within the meaning of s 116 of the Constitution of Australia.

“religious training and belief” under the statute (Incorvaia 1978:337). That is to say, conscientious objection prodded by conscience could be just as religious as that prodded by theological commitment.⁷⁰ Palmer (1993:202) dismisses this case, simply stating that:

The *Berman* court’s broadest reference to the essence of religion required a recognition that religion involved not a unilateral human process, but a “vital and reciprocal interplay between the human and the supernatural.” Congress’s reference [in the Senate Report accompanying the 1948 amendment] to *Berman* is all the more significant because another federal circuit [viz the 2nd Circuit Court of Appeals in *Kauten*] had adopted a broader interpretation of the same definition prior to the *Berman* case. [fns omitted]⁷¹

In *United States v Ballard*⁷² the United States Supreme Court had to consider a most unconventional religious movement known as the “I AM” Movement.⁷³ With its roots in theosophy and spiritualism, the “I AM” Movement’s teachings included claims that the plaintiff (Edna Ballard, the then leader of the movement), her mining engineer husband Guy, and her son Donald were in touch with the “Ascended Master Saint Germain” and that the Ballards had performed numerous miracle cures. (Saint Germain, who was known on earth as the Comte de Saint-Germain, an advisor to Louis XIV and an occultist, and who, according to some, was also Saint Alban, Proclus, Roger Bacon, Christian Rosenkreutz, Francis Bacon and Ivan Rakoczy in previous earthly incarnations, was supposedly one of many ascended “Masters of Wisdom” along with Jesus (known collectively as the “Great White Brotherhood”) who were said to have been responsible for releasing the “Christ Light” (the “Mighty I AM Presence”).

Santucci (1997:Online) writes that Guy W Ballard was allegedly chosen by the Adept Saint Germain (beginning in the summer of 1930) to become a messenger for the Adepts so as to “open a new channel” in order to promulgate the Masters’ teachings after the repudiation by J Krishnamurti⁷⁴ in 1929 of his supposed role as a vehicle through which the “World Teacher” (the Lord Maitreya - the “Living Christ”, the Lord of Love - the alleged head of the occult hierarchy, who supposedly held the office of World Teacher until he assumed the office of the Buddha on 1 January 1956) would speak. (According to theosophical teaching Jesus of Nazareth and the Master Kuthumi have jointly assumed

⁷⁰ 133 F2d 703 at 708 (2d Cir 1943).

⁷¹ However, as already mentioned, the *Berman* court cannot be said to have expressly endorsed the supernaturalistic formulation for legal purposes.

⁷² 322 US 78 (1944). Argued 5 October 1946. Decided 9 December 1946 by a vote of 5 to 4; Douglas J for the court, Jackson J concurring in the result; Frankfurter, Vinson, Jackson and Burton JJ in dissent.

⁷³ See Ex 3:14: “God said to Moses, ‘I AM WHO I AM.’ And he said, ‘Say this to the people of Israel, ‘I AM has sent me to you.’” [RSV].

⁷⁴ See Ellis-Jones (2006c).

the office of the Lord Maitreya. Many Buddhists also believe in the coming Lord Maitreya Buddha - the next and, according to some, the “final” Buddha - the Lord Gautama Buddha being the “Teacher of the Past”.)

Ellwood (1973:121) writes that the “I AM” Movement “at its apex in the late [1930s] ... must have represented the greatest popular diffusion Theosophical concepts ever attained”. The “I AM” Movement is still in existence, the parent organization being “Saint Germain Foundation” with its headquarters located in the suburbs of Chicago. Other organizations, in particular The Church Universal and Triumphant (formerly known as the Summit Lighthouse), continue many of the “I AM” Movement’s teachings.⁷⁵

In *Ballard* the plaintiff appealed (ultimately, successfully) her 1939 conviction for fraudulent use of the mails by challenging the practice of the federal courts in California of systematically excluding women from juries. Justice William O Douglas, a “thorough-going separationist” (Baptist Joint Committee on Public Affairs 2005:Online) who was “not known to possess a traditional faith” (Gabler 1985:34),⁷⁶ opined:

Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. *West Virginia State Board of Education v Barnette* 319 US 624, 63 S Ct 1178, 147 ALR 674 [1943]. It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom. The Fathers of the Constitution were not unaware of the varied

⁷⁵ See, generally, Melton (1986:45-51), Santucci (1997:Online) and Hall (1999:20).

⁷⁶ Douglas, who served on the US Supreme Court from 1939 to 1975, having been nominated by President Franklin D Roosevelt, was the son of a Presbyterian minister. However, according to Hitchcock (2004:Online), Justice Douglas was a “disgruntled Presbyterian” who believed that churchgoers were “not only a thieving lot, but hypocrites, and above all else dull, pious and boring”. He was particularly fearful of Roman Catholicism and believed in the strictest separation of church and state and judges religion solely in terms of whether it supported what he regarded as being progressive social causes. Douglas J dissented in the four “Sunday law” cases adjudged in 1961 (see *McGowan v Maryland* 366 US 420 (1961); *Two Guys from Harrison-Allentown Inc v McGinley* 366 US 582 (1961); *Braunfeld v Brown* 366 US 599 (1961); *Gallagher v Crown Kasher Supermarket* 366 US 617 (1961)), asserting his opinion that such laws violated both the Establishment and Free Exercise Clauses of the First Amendment. In *McGowan v Maryland* 366 US 420, 564 (1961) Douglas J stated, “The First Amendment commands government to have no interest in theology or ritual; it admonishes government to be interested in allowing religious freedom to flourish - whether the result is to produce Catholics, Jews, or Protestants, or to turn the people toward the path of Buddha, or to end in a predominantly Moslem nation, or to produce in the long run atheists or agnostics.”

and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain. The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position. *Murdock v Pennsylvania* 319 US 105, 63 S Ct 870, 891, 146 ALR 81 [1943]. As stated in *Davis v Beason* 133 US 333, 342, 10 S Ct 299, 300. 'With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with.' See *Prince v Massachusetts* 321 US 158, 64 S Ct 438 [1944]. So we conclude that the District Court ruled properly when it withheld from the jury all questions concerning the truth or falsity of the religious beliefs or doctrines of respondents.⁷⁷

So, religion involves, among other things, “theories of life and of death and of the hereafter”, “creed[s]”, “beliefs [and] doctrines” concerning “[m]an's relation to his God”, and “worship”. Implicit in his Honour's judgment, with its references, by way of illustrative example, to the “miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer”, is that religion ordinarily involves faith in things that are inherently unprovable.

Be that as it may, in *Zorach v Clauson*,⁷⁸ in which the US Supreme Court was called upon to determine the constitutionality of “released time” plans that allowed religious instruction for public school students during the school week,⁷⁹ Justice Douglas, who delivered the opinion of the court, was still able to affirm:

We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish

⁷⁷ 322 US 78, 86-8 (1944).

⁷⁸ 343 US 306 (1952). Argued 31 January-1 February 1952. Decided 28 April 1952 by a vote of 6 to 3; Douglas J for the Court, Black, Frankfurter and Jackson JJ in dissent.

⁷⁹ The court, stressing the desirability of accommodating religious needs wherever possible, held that the plans did not violate the First Amendment's Establishment Clause [“Congress shall make no law respecting an establishment of religion.” US Constitution Amend I]. In *Illinois; ex rel McCollum v Board of Education* 333 US 203 (1948) a similar plan had been held to be unconstitutional. In *McCollum* the classrooms were used for religious instruction and the force of the public school was used to promote that instruction. In *Zorach* the public schools did no more than accommodate their schedules to a program of *outside* religious instruction. In the words of Douglas J, “we cannot expand [*McCollum*] to cover the present released time program unless separation of Church and State means that public institutions can make no adjustments of their schedules to accommodate the religious needs of the people. We cannot read into the Bill of Rights such a philosophy of hostility to religion.”

according to the zeal of its adherents and the appeal of its dogma. When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe. Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person. But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence. The government must be neutral when it comes to competition between sects. It may not thrust any sect on any person. It may not make a religious observance compulsory. It may not coerce anyone to attend church, to observe a religious holiday, or to take religious instruction. But it can close its doors or suspend its operations as to those who want to repair to their religious sanctuary for worship or instruction. No more than that is undertaken here.⁸⁰

His Honour concluded his opinion with this sentence:

We cannot read into the Bill of Rights ... a philosophy of hostility to religion.⁸¹

If there was to be, as there eventually was, a change in thinking on the part of the Supreme Court, in particular, a movement away from traditional supernaturalistic theism (cf Justice Douglas' interpolated presupposition of a "Supreme Being") towards an acceptance of broader views,⁸² the court would need to reflect upon and respond to profound changes in American religion, culture and society that had occurred, and were continuing to occur, since the court's decisions in such cases as *Reynolds v United States*⁸³ and *Davis v Beason*.⁸⁴

⁸⁰ 343 US 306, 313-4 (1952), emphasis added. McKay (1983:22) writes: "Americans are a highly religious people - more so indeed than the populations of most comparable countries ... There is also a multiplicity of religions, sects and denominations, and some commentators have argued that religion has been a prime source of the 'creedal passion' associated with various reform movements in American history." However, religious historian Handy (1977) has written that, as at 1800, probably less than 10 per cent of Americans were actual members of Christian congregations. In addition, a Pew Forum Survey on Religion and Public Life conducted in 2002 concluded that about 27 million Americans were atheists or agnostics or had no religious preference. Frost (2003:Online) suggests that the 27 million number may be low, since many non-believers are, in fact, "closeted". In the American Religious Identification Survey of 2001, which revealed that nearly 30 million Americans identified themselves as having "no religion", less than three million of those Americans actually identified with one of the following: Atheist, Agnostic, Humanist, Secular: see Nall (2004:Online).

⁸¹ 343 US 306, 315 (1952).

⁸² Hitchcock (2004, 2004a, 2004b) has documented the progressive secularization of the US Supreme Court, starting with the "revolutionary change in the Court [which] began in the 1930s" when President Franklin D Roosevelt began to choose justices who would interpret the Constitution as a "living", as opposed to an "enduring", document. Many of the justices appointed to the Court in the ensuing years were highly suspicious of, if not outright hostile to, organized religion and religious interests generally.

⁸³ 98 US 145 (1879).

⁸⁴ 133 US 333 (1890).

Apart from the important demographic, racial and social changes that have occurred progressively in American society, in which the United States has become a so-called “melting pot” of all religions and races, there were, as has already been discussed, a number of very important religious developments beginning in the latter years of the 19th century that arguably led to a growing acceptance by judicial decision-makers of “new” ideas about God. Those developments included the growth of religious liberalism and the New Thought movement, certain liberal interfaith activities and events, the promulgation of the various ideas of process theology, predicate theology, and, years later, “Death of God” theology, and the rise of secular humanism.⁸⁵ It was simply inevitable that the courts themselves would eventually come to see the wisdom of abandoning a narrow concept of religion defined in theistic terms.

It’s now official: religion may be theistic or non-theistic

By the early 1960s the US courts were ready to define religion in a broader context, accepting as religious many diverse belief systems and practices.

In *Torcaso v Watkins*⁸⁶ the appellant had refused to declare his belief in Almighty God, as then required by State law in order for him to be commissioned as a notary public. The US Supreme Court unanimously held that the requirement for such an oath invaded the appellant’s freedom of belief and religion. Accordingly, it was therefore unconstitutional for the Commonwealth of Maryland to make belief in God a requirement for becoming a notary public.⁸⁷

Justice Hugo L Black⁸⁸ delivered the opinion of the court. Justices Frankfurter⁸⁹ and Harlan⁹⁰ concurred in the result.

⁸⁵ See Chapter 3 of this thesis.

⁸⁶ 367 US 488 (1961).

⁸⁷ The Supreme Court’s decision in *Torcaso* was subsequently confirmed by the Court in 1997 in *Silverman v Campbell* 326 SC 208, 486 SE2d 1 (1997) in which it was held that a state requirement that the words “So help me God” be said at the conclusion of the taking of an oath of office for a public notary was in violation of the Constitution’s Religious Test Clause (viz Article VI, Section 3). Gordinier (2005:Online) has written: “Prior to *Torcaso*, only the national government was prohibited by Article VI, Section III of the US Constitution from refusing to seat a duly-elected federal official because of his or her religious affiliation or lack thereof. In other words, *Torcaso* used the authority of the First and Fourteenth Amendments to apply the ban on religious test oaths to all levels of government - not just the federal government. And we’re not just talking about non-Christians either. Case law dealing with religious discrimination has secured recognition for atheism as the ‘functional equivalent’ of a religious affiliation.”

⁸⁸ Black, who served on the US Supreme Court from 1937 to 1971, having been nominated by President Franklin D Roosevelt, was a former Sunday School teacher from Alabama who once belonged to the Ku Klux

The court, which rested its decision on “free exercise” grounds as opposed to the Establishment Clause of the First Amendment (see *Abington v Schempp*⁹¹), was quite clear in affirming that a belief system can be religious without being theistic, declaring that the Establishment Clause of the First Amendment went beyond traditional theistic belief systems and faiths and, further, that it was not the business of government or its agents to probe beliefs. Black J stated:

We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person to “profess a belief or disbelief in any religion.” Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.⁹²

Although the *Torcaso* court “[did] not define religion, holding only that a state may not require an oath declaring a belief in God as a prerequisite for holding public office”,⁹³ Justice Black, in an oft-cited footnote⁹⁴ to his judgment made reference to various “religions founded on different beliefs”. The footnote reads as follows:

Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism, and others. See *Washington Ethical Society v District of Columbia* 101 US App DC 371, 249 F2d 127; *Fellowship of Humanity v County of Alameda* 153 Cal App 2d 673, 315 P2d 394; II *Encyclopedia of the Social Sciences* 293; 4 *Encyclopedia Britannica* (1957 ed) 325-327; 21 id at 797; Archer, *Faiths Men Live By* (2d ed revised by Purinton), 120-138, 254-313; 1961 *World Almanac* 695, 712; *Year Book of American Churches for 1961*, at 29, 47.⁹⁵

Klan. According to Hitchcock (2004:Online), although Black later repudiated the Klan’s racism he retained its anti-Catholicism. A “lapsed Baptist”, and freethinking Freemason, Black, always fearful of “sectarian propagandists”, later “moved towards Unitarianism”. In *Everson v Board of Education of Ewing Township* 330 US 1 (1947) Black upheld “for strategic purposes only” the constitutionality of state reimbursement to parents of transportation costs to religious schools (on the basis of “student benefit”) but otherwise pronounced a very strict separation of church and state.

⁸⁹ Justice Felix Frankfurter, who served on the US Supreme Court from 1939 to 1962, having been nominated by President Franklin D Roosevelt, was a “secular Jew” who described himself as “a reverent agnostic” (Hitchcock 2004:Online).

⁹⁰ Justice John Marshall Harlan III, who served on the US Supreme Court from 1955 to 1971, having been nominated by President Dwight D Eisenhower, was an Episcopalian “generally favorable to religious interests” (Hitchcock 2004:Online).

⁹¹ 374 US 203, 264-65 (1962) Brennan J concurring.

⁹² 367 US 488, 495, fns omitted. Notwithstanding the Supreme Court’s clear, unambiguous and unequivocal opinion, to this day at least 7 US states (viz Maryland, Massachusetts, North Carolina, Pennsylvania, South Carolina, Tennessee and Texas) still have a blatantly unconstitutional “religious test” requirement in their Bill of Rights, Declaration of Rights, or in the body of their Constitution. For example, Article I, Section 4 of the Texas Constitution purports to authorize the exclusion of a person from holding public office on religious grounds is the person does not “acknowledge the existence of a Supreme Being”. See “Religious Discrimination in US State Constitutions” (Online).

⁹³ *Missouri Church of Scientology v State Tax Commission of Missouri* 560 SW 2d 837, 842, n 5 (MO banc 1977) per Rendlen J.

⁹⁴ Footnote 11.

⁹⁵ 367 US 488, 495, n 11.

The reference in Justice Black's footnote to "Secular Humanism"⁹⁶ as being a "religion" has resulted in considerable consternation and controversy (Cherry and Matsumura 1997), as most humanists (that is, so-called "secular humanists") do not regard as "religious" either themselves or their movement.⁹⁷ Ericson (1988: xiii-xiv) has written:

The decision in this case (*Torcaso v Watkins*) held that a nontheist is entitled to the same rights of conscience under the Constitution as a believer in God. The Court did not "establish" Humanism as the preferred religion of the secular state as some right-wing Catholic and Fundamentalist polemicists have since absurdly contended. The Court only assured to Ethical Humanists and other nontheists the same rights that Baptists, Lutherans, Catholics, and other religious citizens have always claimed for themselves. ...

Unfortunately, in the footnote quoted above, Justice Black did not help to clarify matters by referring to Humanist religion as "Secular Humanism." The use of this combination of terms in the Supreme Court's *Torcaso* decision has since confused the distinction between the secular and religious types of Humanism.

The confusion came about in the following manner. Shortly before the Supreme Court heard the *Torcaso* case, a congregation of religious Humanists in California had won in state courts their claim to be a church, a decision that was argued in the *Torcaso* case as a precedent. Unfortunately, a legal brief that cited the precedent referred to the California congregation as "Secular Humanists," an ambiguous and problematic conjunction of terms to use when referring to a religious body. But Justice Black apparently accepted the label as an accurate and usual designation, and the practice ever since of identifying Humanist religion as "Secular Humanism" has stirred endless misunderstanding and befuddled public comprehension!

The case involving the "California congregation" was *Fellowship of Humanity v County of Alameda*,⁹⁸ a decision of the California Court of Appeal. In that case the court was called upon to determine a claimed exemption from city and county property tax on the ground that the subject property was used "solely and exclusively for religious worship" within the meaning of the Californian Constitution. In an oft-cited opinion authored by Presiding Justice Raymond Peters, the court framed the question before it as follows:

We will assume that the [trial court's] findings, properly interpreted, are to the effect that the adoration of, and reverence to, a deity have no place in the beliefs of [the Fellowship of Humanity]. That presents the fundamental question - is a belief in God or gods essential to "religious worship," as those terms are used in the state Constitution?⁹⁹

⁹⁶ The official position of the International Humanist and Ethical Union (IHEU) is that the word "Humanism" should begin with an initial capital and does not need any distinguishing adjective (Blackham, Fragell, Lamont, Stopes-Roe and Tielman 1988:Online).

⁹⁷ Be that as it may, the *Concise Oxford Dictionary* (4th ed, 1951), in defining the word "humanism", makes quaint reference to the "[r]eligion of humanity".

⁹⁸ 153 Cal App 2d 673, 315 P2d 394.

⁹⁹ 153 Cal App 2d 673 at 680.

The court noted¹⁰⁰ that early federal cases¹⁰¹ had defined religion by reference to a belief in a deity or a supreme being. However, the court went on to state:

There are forms of belief generally and commonly accepted as religions and whose adherents . . . practice what is commonly accepted as religious worship, which do not include or require as essential the belief in a deity. Taoism, classic Buddhism, and Confucianism, are among these religions.¹⁰²

Justice Peters, after finding that dictionary definitions, judicial authority and the views of various scholars were of limited use in resolving the particular matter before the court,¹⁰³ and noting that in *United States v Ballard*¹⁰⁴ the US Supreme Court had established the concept that “the state has no power to decide the validity of the beliefs held by the group involved”,¹⁰⁵ stated:

[T]he only [proper] inquiry . . . is the objective one of whether or not the belief occupies the same place in the lives of its holders that the orthodox beliefs occupy in the lives of believing majorities, and whether a given group that claims the exemption conducts itself the way groups conceded to be religious conduct themselves. The content of the belief, under such test, is not a matter of governmental concern.

Under this test the belief or nonbelief in a Supreme Being is a false factor. The only way the state can determine the existence or nonexistence of “religious worship” is to approach the problem objectively. It is not permitted to test validity of, or to compare beliefs. This simply means that “religion” fills a void that exists in the lives of most men. Regardless of why a particular belief suffices, as long as it serves this purpose, it must be accorded the same status of an orthodox religious belief.¹⁰⁶

The court concluded:

[T]he proper interpretation of the terms “religion” or “religious” in tax exemption laws should not include any reference to whether the beliefs involved are theistic or nontheistic. Religion simply includes: (1) a belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from an adherence to the belief; and (4) an organization within the cult designed to observe the tenets of belief. The content of the belief is of no moment.¹⁰⁷

¹⁰⁰ 153 Cal App 2d 673 at 684.

¹⁰¹ See *Davis v Beason* 133 US 333, 342 (1890), overruled on other grounds, *Romer v Evans* 517 US 620, 634 (1996); *Berman v United States* 156 F2d 377, 380 (9th Cir 1946); *George v United States* 196 F2d 445, 451 (9th Cir 1952).

¹⁰² 153 Cal App 2d 673 at 684. See also *Citizens for Parental Rights v San Mateo Board of Education* 51 Cal App 3d 1, 21, fn 22 (1975): “religious liberty is not limited to theistic beliefs.”

¹⁰³ 153 Cal App 2d 673 at 684-691.

¹⁰⁴ 322 US 78 at 86 (1944).

¹⁰⁵ 153 Cal App 2d 673 at 692.

¹⁰⁶ 153 Cal App 2d 673 at 692-3. See also *Saint Germain Foundation v County of Siskiyou* 212 Cal App 2d 911 at 916 (1963).

¹⁰⁷ 153 Cal App 2d 673 at 693.

The decision in the *Fellowship of Humanity* case was later criticized by the Supreme Court of Missouri in *Missouri Church of Scientology v State Tax Commission of Missouri*,¹⁰⁸ with Rendlen J saying:

Under this loose concept it is readily apparent any organization espousing moral principles, without theistic foundation, to which the membership openly express belief might opt for the exempt status. We are unwilling to ascribe such meaning to the expression "religious worship" in Missouri's tax law. Instead we conclude that the constitutional and statutory term religious worship of Art X, s 6 and s 137.100 embody as a minimum requirement a belief in the Supreme Being.¹⁰⁹

Justice Adams, in his concurring opinion in *Malnak v Maharashi Mahesh Yogi*,¹¹⁰ stated that "*Torcaso* does not stand for the proposition that 'humanism' is a religion, although an organized group of 'Secular Humanists' may be".¹¹¹

In *Kalka v Hawk*¹¹² the District of Columbia Circuit Court also made it clear that *Torcaso* does not stand for the proposition that all forms of humanism are religions. The court stated:

The Court's statement in *Torcaso* [*v Watkins* 367 US 488, 495, n 11] does not stand for the proposition that humanism, no matter in what form and no matter how practiced, amounts to a religion under the First Amendment. The most one may read into the *Torcaso* footnote is the idea that a particular non-theistic group calling itself the "Fellowship of Humanity" qualified as a religious organization under California law.¹¹³

The court also referred to the holding of the United States 9th Circuit Court of Appeals in *Pelozza v Capistrano Unified School District*¹¹⁴ that secular humanism had never been formally held to be a religion as such:

[N]either the Supreme Court, nor this circuit, has ever held that evolutionism or secular humanism are "religions" for Establishment Clause purposes. Indeed, both the dictionary definition of religion and the clear weight of the caselaw are to the contrary. The Supreme Court has held unequivocally that while the belief in a divine creator of the universe is a religious belief, the scientific theory that higher forms of life evolved from lower forms is not. [*Edwards v Aguillard* 482 US 578 (1987).]¹¹⁵

¹⁰⁸ 560 SW2d 837(MO banc 1977).

¹⁰⁹ 560 SW2d 837, 842, fn 4 (MO banc 1977).

¹¹⁰ 592 F2d 197 (3d Cir 1979) ["Malnak II"].

¹¹¹ 592 F2d 197, 212 (3d Cir 1979).

¹¹² 215 F3d 90 (DC Cir 2000).

¹¹³ 215 F3d 90, 99 (DC Cir 2000), [Online] viewed July 27 2006 <<http://laws.lp.findlaw.com/dc/985485a.html>>.

¹¹⁴ 37 F3d 517 (9th Cir 1994); cert denied, 115 S Ct 2640 (1995).

¹¹⁵ *Pelozza v Capistrano Unified School District* 37 F3d 517, 521 (9th Cir 1994). Interestingly, but not surprisingly, in their pro-creationist dissent to *Edwards v Aguillard* 482 US 578 (1987) Rehnquist CJ and Scalia J cited Black J's footnote 11 (in *Torcaso v Watkins* 367 US 488, 495).

Similarly, in *Alvarado v City of San Jose*,¹¹⁶ another decision of the 9th Circuit Court of Appeals, Circuit Judge Nelson stated:

In *Torcaso*, in the context of ruling on a state statute requiring notaries to profess belief in God as a condition of office, the Supreme Court assumed without deciding that certain non-theistic beliefs could be deemed "religious" for First Amendment purposes. The Court stated in dictum: "Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others [citations]." *Id* at 495 n 11. Much has been made of this footnote, which has been explained as follows by Judge Canby, concurring in [*Grove v Mead School Dist No 354* 753 F2d 1528 (9th Cir 1985)]: "The apparent breadth of the reference to 'Secular Humanism' . . . is entirely dependant upon viewing the term out of context. In context, it is clear that the Court meant 'no more than a reference to the group seeking an exemption in *Fellowship of Humanity v County of Alameda* 153 Cal App 2d 673 [315 P2d 394] (1957) which, although non-Theist in belief, also met weekly on Sundays and functioned much like a church Thus *Torcaso* does not stand for the proposition that "humanism" is a religion, although an organized group of "secular humanists" may be."¹¹⁷

In his famous footnote in *Torcaso* Black J also made reference to a 1957 decision of the US Court of Appeals, *Washington Ethical Society v District of Columbia*¹¹⁸ relating to an Ethical Culture Society. The Ethical Culture Movement¹¹⁹ has much in common with Secular Humanism. Potter (1955:194) writes:

Historically, as well as to a large extent ideologically, Ethical Culture lies midway between Unitarianism and Humanism.¹²⁰

The *Washington Ethical Society* case concerned a rejection of the Society's application for a tax exemption as a religious organization. The US Court of Appeals reversed the tax court's ruling, declaring the Ethical Society to be a religious organization. The matter was remanded to the district court. In its decision (written by then Circuit Judge Warren Burger) the court stated:

The sole issue raised is whether petitioner falls within the definition of a "church" or a "religious society". ...The taxing authority urges denial of the tax exemption asserting

¹¹⁶ 94 F3d 1223, 1227 (9th Cir 1994).

¹¹⁷ 753 F2d 1528, 1537, n2.

¹¹⁸ 101 US App DC 371, 249 F2d 127.

¹¹⁹ In its more modern form, the Ethical Culture Movement is generally said to have begun in February 1877 with the incorporation of the New York Society for Ethical Culture. Felix Adler was the founder and directing leader of the Ethical Culture Movement during his lifetime. However, the movement is indebted to others such as Julius Rosenbaum who inaugurated a series of Sunday lectures commencing in May 1876. Adler wrote many influential books.

¹²⁰ On 26 August 1952 the International Humanist and Ethical Union (IHEU) was established in Amsterdam "in response to the widespread demand for an alternative to the religions which claim to be based on revelation on the one hand and to totalitarian systems on the other ... Ethical Humanism unites all those who cannot any longer believe the various creeds and are willing to base their convictions on respect for man as a spiritual and moral being" (Potter 1955:198).

petitioner is not a religious society or church and that it does not use its buildings for religious worship since "religious" and "worship" require a belief in and teaching of a Supreme Being who controls the universe. The position of the tax Court, in denying tax exemption, was that belief in and teaching of the existence of a Divinity is essential to qualify under the statute. ...To construe exemptions so strictly that unorthodox or minority forms of worship would be denied the exemption benefits granted to those conforming to the majority beliefs might well raise constitutional issues. ...We hold on this record and under the controlling statutory language petitioner qualifies as "a religious corporation or society". ...¹²¹

It was held that the legislative purpose of the tax-exemption statute was "to grant support to elements in the community regarded as good for the community," and thus, although the Ethical Society did not demand a belief in a god, it should be accorded the status of a "religious" organization to promote the broad public purposes of the statute. Indeed, the American Ethical Union, a federation of Ethical Societies in the United States of America, explains on its website¹²² why and how it sees itself as being a religion ("How We Are a Religion":Online):

In a footnote to the Supreme Court's judgment in *Torcaso v Watkins* (1964) [sic], it was noted that a non-theistic religion is for legal purposes as valid as a theistic religion. We urge careful clarification when the term religion is used. We assert our affirmation of the term religion when it refers to:

The reverence, wonder, and thankfulness with which we take our place in the universe.

The sense of a larger whole of which we are a part.

The organization of communities that generate values and meaning and seek fellowship in pursuit of ideals.

The passionate devotion to the cause of serving the good of humanity and the world.

A way of life that integrates our values and gives ethical direction and resources for ethical living.

Access to the "ethical energy" that resides in the human mind and heart and in the inspiration of human companionship and collaboration.

The Ethical Culture Movement's emphasis on "reverence, wonder and thankfulness", together with its emphasis on a sense of transcendence ("sense of a larger whole of which we are a part"), are essentially and undeniably *religious*.¹²³

¹²¹ 249 F2d 127, 127-9.

¹²² See <www.aeu.org>.

¹²³ The International Humanist and Ethical Union (IHEU), the international federation of both humanist societies and ethical societies, recognizes that there are "secular" as well as "religious" Humanists, but notes (Blackham, Fragell, Lamont, Stopes-Roe and Tielman 1988:Online): "The similarities between the beliefs and values of the different groups - even 'secular' and 'religious' Humanists - is more fundamental and more important than the

Whatever Justice Black may have intended in his now famous - or infamous - footnote 11, it would appear nevertheless that his Honour saw no good grounds for adopting a narrow construction of “religion” for legal purposes given that there were clearly belief systems, many of them non-supernatural and non-theistic in nature, that were ordinarily seen to be religions as that word is usually applied and understood. In that regard, in *Welsh v United States*¹²⁴ Justice Harlan of the US Supreme Court, in a footnote to his concurring opinion in that case, noted:

This Court has taken notice of the fact that recognized "religions" exist that "do not teach what would generally be considered a belief in the existence of God," *Torcaso v Watkins* 367 US 488, 495 n 11, eg "Buddhism, Taoism, Ethical Culture, Secular Humanism and others." *Ibid.* See also *Washington Ethical Society v District of Columbia* 101 US App DC 371, 249 F2d 127 (1957); 2 *Encyclopaedia of the Social Sciences* 293; J Archer, *Faiths Men Live By* 120-138, 254-313 (2d ed revised by Purinton 1958); Stokes & Pfeffer, *supra*, n 3, at 560.¹²⁵

The Seeger “parallel position” test

In *United States v Seeger*¹²⁶ which involved a constitutional challenge to a federal statute under the First Amendment’s “establishment of religion” and “free exercise” clauses, the US Supreme Court ruled that a belief was religious (for the purposes of the relevant statute) if it was “sincere and meaningful” and occupied a place in the life of its possessor parallel to that filled by an orthodox belief in God.¹²⁷

Seeger, who was the product of a devout Roman Catholic home, was a close student of Quaker beliefs from which he said much of his thought had been derived. He approved of the Quakers’ opposition to war and had been convicted in the District Court for the Southern District of New York of having refused to submit to induction in the armed forces. Claiming exemption as a conscientious objector, he declared that he was conscientiously opposed to participation in war in any form by reason of his “religious” belief. He preferred to leave the question as to his belief in a Supreme Being open rather than answer “yes” or

different groups is divisive.” However, the IHEU does not hold out either itself or Humanism to be a religion, and, in its *Minimum Statement on Humanism*, simply describes itself as being “a democratic and ethical life stance”, which is “not theistic”, and which “does not accept supernatural views of reality”. See International Humanist and Ethical Union “Minimum Statement on Humanism” (Online).

¹²⁴ 398 US 333 (1970).

¹²⁵ 398 US 333, 357, fn 8.

¹²⁶ 380 US 163 (1965)

¹²⁷ 380 US 163, 173-80 (1965).

“no”. He expressed a belief in and devotion to goodness and virtue for their own sakes, claiming nevertheless a *religious* faith in a purely ethical creed.

Seeger's claim, however, was denied solely because it was not based upon a "belief in a relation to a Supreme Being" as required by the exemption claim under section 6 (j) of the *Universal Military Training and Service Act*. He was subsequently convicted for refusing induction during the Vietnam War.

At his trial Seeger's counsel admitted that his belief was not in relation to a Supreme Being as commonly understood, but contended that he was entitled to the exemption because "under the present law Mr Seeger's position would also include definitions of religion which have been stated more recently,"¹²⁸ and could be "accommodated" under the definition of religious training and belief in the Act.¹²⁹

Seeger was convicted and the Court of Appeals reversed, holding that the Supreme Being requirement of the section distinguished "between internally derived and externally compelled beliefs" and was, therefore, an "impermissible classification" under the Due Process Clause of the Fifth Amendment.

The matter eventually came before the United States Supreme Court, with Justice Tom C Clark¹³⁰ delivering the unanimous opinion of the court. His Honour, after comparing the statutory definition ("belief in a relation to a Supreme Being involving duties superior to those arising from any human relation") with the dictum originally articulated by Hughes CJ in *Macintosh*¹³¹ ("belief in a relation to God involving duties superior to those arising from any human relation"), rather disingenuously declared that it was readily apparent that Congress had "deliberately broadened them by substituting the phrase 'Supreme Being' for the appellation 'God.'" Clark J went on to say:

... And in so doing it is also significant that Congress did not elaborate on the form or nature of this higher authority which it chose to designate as "Supreme Being." By so

¹²⁸ 380 US 163, 167 (1965).

¹²⁹ 380 US 163, 167 (1965).

¹³⁰ Clark, who served on the US Supreme Court from 1949 to 1967, having been nominated by President Harry Truman, was a Presbyterian "whose chief importance lies in the fact that in the 1960s [in *US v Seeger*] he redefined religion in the broadest possible way: 'a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by God [in the lives of others]'" (Hitchcock 2004:Online). Hitchcock further writes: "Although some people thought religion had to emanate 'from a superior source,' Clark held that such was not a tenable principle under the Constitution."

¹³¹ *United States v Macintosh* 283 US 605 (1931).

refraining it must have had in mind the admonitions of the Chief Justice when he said in the same opinion that even the word "God" had myriad meanings for men of faith:

"[P]utting aside dogmas with their particular conceptions of deity, freedom of conscience itself implies respect for an innate conviction of paramount duty. The battle for religious liberty has been fought and won with respect to religious beliefs and practices, which are not in conflict with good order, upon the very ground of the supremacy of conscience within its proper field." [283 US 605, 634 (1931)].¹³²

The Supreme Court chose to resolve the matter before it strictly as a matter of statutory construction as opposed to an issue of constitutional law. In that regard, the court declared that the question before it was a "narrow one", namely:

Does the term "Supreme Being" as used in [s] 6(j) mean the orthodox God or the broader concept of a power or being, or a faith, "to which all else is subordinate or upon which all else is ultimately dependent"? *Webster's New International Dictionary* (Second Edition). In considering this question we resolve it solely in relation to the language of 6(j) and not otherwise.¹³³

The Supreme Court went on to opine:

... Few would quarrel, we think, with the proposition that in no field of human endeavor has the tool of language proved so inadequate in the communication of ideas as it has in dealing with the fundamental questions of man's predicament in life, in death or in final judgment and retribution. This fact makes the task of discerning the intent of Congress in using the phrase "Supreme Being" a complex one. Nor is it made the easier by the richness and variety of spiritual life in our country. Over 250 sects inhabit our land. Some believe in a purely personal God, some in a supernatural deity; others think of religion as a way of life envisioning as its ultimate goal the day when all men can live together in perfect understanding and peace. There are those who think of God as the depth of our being; others, such as the Buddhists, strive for a state of lasting rest through self-denial and inner purification; in Hindu philosophy, the Supreme Being is the transcendental reality which is truth, knowledge and bliss. ... This vast panoply of beliefs reveals the magnitude of the problem which faced the Congress when it set about providing an exemption from armed service. It also emphasizes the care that Congress realized was necessary in the fashioning of an exemption which would be in keeping with its long-established policy of not picking and choosing among religious beliefs.¹³⁴

The Supreme Court, after referring to the Senate Report on the 1948 bill that ultimately became the *Universal Military Training and Service Act* - which defined the expression "religious training and belief" as "an individual's belief in relation to a Supreme Being involving duties superior to those arising from any human relation" - noted that the statutory definition was in two parts. The first half of the definition referred to belief in a

¹³² 380 US 163, 175-6 (1965).

¹³³ 380 US 163, 174 (1965).

¹³⁴ 380 US 163, 174-5 (1965).

Supreme Being. The second half involved “the rejection of sociological and moral views”, meaning:

... that exemption must be denied to those whose beliefs are political, social or philosophical in nature, rather than religious.¹³⁵

The Supreme Court noted “the ever-broadening understanding of the modern religious community” wherein God was identified by theologians such as Paul Tillich “not as a projection ‘out there’ or beyond the skies but as the ground of our very being”.¹³⁶ Reference was made also to the Schema of Vatican II (in which there were many references to the broad spectrum of religious beliefs found in the world), as well as to the views expressed by a leader in the Ethical Culture Movement:

Dr David Saville Muzzey, a leader in the Ethical Culture Movement, states in his book, *Ethics As a Religion* (1951), that “[e]verybody except the avowed atheists (and they are comparatively few) believes in some kind of God,” and that “The proper question to ask, therefore, is not the futile one, Do you believe in God? but rather, What kind of God do you believe in?” *Id* at 86-87. Dr Muzzey attempts to answer that question:

“Instead of positing a personal God, whose existence man can neither prove nor disprove, the ethical concept is founded on human experience. It is anthropocentric, not theocentric. Religion, for all the various definitions that have been given of it, must surely mean the devotion of man to the highest ideal that he can conceive. And that ideal is a community of spirits in which the latent moral potentialities of men shall have been elicited by their reciprocal endeavors to cultivate the best in their fellow men. What ultimate reality is we do not know; but we have the faith that it expresses itself in the human world as the power which inspires in men moral purpose.” At 95.

“Thus the ‘God’ that we love is not the figure on the great white throne, but the perfect pattern, envisioned by faith, of humanity as it should be, purged of the evil elements which retard its progress toward ‘the knowledge, love and practice of the right.’” At 98.¹³⁷

The Supreme Court concluded that there were “difficulties inherent in placing too narrow a construction on the provisions of 6(j)”.¹³⁸ Additionally, the court noted that the relevant statute did not distinguish between “externally and internally derived beliefs”.¹³⁹

... Such a determination would, as the Court of Appeals observed, prove impossible as a practical matter, and we have found that Congress intended no such distinction.¹⁴⁰

¹³⁵ 380 US 163, 178 (1965).

¹³⁶ 380 US 163, 180 (1965).

¹³⁷ 380 US 163, 182-3 (1965).

¹³⁸ 380 US 163, 186 (1965).

¹³⁹ 380 US 163, 186 (1965).

¹⁴⁰ 380 US 163, 184 (1965).

That is quite significant, even as regards members and adherents of so-called orthodox belief systems, many of whom may hold quite heterodox or even completely unorthodox beliefs. The court appears to be saying that is irrelevant when determining whether a particular person's set of beliefs is religious in nature. Then the court enunciated the test to be applied:

... [T]he test is simple of application. It is essentially an objective one, namely, does the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption?¹⁴¹

The court concluded as follows:

In summary, Seeger professed "religious belief" and "religious faith." He did not disavow any belief "in a relation to a Supreme Being"; indeed he stated that "the cosmic order does, perhaps, suggest a creative intelligence." He decried the tremendous "spiritual" price man must pay for his willingness to destroy human life. In light of his beliefs and the unquestioned sincerity with which he held them, we think the Board, had it applied the test we propose today, would have granted him the exemption. We think it clear that the beliefs which prompted his objection occupy the same place in his life as the belief in a traditional deity holds in the lives of his friends, the Quakers. We are reminded once more of Dr Tillich's thoughts:

"And if that word [God] has not much meaning for you, translate it, and speak of the depths of your life, of the source of your being, of your ultimate concern, of what you take seriously without any reservation. Perhaps, in order to do so, you must forget everything traditional that you have learned about God" Tillich, *The Shaking of the Foundations* 57 (1948). (Emphasis supplied.)

It may be that Seeger did not clearly demonstrate what his beliefs were with regard to the usual understanding of the term "Supreme Being." But as we have said Congress did not intend that to be the test. We therefore affirm the judgment in No 50.¹⁴²

Justice Douglas, who delivered a separate concurring opinion, sought to demonstrate that even at the time the relevantly applicable legislation was first enacted the United States of America was by no means homogeneous as regards religious beliefs.¹⁴³ His Honour then concluded:

¹⁴¹ 380 US 163, 184 (1965).

¹⁴² 380 US 163, 187 (1965).

¹⁴³ 380 US 163, 191-2 (1965). His Honour made reference to Hawaii, which is reportedly the most irreligious US state with approximately 52% of the population identifying themselves as atheist, agnostic or secular humanist or are simply religiously indifferent. Source (see "Religion in Hawaii":Online): *2000 State of Hawaii Data Book*, Table 1.47; *Religious Congregations and Membership in the United States 2000*, Glenmary Research Center. (For more information on the Hawaii breakdown see the American Religion Data Archive, viewed April 29 2005, <http://www.thearda.com/FR_Index.html?/RCMS/2000/State/15.htm>.) A vibrant organization known as Hawaii Citizens for the Separation of State and Church (website: <http://www.thearda.com/FR_Index.html?/RCMS/2000/State/15.htm>) was founded in 1997 as a watchdog group to "oppose the Christian supremacy movement and defend the separation of state and church".

When the Congress spoke in the vague general terms of a Supreme Being I cannot, therefore, assume that it was so parochial as to use the words in the narrow sense urged on us. I would attribute tolerance and sophistication to the Congress, commensurate with the religious complexion of our communities. In sum, I agree with the Court that any person opposed to war on the basis of a sincere belief, which in his life fills the same place as a belief in God fills in the life of an orthodox religionist, is entitled to exemption under the statute. None comes to us an avowedly irreligious person or as an atheist; one, as a sincere believer in "goodness and virtue for their own sakes." His questions and doubts on theological issues, and his wonder, are no more alien to the statutory standard than are the awe-inspired questions of a devout Buddhist.¹⁴⁴

The question before the Supreme Court decision in *Seeger* may well have been a "narrow one" resolved "solely in relation to the language of [s] 6(j) [of the relevant statute] and not otherwise"¹⁴⁵ - in other words *Seeger* was "technically a statutory case" (Penalver 1997:Online) - but the court took the opportunity to express some very broad views indeed as to what views were or were capable of being "religious" for legal purposes. Palmer (1993:201-2) has aptly written:

In reaching its definition, the Court impliedly concluded that Congress's [1948] addition of the words "belief in relation to a Supreme Being" had no meaning and did not qualify or define the term Congress expressly intended them to qualify or define. ... The evidence indicates that Congress intended a more limited definition of "religious training and belief," - one consistent with traditional concepts of religion including a theistic component. ... Justice Clark's opinion removed any such requirement from the statute, thereby making it something quite different from what Congress intended.

Justice Harlan, part of the court in *Seeger*, would later recoil somewhat from the decision in that case, describing the court's opinion in *Seeger* as "a remarkable feat of judicial surgery".¹⁴⁶ Be that as it may, the Supreme Court seized upon the opportunity in *Seeger* to declare that, provided a belief was "sincere and meaningful", and *objectively*¹⁴⁷ occupied a place in a person's life *parallel to that filled by an orthodox belief in God*, it was

¹⁴⁴ 380 US 163, 192-3 (1965), fns omitted. Religious liberals such as Unitarians also have "questions and doubts on theological issues", recognizing that "Creation is too grand, complex, and mysterious to be captured in a narrow creed" (Schulz 1990:Online). For many such people the Supreme Being, if they acknowledge that there is one, may take many forms including the recognition that there is a "power-not-ourselves" that works for good in our lives if we can contact it. Unitarian minister Dr Dilworth Lupton, in a 1939 sermon (which was later turned into one of the very first pamphlets on Alcoholics Anonymous), said (1939:Online): "How hard it is for moderns to concede - much less express it as our deep conviction - that our inner lives ultimately are dependent upon a power-not-ourselves."

¹⁴⁵ 380 US 163, 174 (1965) per Clark J. In *Missouri Church of Scientology v State Tax Commission of Missouri* 560 SW2d 837(MO banc 1977) Rendlen J declined to apply the *Seeger* test in the case before him, stating [at 841-2, fn 4]: "Though announcing this diluted version as the intended legislative meaning of 'religious ... belief', the court nevertheless acknowledged that Congress had referred in the Act to 'this higher authority'. ([380 US 163, 175] 85 S Ct 850) The *Seeger* definition is not one of constitutional construction but of statutory interpretation neither controlling nor persuasive here for a number of reasons"

¹⁴⁶ *Welsh v United States* 398 US 333, 351 (1970) (Harlan J dissenting).

¹⁴⁷ See 380 US 163, 184 (1965).

“religious”.¹⁴⁸ Put simply, a religious belief is one “based upon a power or being or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent”,¹⁴⁹ the only qualification being that religion does not include “essentially political, sociological, or philosophical views”,¹⁵⁰ “essentially political, sociological or economic considerations”,¹⁵¹ or a merely personal code, that is, a personal belief “in no way related to a Supreme Being”.¹⁵²

Justice Douglas, in his concurring opinion, stated:

[The] task is to decide whether the beliefs professed by a registrant are sincerely held and whether they are, *in his own scheme of things*, religious.¹⁵³

With respect, His Honour’s “test” is an overly *subjective* one, although it is almost assuredly the case that religious orthodoxy is unnecessary to obtain the protection of the Free Exercise Clause.¹⁵⁴ It was the opinion of the court that the true and correct enquiry is to ask whether an objector’s beliefs are sincerely held and whether *objectively* the claimed occupied the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for the exemption.¹⁵⁵ Further, courts were not to require proof

¹⁴⁸ See 380 US 163, 184 (1965). This is known as the “*Seeger* definition” as well as the “parallel position” (or “parallel belief”) test.

¹⁴⁹ *Webster’s New International Dictionary* (Second Edition), as cited by the Supreme Court in *Seeger* at 380 US 163, 174 (1965).

¹⁵⁰ 380 US 163, 165 (1965).

¹⁵¹ 380 US 163, 173 (1965). See eg *State of Minnesota v Tenerelli* 583 NW2d 1 (Minn App 1998) in which the defendant/appellant challenged under the Establishment Clause a mandate to pay restitution to his victim for a Hu Plig healing ceremony. (Hu Plig involves the sacrifice of live animals to heal the soul of someone who has been physically and emotionally harmed.) The trial court had characterized Hu Plig as “a social and cultural tradition that has been practiced in the Hmong culture for thousands of years...It is not a religious practice or belief, nor is it a ‘face-saving’ endeavor; rather it is a healing ceremony intended to restore the soul of a victim of physical or emotional trauma.” 583 NW2d 1 (Minn App 1998). The appellant argued that restitution awarded for spiritual purposes violated the Establishment Clause. However, the court (per Blatz CJ) held that since the evidence supported the trial court’s conclusion that the Hu Plig ceremony was not religious it was unnecessary to address the issue further. Anderson J, concurring specially, stated that the record indicated that, depending upon the belief of the beneficiary, the Hu Plig in some circumstances may be a cultural and social ceremony and, in others, a religious practice. In this particular case, there was no evidence on the record of the subject beneficiary’s beliefs. Gilbert J, dissenting, stated that under the objective *Seeger* test [see 380 US 163, 184 (1965)] the Hu Plig ceremony was religious; accordingly, the trial court should only have determined whether the victim’s belief was sincerely held, an issue that was undisputed in the case.

¹⁵² 380 US 163, 186 (1965).

¹⁵³ 380 US 163, 185 (1965), emphasis added.

¹⁵⁴ See eg *Michigan v Emmanuel Baptist Preschool* 434 Mich 380, 455 NW2d 1, 1990 MI 628 in which it was held that religious belief and conduct need not be endorsed or mandated by a religious organization in order to receive protection under the Free Exercise Clause. 434 Mich 380, 392 (Cavanagh J concurring).

¹⁵⁵ 380 US 163, 184 (1965). See *State of Minnesota v Tenerelli* 583 NW2d 1 (Minn App 1998). Insofar as the requirement for “sincerity” is concerned, UU minister Mike Young (1998:Online) has aptly written: “One of the Unitarian Universalist principles is that you *ought* to believe whatever it is in fact that you *do* believe” [original emphasis].

of the religious doctrines nor were they to reject beliefs on the ground that they were incomprehensible.¹⁵⁶

The *Seeger* test has not found favour with the English courts. For example, in *In re South Place Ethical Society Barralet v. Attorney-General*¹⁵⁷ Dillon J had this to say about the matter:

In a free country - and I have no reason to suppose that this country is less free than the United States of America - it is natural that the court should desire not to discriminate between beliefs deeply and sincerely held, whether they are beliefs in a god or in the excellence of man or in ethical principles or in Platonism or some other scheme of philosophy. But I do not see that that warrants extending the meaning of the word "religion" so as to embrace all other beliefs and philosophies. Religion, as I see it, is concerned with man's relations with God, and ethics are concerned with man's relations with man. The two are not the same, and are not made the same by sincere inquiry into the question: what is God? If reason leads people not to accept Christianity or any known religion, but they do believe in the excellence of qualities such as truth, beauty and love, or believe in the platonic concept of the ideal, their beliefs may be to them the equivalent of a religion, but viewed objectively they are not religion. The ground of the opinion of the court, in the United States Supreme Court, that any belief occupying in the life of its possessor a place parallel to that occupied by belief in God in the minds of theists prompts the comment that parallels, by definition, never meet.¹⁵⁸

Even some US courts have taken the view that the *Seeger* test goes too far. For example, in *Missouri Church of Scientology v State Tax Commission of Missouri*,¹⁵⁹ a tax case in which the appellant church claimed an exemption on the ground that its property was used exclusively for religious worship, the appellant sought to argue that the *Seeger* court had in effect removed the requirement for belief in a Supreme Being for the purposes of a religion. However, the Supreme Court of Missouri did not accept that argument, saying:

Contrary to this appellant's argument that the Court in effect excised the concept of a Supreme Being from "religion" it can reasonably be said that when the court spoke of "claimed belief" as occupying "the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption," the term necessarily includes God or Supreme Being. This because the "claimed belief" must equate qualitatively and quantitatively with the place God holds in the life of one clearly qualified for exemption (eg a devout member of the Society of Friends) and such would require a devotion to God (or an equivalent) accompanied by a divinely inspired rejection of violence in the form of war. It is

¹⁵⁶ 380 US 163, 184-5 (1965). "[I]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds": *Hernandez v Comm'r of Internal Revenue* 490 US 680, 699 (1989).

¹⁵⁷ [1980] 1 WLR 1565.

¹⁵⁸ [1980] 1 WLR 1565 at 1571. Dillon J concluded that an ethical society which held Sunday meetings at which lectures were given on "subjects of serious and mainly intellectual interest", followed by general discussion, was not, in law, for the advancement of religion. His Honour stated [at 1572]: "It seems to me that two of the essential attributes of religion are faith and worship; faith in a god and worship of that god."

¹⁵⁹ 560 SW2d 837(MO banc 1977).

against this or a similar orthodox standard of another "clearly qualified for exemption" that an objector's "claimed belief" must measure. In the alternative, *Seeger* [380 US 163 (1965)] may be said to mean that the "claimed belief" occupies the same place in the life of the objector as that which an orthodox belief in God holds in the lives of others clearly exempted, but the objector may choose not to use the word "God" or "Supreme Being". In that sense Seeger's interpretation of the Act seems more a matter of semantics than substance, but in no sense can that case be considered as declaring a constitutional standard circumscribing state action in the field of tax exemption.¹⁶⁰

The Welsh elaboration

In *Welsh v United States*¹⁶¹ the United States Supreme Court chose to elaborate upon the *Seeger* definition of religion, holding that if a person deeply and sincerely held beliefs that were purely ethical or moral in source and content but that nevertheless imposed upon him or her a duty of conscience to refrain from participating in any war at any time, those beliefs certainly occupied in the life of that person "a place parallel to that filled by ... God in the lives of traditionally religious persons".¹⁶²

The petitioner had been convicted of refusing to submit to induction into the US Armed Forces despite his claim for conscientious objector status under s 6(j) of the *Universal Military Training and Service Act*.¹⁶³ That provision, as in force *at the time the petitioner was convicted* of refusing to submit to induction into the Armed Forces, exempted from military service persons who, by reason of "religious training and belief", were conscientiously opposed to war in any form, that term being defined in the Act - as was the case in *Seeger* - as "belief in a relation to a Supreme Being involving duties superior to those arising from any human relation" but not including "essentially political, sociological, or philosophical views or a merely personal code."¹⁶⁴

In his exemption application the petitioner had stated that he could not affirm or deny belief in a "Supreme Being" and had struck the words "my religious training and" from the form.

¹⁶⁰ 560 SW2d 83, 842 (MO banc 1977) per Rendlen J, emphasis omitted.

¹⁶¹ 398 US 333 (1970).

¹⁶² 398 US 333 at 340 (1970) per Black J.

¹⁶³ An amendment to the *Universal Military and Service Act* in 1967, subsequent to the Court's decision in *Seeger*, deleted the reference to a "Supreme Being" but continued to provide that "religious training and belief" did not include "essentially political, sociological, or philosophical views, or a merely personal moral code." 81 Stat 104, 50 USC App 456 (j) (1964 ed, Supp IV). See 398 US 333, 344, fn 2 (1970) per Black J.

¹⁶⁴ 398 US 333 at 333 (1970).

He nevertheless affirmed that he held deep conscientious scruples against participating in wars where people were killed.¹⁶⁵

The Court of Appeals, while noting that the petitioner's beliefs were held with the strength of more traditional religious convictions, nevertheless concluded that those beliefs were not sufficiently "religious" to meet the terms of section 6 (j) of the statute, and affirmed the conviction. The petitioner then took the matter to the US Supreme Court, contending that the statute violated the First Amendment prohibition of establishment of religion and that his conviction should be set aside on the basis of the unanimous decision in *United States v Seeger*¹⁶⁶

The judgment of the Court of Appeals was reversed by the United States Supreme Court in a 5-3 decision. Justice Black announced the judgment of the court and, joined by Justices Douglas, Brennan and Marshall, delivered the majority opinion¹⁶⁷ in which he concluded that the case was controlled by the court's previous decision in *Seeger* to which it was factually similar and that Welsh could be declared a conscientious objector even though he declared that his opposition to war was not based on any formal religious convictions.

Under *Seeger* an exemption under s 6(j) of the Act was not limited to those whose opposition to war was prompted by orthodox or parochial religious beliefs. Thus, a registrant's conscientious objection to all war was "religious" within the meaning of s 6(j) if the objection stemmed from the registrant's moral, ethical, or religious beliefs about what was right and wrong and those beliefs were held with the strength of traditional religious convictions. Further, in view of the broad scope of the word "religious", a registrant's characterization of his or her own beliefs as "nonreligious" was not, in the opinion of the court, a reliable guide to those administering the exemption.¹⁶⁸

Justice Black had this to say about the meaning given to the term religion in *Seeger*:

¹⁶⁵ 398 US 333 at 333-4 (1970).

¹⁶⁶ 380 US 163 (1965). As mentioned previously, *Seeger* had held that the test of religious belief under section 6 (j) of the statute was whether it was a sincere and meaningful belief occupying in the life of its possessor a place parallel to that filled by the God of those admittedly qualified for the exemption.

¹⁶⁷ Justice Harry Blackmun took no part in the *Welsh* case.

¹⁶⁸ 398 US 333, 341 (1970). "When a registrant states that his objections to war are 'religious,' that information is highly relevant to the question of the function his beliefs have in his life. But very few registrants are fully aware of the broad scope of the word 'religious' as used in 6 (j), and accordingly a registrant's statement that his beliefs are nonreligious is a highly unreliable guide for those charged with administering the exemption." 398 US 333, 341 per Black J.

The Court made it clear [in *United States v Seeger* 380 US 163 (1965)] that these sincere and meaningful beliefs that prompt the registrant's objection to all wars need not be confined in either source or content to traditional or parochial concepts of religion. It held that 6(j) "does not distinguish between externally and internally derived beliefs," *id.*, at 186, and also held that "intensely personal" convictions which some might find "incomprehensible" or "incorrect" come within the meaning of "religious belief" in the Act. *Id.*, at 184-185. What is necessary under *Seeger* for a registrant's conscientious objection to all war to be "religious" within the meaning of 6(j) is that this opposition to war stem from the registrant's moral, ethical, or religious beliefs about what is right and wrong and that these beliefs be held with the strength of traditional religious convictions. Most of the great religions of today and of the past have embodied the idea of a Supreme Being or a Supreme Reality - a God - who communicates to man in some way a consciousness of what is right and should be done, of what is wrong and therefore should be shunned. *If an individual deeply and sincerely holds beliefs that are purely ethical or moral in source and content but that nevertheless impose upon him a duty of conscience to refrain from participating in any war at any time, those beliefs certainly occupy in the life of that individual "a place parallel to that filled by ... God" in traditionally religious persons.* Because his beliefs function as a religion in his life, such an individual is as much entitled to a "religious" conscientious objector exemption under 6(j) as is someone who derives his conscientious opposition to war from traditional religious convictions.¹⁶⁹

After rejecting the Government's attempt to distinguish *Seeger* on the ground that Welsh was "far more insistent and explicit than *Seeger* in denying that his views were religious",¹⁷⁰ his Honour went on to discuss the types of views that would be insufficient for the purposes of the statutory exemption:

We certainly do not think that [s] 6(j)'s exclusion of those persons with "essentially political, sociological, or philosophical views or a merely personal moral code" should be read to exclude those who hold strong beliefs about our domestic and foreign affairs or even those whose conscientious objection to participation in all wars is founded to a substantial extent upon considerations of public policy. The two groups of registrants that obviously do fall within these exclusions from the exemption are those whose beliefs are not deeply held and those whose objection to war does not rest at all upon moral, ethical, or religious principle but instead rests solely upon considerations of policy, pragmatism, or expediency. In applying 6(j)'s exclusion of those whose views are "essentially political, sociological, or philosophical" or of those who have a "merely personal moral code," it should be remembered that these exclusions are definitional and do not therefore restrict the category of persons who are conscientious objectors by "religious training and belief." Once the Selective Service System has taken the first step and determined under the standards set out here and in *Seeger* that the registrant is a "religious" conscientious objector, it follows that his views cannot be "essentially political, sociological, or philosophical." Nor can they be a "merely personal moral code." See *United States v Seeger* 380 US, at 186.¹⁷¹

Under this interpretation, s 6(j) of the *Universal Military and Service Act*:

¹⁶⁹ 398 US 333, 339-40 (1970), emphasis added. In *Gillette v United States* 401 US 437 (1971) one of the petitioners, Gillette, objected to participation in the Vietnam conflict as an "unjust" war, "based on a humanist approach to religion". The question before the Supreme Court was not whether Gillette's beliefs concerning war were "religious" in nature; indeed, the court appeared to proceed on the assumption that they were "religious" in nature within the meaning of the statute, as amended, as well as the court's decisions concerning s 6(j) of the statute.

¹⁷⁰ 398 US 333, 342-3 (1970).

¹⁷¹ 398 US 333, 344 (1970) per Black J.

exempts from military service all those whose consciences, spurred by deeply held moral, ethical, or religious beliefs, would give them no rest or peace if they allowed themselves to become a part of an instrument of war.¹⁷²

Palmer (1993:203) writes:

Unlike Justice Clark in *Seeger*, Justice Black did not even bother to construct an argument that legislative history supported his conclusions.

Similarly, Paris (1973:455), who referred to Justice Black's handiwork as "judicial sleight of hand", went on to observe:

Unfortunately for those concerned for judicial constraint and logical consistency, there was no legislative history or judicial language to support Black's reading.

Justice Harlan, while concurring in the result on constitutional grounds,¹⁷³ was of the opinion that the statute evinced a clear intention on the part of Congress to restrict conscientious objection status to those persons who could demonstrate a traditional religious foundation for their beliefs and that this was impermissible under the First Amendment's Establishment Clause, and his Honour expressed considerable misgivings about the court's opinion in *Seeger*, referring to it as akin to "an Alice-in-Wonderland world where words have no meaning".¹⁷⁴ Worse, the court's plurality in *Seeger*, of whom he had formed part, had performed a "lobotomy" on the words in the statute.¹⁷⁵ His Honour stated:

Candor requires me to say that I joined the Court's opinion in *United States v Seeger* 380 US 163 (1965), only with the gravest misgivings as to whether it was a legitimate exercise in statutory construction, and today's decision convinces me that in doing so I made a mistake which I should now acknowledge.

In *Seeger* the Court construed 6(j) of the Universal Military Training and Service Act so as to sustain a conscientious objector claim not founded on a theistic belief. The Court, in treating with the provision of the statute that limited conscientious objector claims to those stemming from belief in "a Supreme Being," there said: "Congress, in using the expression 'Supreme Being' rather than the designation 'God,' was merely clarifying the meaning of religious training and belief so as to embrace all religions and to exclude essentially political, sociological, or philosophical views," and held that the test of belief "'in a relation to a Supreme Being' is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption." 380 US, at 165-166. Today the prevailing opinion makes explicit its total elimination of the statutorily required religious content for a conscientious objector exemption. The prevailing opinion now says: "If an individual deeply

¹⁷² 398 US 333, 344 (1940) per Black J.

¹⁷³ His Honour thereby tipped the scale in Welsh's favour.

¹⁷⁴ 398 US 351, 354 (1970).

¹⁷⁵ 398 US 351, 351 (1970).

and sincerely holds beliefs that are purely ethical or moral in source and content but that nevertheless impose upon him a duty of conscience to refrain from participating in any war at any time" (emphasis added), he qualifies for a 6(j) exemption.

In my opinion, the liberties taken with the statute both in *Seeger* and today's decision cannot be justified in the name of the familiar doctrine of construing federal statutes in a manner that will avoid possible constitutional infirmities in them. There are limits to the permissible application of that doctrine, and, as I will undertake to show in this opinion, those limits were crossed in *Seeger*, and even more apparently have been exceeded in the present case. I therefore find myself unable to escape facing the constitutional issue that this case squarely presents: whether 6(j) in limiting this draft exemption to those opposed to war in general because of theistic beliefs runs afoul of the religious clauses of the First Amendment. For reasons later appearing I believe it does, and on that basis I concur in the judgment reversing this conviction, and adopt the test announced by Mr Justice Black, not as a matter of statutory construction, but as the touchstone for salvaging a congressional policy of long standing that would otherwise have to be nullified.¹⁷⁶

Justice White, with whom the Chief Justice and Justice Stewart joined, dissented.

The *Welsh* formulation is more radical than that in *Seeger*. The decision in *Welsh* considerably expanded the types of beliefs that could be used to obtain conscientious objector status. Under *Seeger*, the statutory formulation "religious training and belief" embraced a "sincere and meaningful belief [occupying] a place parallel to that filled by the God of [traditional religion]". Under *Welsh*, there was no longer any reliance on concepts of traditional religion, the latter no longer being needed as some sort of benchmark. Greenawalt (1971:42, n38) points out:

Perhaps the most startling aspect of this exegesis is the conversion of personal moral beliefs, explicitly excluded by the statute, into included religious beliefs.

Indeed, under the *Welsh* formulation a belief would now be religious, even if it is a purely moral or ethical belief, if it occupies in a person's life *a place parallel to that filled by God in traditional religions*.¹⁷⁷ However, the depth and fervency of a person's beliefs will be critical to determining which views exempt a person from military service.¹⁷⁸

For the supposed benefit of potential conscientious objectors the *Seeger-Welsh* exegesis of the statutory formulation "religious training and belief" has been officially, and legalistically, described in the following terms:

Belief in an external power or being or deeply held moral or ethical belief, to which all else is subordinate or upon which all else is ultimately dependent, and which has the power or

¹⁷⁶ 398 US 333, 344-5, fn omitted.

¹⁷⁷ 398 US 333, 340 (1970).

¹⁷⁸ 398 US 333, 344 (1970).

force to affect moral well-being. The external power or being need not be of an orthodox deity, but which may be a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of another, or, in the case of deeply held moral or ethical beliefs, a belief held with the strength and devotion of traditional religious conviction. The term “religious training and belief” may include solely moral or ethical beliefs even though the applicant himself may not characterize these beliefs as “religious” in the traditional sense, or may expressly characterize them as not religious. The term “religious training and belief” does not include a belief which rests solely upon considerations of policy, pragmatism, expediency, or political views.¹⁷⁹

The *Seeger-Welsh* formulation, affording as it does a very liberal and permissive view as to what constitutes a religion, stands in stark contradistinction to the exceedingly narrow approach adopted by the English court in *Re South Place Ethical Society*:¹⁸⁰

Nevertheless, it needs always to be kept in mind that the *Seeger-Welsh* test was developed for a specific purpose, namely, the construction and application of a particular statutory description contained in s 6(j) of the United States’ *Universal Military and Service Act*. It does not purport to be a definitive definition or even description of religion for wider legal purposes. However, the court’s insistence that religion, or a religious belief, must involve *more* than just a merely personal moral code or personal philosophy of life is seminal.

In a recent case from the State of Hawaii, this same issue arose in an altogether different, and very Hawaiian, context. In *State of Hawaii v Fergerstrom*,¹⁸¹ a 2004 decision of the Hawaii Intermediate Court of Appeals, which, subject to one clarification, was subsequently affirmed on appeal by the Supreme Court of Hawaii,¹⁸² the defendant-appellant Harry Fergerstrom,¹⁸³ a *kupuna* (elder) of the Hawaiian community¹⁸⁴ and practitioner of ancient Hawaiian religion, had been charged with the violation of various motor vehicle laws.¹⁸⁵ In an appeal against a 13 December 2002 decision of the Circuit

¹⁷⁹ 32 CFR §75.3(b). Palmer (1993:200) writes: “Anyone who surmises from this language that attorneys were involved in creating this collage of religion-philosophy-sociology, is correct.”

¹⁸⁰ [1980] 1 WLR 1565 at 1571-2 per Dillon J.

¹⁸¹ 106 Haw 43, 101 P3d 652 (2004), 2004 Haw App LEXIS 349.

¹⁸² See *State v Fergerstrom* 106 Haw 41, 101 P3d 225 (2004), 2004 Haw LEXIS 774. The clarification made by the Supreme Court of Hawaii was that while the Intermediate Court of Appeals had correctly concluded that Fergerstrom’s First Amendment defense was not a question for the jury its reliance on *State of Hawaii v Lee* 83 Hawaii 267, 925 P2d 1091 (1996), to dispose of Fergerstrom’s constitutional question was inconsistent with the Supreme Court of Hawaii’s precedent on the issue. The Supreme Court held that *State of Hawaii v Hanapi* 89 Hawaii 177, 182-184, 970 P2d 485, 490-492 (1998) was the appropriate judicial authority for deciding Fergerstrom’s First Amendment claim.

¹⁸³ Also known as Hanalei Fergerstrom.

¹⁸⁴ Native Hawaiians (called *Kanaka Maoli*) include both full-blooded and part Hawaiians.

¹⁸⁵ Count I: Driving Without a License, Hawaii Revised Statutes (HRS) § 286-102(a) (1993); Count II: Operation of a Vehicle Without a Certificate of Inspection, HRS § 286-25 (1993); Count III: Delinquent Motor Vehicle Tax, HRS § 249-11 (1993); and Count IV: Conditions of Operation and Registration of Motor Vehicles,

Court of the Third Circuit Fergerstrom asserted his belief that to comply with these State regulations would compel him to recognize the legitimacy of the State of Hawaii as a political entity. Fergerstrom further stated that he considered himself unable to do that so long as the federal government refused to recognize Hawaiian political sovereignty.¹⁸⁶

In addition to his “free exercise” of religion argument, Fergerstrom, a “supporter of Hawaiian sovereignty and an activist on numerous issues” (McNarie 2005:Online), further asserted that his acts of political protest were protected under the First Amendment as “free speech”. McNarie (2005:Online) has written:

State of Hawaii v Fergerstrom has never really been about traffic tickets, in the eyes of the defendant and his supporters. It's about Hawaiian sovereignty and the occupation of the Hawaiian kingdom by what they consider an illegal military force: the State of Hawai'i.

Fergerstrom testified that he was a practitioner of “native Hawaiian religion ... [t]he overall native Hawaiian religion, and very specifically the Lono traditions”. When asked to explain to the court the relationship between his sense of religious practice and duty and his sense of political duty, Fergerstrom stated that it was “very difficult to separate the Hawaiian from his land, his religion, or the politics that engulf him”. When asked by the court whether he had engaged in acts of, what would be termed in western concept, political protest, and whether he saw those acts as being inseparable from religious conduct, he answered in the affirmative to both questions.

The court below ultimately found that despite Fergerstrom's stated subjective intent that his conduct contained a particularized message, that is an intent not to recognize the legitimacy of the State of Hawaii, it was highly unlikely that this message would be understood by those who viewed it, and that he had failed to show that enforcement of

HRS § 431:10C-104(a) (Supp 2003). *State of Hawaii v Fergerstrom* 106 Haw 43, 101 P3d 652 (2004), 2004 Haw App LEXIS 349. According to McNarie (2005:Online), under the law of the former Kingdom of Hawaii any Hawaiian could apparently travel anywhere, without a license, unless “hauling other people for hire”.

¹⁸⁶ The independent Kingdom of Hawaii was overthrown in January 1893 by a group of non-Hawaiian businessmen (including US citizens) with the assistance of US marines and the complicity of the official US minister assigned to the kingdom as well as the historical complicity of the Congregational Church (now known as the United Church of Christ). In 1898, the United States, by joint resolution of Congress, annexed the (then) Republic of Hawaii, which became an official US territory in 1900 and the 50th US state in 1959. In 1993, on the occasion of the 100th anniversary of the overthrow of the Kingdom of Hawaii, the US Congress publicly apologized to Native Hawaiians on behalf of the American people for the overthrow of the kingdom and the deprivation of the rights of Native Hawaiians to self-determination. See US Apology, PL 103-150, 107 Stat 1510, 103d Congress Joint Resolution 19 (November 23, 1993). US President Bill Clinton signed the public law. The United Church of Christ has also offered a public apology to the Native Hawaiian people. For a number of years now there has been a political movement in Hawaii and also on the mainland for Native Hawaiian self-determination in their own homeland. (As a sidelight, if current trends in mortality rates continue full-blooded Native Hawaiians are expected to be extinct in their own homeland by the year 2044.)

traffic laws against him resulted in an unconstitutional deprivation of his right to free exercise of religion. Relevantly, it was found that Fergerstrom had not shown that noncompliance with traffic laws was an integral part of his religious faith. It was further found that:

... [Fegerstrom's] testimony is that he has elected noncompliance with traffic laws as his way of not acknowledging the legitimacy of the State of Hawaii. *This is an expression of [Fegerstrom's] own personal philosophy and way of life and not an integral part of native Hawaiian religion.*

... Compliance with traffic laws would not result in the virtual inhibition of his native Hawaiian religion or the practice of his faith. Even if he were to comply with traffic laws, [Fegerstrom] would be able to undertake spiritual practices, meet with his spiritual leaders, study his religion and instruct followers and observers as to his religious tenets.¹⁸⁷

Ultimately, the Hawaii Intermediate Court of Appeals affirmed the decision under appeal. An application for writ of certiorari, filed in the registry of the Supreme Court of Hawaii on 8 November 2004, was granted on 15 November 2004,¹⁸⁸ but on December 1 2004 the Supreme Court of Hawaii ordered that the disposition of the Intermediate Court of Appeals be affirmed.¹⁸⁹

The court's decision seems a sensible one, as not only could Fergerstrom not demonstrate that his belief was an integral part of native Hawaiian religion, he could not establish the existence of any belief occupying in his life "a place parallel to that filled by ... God in the lives of traditionally religious persons",¹⁹⁰ nor could he demonstrate that his conscience was "spurred by deeply held moral, ethical, or religious beliefs" that "would give them no rest or peace"¹⁹¹ unless he were free to disobey with impunity the laws of the State of Hawaii or at least those laws to which he especially objected.¹⁹²

¹⁸⁷ *State of Hawaii v Fergerstrom* 106 Haw 43, 101 P3d 652 (2004), 2004 Haw App LEXIS 349, emphasis added. The court applied *State of Hawaii v Blake* 5 Haw App 411, 413 (1982). In that case the Hawaii Intermediate Court of Appeals had applied the test set forth in *State of Hawaii v Andrews* 65 Haw 289, 291 (1982) and stated that in order to prove an unconstitutional deprivation of a right to free exercise of religion, the defendant must establish "that such practice is *an integral part of a religious faith* and that the prohibition . . . results in a *virtual inhibition of the religion or the practice of the faith.*" *People v Mullins* 50 Cal App 61, 70, 123 Cal Rptr 201, 207 (1975) (original emphasis). *State of Hawaii v Blake* 5 Haw App at 417.

¹⁸⁸ See <http://www.courts.state.hi.us/page_server/LegalReferences/73DFB8859867A628EAE7AB3DC5.html> (viewed 22/11/2004).

¹⁸⁹ See *State of Hawaii v Fergerstrom* 106 Haw 41, 101 P3d 225 (2004), 2004 Haw LEXIS 774.

¹⁹⁰ See *Welsh v United States* 398 US 333 at 340 (1970) per Black J.

¹⁹¹ See *Welsh v United States* 398 US 333 at 344 (1970) per Black J.

¹⁹² Fergerstrom had held a driver's license in the past but apparently he ceased renewing it in 1993, the turning point occurring in November 1993 when, in his words, "United States public 103-150 was signed by the president of the United States on behalf of all people of the United States recognizing the involvement of the United States in the conspiracy and the subsequent invasion of the Hawaiian islands. Creating what is

The Yoder test

In *Wisconsin v Yoder*¹⁹³ the United States Supreme Court held that the State of Wisconsin could not legally require members of the Amish sect to send their children to school beyond the eighth grade in the face of uncontested evidence that such a course was inconsistent with the Amish religion.

The Supreme Court conducted a searching inquiry into the history and customs of the Amish people and into the nature of their religious teachings and practices. The court sought to distinguish between religious beliefs, on the one hand, and “philosophical and personal” views on the other. In the course of his opinion for the Court, Chief Justice Burger stressed that the objections of the Amish to compulsory secondary education derived from “deep religious conviction(s)” rather than from a “personal” or “secular” philosophy.¹⁹⁴ As regards the latter, the court made it very clear that beliefs that were “philosophical and personal” rather than “religious” were not entitled to First Amendment protection:

... A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation . . . if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief. ...¹⁹⁵

The Chief Justice, after acknowledging that the determination of what is a “religious” belief or practice entitled to constitutional protection may present “a most delicate question”,¹⁹⁶ continued:

... Thus, if the Amish asserted their claims because of their subjective evaluation and rejection of the contemporary secular values accepted by the majority, much as Thoreau rejected the social values of his time and isolated himself at Walden Pond, their claims would not rest on a religious basis. Thoreau's choice was philosophical and personal rather than religious, and such belief does not rise to the demands of the Religion Clauses.¹⁹⁷

In other words, rejection of contemporary values and lifestyle, not otherwise associated with and arising from religious beliefs, remains “purely secular”, and such considerations

internationally recognized as a military occupation.” See *State of Hawaii v Fergestrom* 106 Haw 43, 101 P3d 652 (2004), 2004 Haw LEXIS 349.

¹⁹³ 406 US 205 (1972). Argued 8 December 1971. Decided 15 May 1972 by a vote of 6 to 1; Burger CJ for the Court, Douglas J in dissent, Powell and Rehnquist JJ not participating.

¹⁹⁴ 662 F2d 1025, 1034.

¹⁹⁵ 406 US 205, 215.

¹⁹⁶ 406 US 205, 215.

¹⁹⁷ 406 US 205, 216.

are insufficient to support a free exercise claim. This is, however, a retreat from the highwater mark of the *Seeger-Welsh* formulation. Penalver (1997:Online) has written:

Thoreau's beliefs, however, would almost certainly have passed as religion under the "parallel position" definition from *Seeger* and *Welsh*.¹⁹⁸

Although the reasoning of the court was certainly much narrower than that of the *Seeger* and *Welsh* courts, the court itself did not really articulate any test or definition of what constituted a "religion" either for constitutional or other purposes. However, as Palmer (1993:220) points out:

The Court also impliedly rejected Justice Black's assertion in *Torcaso* that secular belief systems qualified as religions. The secular belief systems Black cited in *Torcaso* probably would not qualify as religions under Yoder's criteria.

Be that as it may, the court rejected the State's claims that the First Amendment only protected religious *beliefs*, and not actions. The court, relying on *Sherbert v Verner*,¹⁹⁹ affirmed:

A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion. *Sherbert v Verner* [374 US 398 (1963)]; cf *Walz v Tax Commission* 397 US 664 (1970). The Court must not ignore the danger that an exception from a general obligation of citizenship on religious grounds may run afoul of the Establishment Clause, but that danger cannot be allowed to prevent any exception no matter how vital it may be to the protection of values promoted by the right of free exercise. By preserving doctrinal flexibility and recognizing the need for a sensible and realistic application of the Religion Clauses

"we have been able to chart a course that preserved the autonomy and freedom of religious bodies while avoiding any semblance of established religion. This is a 'tight rope' and one we have successfully traversed." *Walz v Tax Commission, supra*, at 672.²⁰⁰

In a powerful dissent Justice William O Douglas argued that the children needed to be heard as they had constitutional rights of their own:

... If the parents in this case are allowed a religious exemption, the inevitable effect is to impose the parents' notions of religious duty upon their children. Where the child is mature

¹⁹⁸ Penalver, in his footnote 57, has also expressed the view that Thoreau's views were "far more religiously based than, for example, those of the defendant in *Welsh*". Henry David Thoreau (1817-1862) was a Unitarian and a Transcendentalist. Finseth (1995:Online) writes: "The Transcendentalists can be exasperatingly vague in their prescriptions for spiritual transformation, a vagueness which derives principally from their distrust of all forms of ritual and inherited religious forms. The transcendent individual is often a solitary figure, contemplating his soul (and by analogy, the soul of all humanity), and contemplating other souls through the reading of serious literature. But the central recurring theme that emerges is a return to nature, where the artifice and depravity of society cannot reach. Thus Thoreau leaves Concord and heads for Walden Pond to explore the great truths of the natural world."

¹⁹⁹ 374 US 398 (1963).

²⁰⁰ 406 US 205, 220-1 (1972).

enough to express potentially conflicting desires, it would be an invasion of the child's rights to permit such an imposition without canvassing his views. As in *Prince v Massachusetts* 321 US 158, it is an imposition resulting from this very litigation. As the child has no other effective forum, it is in this litigation that his rights should be considered. And, if an Amish child desires to attend high school, and is mature enough to have that desire respected, the State may well be able to override the parents' religiously motivated objections.

Religion is an individual experience. It is not necessary, nor even appropriate, for every Amish child to express his views on the subject in a prosecution of a single adult. Crucial, however, are the views of the child whose parent is the subject of the suit. Frieda Yoder has in fact testified that her own religious views are opposed to high-school education. I therefore join the judgment of the Court as to respondent Jonas Yoder. But Frieda Yoder's views may not be those of Vernon Yutzy or Barbara Miller. I must dissent, therefore, as to respondents Adin Yutzy and Wallace Miller as their motion to dismiss also raised the question of their children's religious liberty.²⁰¹

His Honour also questioned whether only formal religious communities could seek an exemption from compulsory high school for their adherents, saying:

In another way, however, the Court retreats when in reference to Henry Thoreau it says his "choice was philosophical and personal rather than religious, and such belief does not rise to the demands of the Religion Clauses." That is contrary to what we held in *United States v Seeger* 380 US 163, where we were concerned with the meaning of the words "religious training and belief" in the Selective Service Act, which were the basis of many conscientious objector claims. We said:

"Within that phrase would come all sincere religious beliefs which are based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent. The test might be stated in these words: 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 comes within the statutory definition. This construction avoids imputing to Congress an intent to classify different religious beliefs, exempting some and excluding others, and is in accord with the well-established congressional policy of equal treatment for those whose opposition to service is grounded in their religious tenets." *Id* at 176.

Welsh v United States 398 US 333, was in the same vein, the Court saying:

"In this case, Welsh's conscientious objection to war was undeniably based in part on his perception of world politics. In a letter to his local board, he wrote: "I can only act according to what I am and what I see. And I see that the military complex wastes both human and material resources, that it fosters disregard for (what I consider a paramount concern) human needs and ends; I see that the means we employ to "defend" our "way of life" profoundly change that way of life. I see that in our failure to recognize the political, social, and economic realities of the world, we, as a nation, fail our responsibility as a nation." *Id* at 342.

The essence of Welsh's philosophy, on the basis of which we held he was entitled to an exemption, was in these words:

"I believe that human life is valuable in and of itself; in its living; therefore I will not injure or kill another human being. This belief (and the corresponding "duty" to

²⁰¹ 406 US 205, 242-3 (1972).

abstain from violence toward another person) is not "superior to those arising from any human relation." On the contrary: it is essential to every human relation. I cannot, therefore, conscientiously comply with the Government's insistence that I assume duties which I feel are immoral and totally repugnant." *Id* at 343.

I adhere to these exalted views of "religion" and see no acceptable alternative to them now that we have become a Nation of many religions and sects, representing all of the diversities of the human race. *United States v Seeger* 380 US at 192 -193 (concurring opinion).²⁰²

The *Yoder* court "did not face the distinction between a philosophy and a strong commitment to an established religious belief" (Riga 1977:419) and appears to have made a rather impermissible "content-based choice in violation of a cardinal principle of the First Amendment" (Riga 1977:419), granting an exemption to those with prescribed religious beliefs and longstanding membership in religious communities, without any ostensible evidence of a preparedness to allow a similar exemption for individuals whose "independent and individualistic moral choices are based on secular grounds" (R Kahn, "Wisconsin v Yoder", in Hall 1999:336), or, perhaps more correctly, on *Seeger-Welsh* grounds in the case of a purely moral or ethical belief that nevertheless occupies in a person's life a place parallel to that filled by God in traditional religions.

The no-doctrine church that accepts all religions and ordains anybody

The non-denominational and very ecumenical Universal Life Church ("ULC") is perhaps the most famous, or infamous, outworking of First Amendment liberalism in both religion and judicial tolerance. In the words of the church's founder, Kirby J Hensley²⁰³ (as quoted in Ashmore 1977:52):

We recognize *everyone's* belief. We don't stand between *you* and your *God*, but between *you* and the *State*. The purpose of the Church is to bring *absolute Freedom of Religion* to *all* people! [Original emphasis]

The once mail-order and now Online church, which has its international headquarters in Modesto, California,²⁰⁴ has been in existence in one form or another since 1959. Originally called the "Universal Life Church of Modesto, California", it was incorporated as the

²⁰² 406 US 205, 248-9 (1972).

²⁰³ Kirby James Hensley (1911-1999) was "a very educated man despite the fact that he could not read or write". Hensley's own "eclectic theology" included belief in reincarnation and a belief that God was substance manifest in natural laws (cf Deism and religious naturalism): "Mother God is Earth and father God is the life of the Earth's substance." Hensley did not appear to believe in the divinity of Jesus. See Universal Life Church *We Are One: Information* (nd:3, 18); Melton (1996:559-60).

²⁰⁴ A church service is held at the church's headquarters in Modesto every Sunday morning.

“Universal Life Church, Inc” under the laws of the State of California on 2 May 1962 as a non-profit religious organization. The church, which has a board of directors as its governing body, was founded by Hensley who was originally ordained as a Baptist minister. He eventually left the Baptists and proceeded to pastor some Pentecostal churches in California and Oklahoma, establishing several churches. After a study of the world’s major religions Hensley eventually decided to establish a church for *all* people in the belief that there was no one religion that was “right” for everyone and that each person had the right to choose for himself or herself their own particular religion, faith and creed according to conscience. Indeed, it has been written that Hensley “wanted to create a church where all views could be practiced freely, where people could come together and work for the good of all people.”²⁰⁵

The Universal Life Church was obliquely founded on very broad Christian beliefs²⁰⁶ but, in a manner similar to modern day Unitarianism and Unitarian Universalism, is entirely respectful to all beliefs and belief systems. According to the Online article “Universal Life Church” the church affirms the following:

Our common thread is our adherence to the universal doctrine of religious freedom:

“Do only that which is right”.

Every person has the natural right (and the responsibility) to **peacefully** determine what is right. We are advocates of religious freedom.

The Universal Life Church wants you to pursue your spiritual beliefs without interference from any outside agency, including government or church authority.²⁰⁷

In the very first publication of the church, a newsletter entitled “Universal Life Church News” (cited in Ashmore 1977:24), there appeared the following statement of purpose (although not so described):

The Universal Life Church has no doctrine or creed of its own, but acts only as a mediator between many varied groups. It does not invoke or bind its fellowshiping ministers in any way. It does advocate the freedom of the individual to believe, express and teach his own

²⁰⁵ Information on the church and its formation has come from the abovementioned Online article “Universal Life Church” (see bibliography) as well from its official website, viewed May 5 2005, <<http://www.ulc.net/>>. Hensley’s remarkable life, and his battles with the IRS and other government authorities, are fully documented in Ashmore (1977).

²⁰⁶ Hensley’s theology was, however, very much a “theology of man”, stating, “Know there’s no such thing as a God way off there somewhere who makes laws we must obey. *We* made the law, and we shall have to take responsibility for it.” Also, “*There would be no God were it not for people.*” Ashmore (1977:63, 65, original emphasis).

²⁰⁷ Universal Life Church Home Page, viewed May 5 2005, <<http://www.ulc.net/>>, original emphasis.

revelation. It is the vision of the Universal Life Church to work toward the unification of the Brotherhood of Man and to bring people everywhere into a spirit of understanding and fellowship.

The church, which has had a rapid growth throughout the years, offers religious courses of study, issues degrees (including doctorates of philosophy in religion and honorary doctorates of divinity²⁰⁸), freely ordains as ministers “for life” any living person²⁰⁹ anywhere in the world who seeks ordination (without first conducting any background checks, and without the need for candidates for ordination to undertake any prior religious instruction), canonizes “saints” (for a small fee), solicits prayer requests and provides a facility for “Online confession”, and charters other Universal Life churches formed by ULC ordained ministers throughout the United States and elsewhere, with each such church being free to promulgate its own distinctive teachings or practices (eg Christian, Buddhist, Wiccan, Humanist, Pantheist, or whatever).

In other words, “[w]hile individual congregations hold certain beliefs, the ULC as a religion has no central tenets other than the belief in freedom to choose one’s religion” (“Universal Life Church” article Online). The headquarters of the church officially states that it “has no traditional doctrine” (Universal Life Church *We Are One:Information* nd:back cover) and “has only one belief or doctrine” (Universal Life Church *We Are One:Information* nd:1):

We only believe in that which is right! Every person has the right to interpret what is right for themselves, as long as it doesn’t interfere with the rights of others. [Original emphasis]²¹⁰

The Universal Life Church (*We Are One: Information* nd:1) lists its primary focus as follows:

²⁰⁸ Hensley, who always contended (usually successfully) that the state had no power to regulate, accredit or refuse to accredit a religious educational institution, stated that any doctor of divinity degree had to be honorary “seeing as how God isn’t here Himself to present it” (Ashmore 1977:44-5)

²⁰⁹ The Church believes that when a person seeks ordination, that person is “already ordained by God, according to the Bible [see Jn 15:16].” Universal Life Church *We Are One: Information* (nd:9). According to Ashmore (1977: 91, 94) celebrities, past and present, with ULC ordination credentials reportedly include the Beatles, the Rolling Stones, Carol Burnett, Rowan and Martin, Barbra Streisand, James Stewart, Sammy Davis Jr, Milton Berle, Doris Day, Rosalind Russell and Goldie Hawn.

²¹⁰ Set forth on the inside back cover of Universal Life Church *Doctor of Divinity: Universal Life Church* are a number of almost identical statements of the “golden rule” drawn from various major religions being Christianity, Judaism, Buddhism, Hinduism, Sikhism, Islam, Confucianism, Janism and Zoroastrianism, the implication being that whatever improves human well-being or decreases human misery is “right” and whatever reduces well-being and increases human misery is “wrong”. See Ellis-Jones (2003a) for an attempt at an objective theory of ethics

- OUR GOAL - A fuller life for Everyone
- OUR OBJECTIVE - Eternal Progression
- OUR SLOGAN - To Live and Help Live

All this may sound very vague and nebulous, but the Universal Life Church certainly does advocate a straightforward, naturalistic and objective system of morality in the best American tradition of Ralph Waldo Emerson and Henry David Thoreau (Universal Life Church *Doctor of Divinity* nd:back cover):

We want - to be competent, to be proficient, to be cooperative, to love our fellow man, to appreciate, to be humble, to be honest, to be moral, to live positively, to be what we profess.

ULC minister and Hensley biographer Lewis Ashmore (1977:10) has referred to the religious naturalism of the church and its teachings:

Life is the REAL divinity and the immortal essence of existence. Everyone's Beingness and substance of that expression is synonymous with whatever you may conceive God to be. Life is without conception, but it expresses itself in whatever form that its inherent awareness of itself conceives, whether that form is a dinosaur of ages past or a cosmic energy man of the 21st century. Life is the universal catalyst of all existence and should be esteemed with a holy reverence no matter what its form. The only difference between gods and beasts is the realization and awareness of Self. Life, no matter what form it expresses - plant, animal, or man – is the most precious, glorious, immortal moment, and that moment is happening now. It's you and me; everything that is. [Original emphasis]

The church's founder (as quoted in Universal Life Church *We Are One: Information* nd:1) has written:

We are a Universal Church. We have people of all walks of life and from all religions. We now have churches established all around the world. The sun never sets on the Universal Life Church. This is why we call it a Universal Church.

We have within this church a very liberal type of religion, but we also have conservative types of people. I have never met a person who disagrees with our doctrine. We feel that our doctrine is Universal.

I believe that every person is part of the Universal life, and when people become conscious that they are a part of this Universal Life, they will look for people who are like-minded.

Indeed, the Universal Life Church "affirms the understanding of religious freedom embodied in the Universal Declaration of Human Rights (1948) and other international covenants" (Universal Life Church *We Are One: Information* nd:20) and enthusiastically rejoices in religious plurality as do the majority of modern day Unitarians and Unitarian Universalists (Universal Life Church *Doctor of Divinity* nd:2):

Because we are Universal and believe in the inherent strength of the unity of religion, we do not hesitate to allow other religious systems free scope. Protection is, therefore, afforded to all religion and beliefs.

The Universal Life Church has been held by the United States District Court²¹¹ to be a “church” and therefore tax-exempt as a religious body.²¹² In *Universal Life Church Inc v United States of America*²¹³ federal District Court Judge James F Battin, after concluding that the plaintiff church’s issuance of Honorary Doctor of Divinity certificates did not violate the California Education Code as then in force by reason of the church being a “bona fide church or religious denomination” within the meaning of the code,²¹⁴ stated:

The Court must then address itself to the defendant's second conclusion: that the ordination of ministers, the granting of church charters and the issuance of Honorary Doctor of Divinity certificates by the plaintiff are substantial activities which do not further any religious purpose. Certainly the ordination of ministers and the chartering of churches are accepted activities of religious organizations. The defendant impliedly admits the same on Page 5 of its Memorandum in Support of its Requested Instructions. The fact that the plaintiff distributed ministers' credentials and Honorary Doctor of Divinity certificates is of no moment. Such activity may be analogized to mass conversions at a typical revival or religious crusade. Neither this Court, nor any branch of this Government, will consider the merits or fallacies of a religion. Nor will the Court compare the beliefs, dogmas, and practices of a newly organized religion with those of an older, more established religion. Nor will the Court praise or condemn a religion, however excellent or fanatical or preposterous it may seem. Were the Court to do so, it would impinge upon the guarantees of the First Amendment.

In short, the Court merely finds that the plaintiff’s ordination of ministers, its granting of church charters, and its issuance of Honorary Doctor of Divinity certificates are not substantial activities which do not further any religious purpose. Furthermore, the facts ... reveal that the plaintiff requested, but did not require, free will offerings in performance of these activities.²¹⁵

Thus, although the Universal Life Church has been strongly criticized, even lampooned, on

²¹¹ See *Universal Life Inc v United States of America* 372 FSupp 770 (ED Cal 1974). An Online pdf version of the judgment, viewed May 5 2005, can be found at: <<http://www.bjturk.com/munion/ulcbattin.pdf>>.

²¹² The exemption is under s 501(c)(3) of the Internal Revenue Code of 1954 (“IRC”). Over the years the ULC has been involved in litigation with a number of US states including the States of California, Arizona, North Carolina, Alabama. The church boasts (*Universal Lidfe Church We Are One: Information* nd:19): “All of these states said, in the court of law, that the Universal Life Church is a legal church and that we have all the rights and privileges of any other church.” However, in 1984 the Inland Revenue Service (“IRS”) revoked the church’s tax exempt status in respect of certain fiscal years, and the Court of Federal Claims upheld the revocation on the ground that the ULC hadn’t operated solely for tax-exempt purposes as required by s 501(c)(3) of the IRC: see *Universal Life Church Inc v United States* 13 Cl Ct 567 (1987), affd 862 F2d 321 (Fed Cir 1988). For subsequent developments between the parties see also *Universal Life v United States* dkt no 96151220 12/30/97 (9th Cir 1997) in which the ULC sought a declaration that IRS revocation of its tax-exempt status was void on the ground that it violated bankruptcy’s automatic stay.

²¹³ 372 FSupp 770 (ED Cal 1974).

²¹⁴ Section 29020 of the California Education Code provided: “The provisions of Sections 29003 to 29010, inclusive, do not apply to any diploma or course on instruction given by a bona fide church or religious denomination if such course is limited to instruction in the principles of that church or denomination”

²¹⁵ 372 FSupp 770 (ED Cal 1974) [Online] <<http://www.bjturk.com/munion/ulcbattin.pdf>> (viewed May 5 2005).

the basis that “a church that accepts all religions holds no views of its own and is [therefore] not a true church” (“Universal Life Church” article Online), there would appear to be little, if any, doubt that it qualifies in all respects as a religion for the purposes of United States law, for, as was pointed out by the United States Supreme Court in *West Virginia State Board of Education v Barnette*.²¹⁶

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.²¹⁷

Definition by analogy: Malnak, Africa and beyond

In October 1977, in the case of *Malnak v Maharashi Mahesh Yogi*,²¹⁸ a New Jersey federal court barred the teaching of Science of Creative Intelligence (SCI) and Transcendental Meditation (TM) in the state's public schools. According to US District Judge H Curtis Meanor, the teaching of SCI/TM, a Westernized version of Eastern religious mysticism, was:

... religious in nature; no other inference is “permissible” or reasonable. ... Although defendants have submitted well over 1500 pages of briefs, affidavits and deposition testimony in opposing plaintiffs' motion for summary judgment, defendants have failed to raise the slightest doubt as to the facts or as to the religious nature of the teaching of the Science of Creative Intelligence and the *puja* [A Sanskrit prayer used during the initiation ceremony. English translations clearly show its religious nature]. The teaching of the SCI/TM course in New Jersey public high schools violates the establishment clause of the First Amendment, and its teaching must be enjoined. (United States District Court, District of New Jersey, Civil Action No 76-341 (October 1977), as quoted in Elliot Miller, “Hinduism: Hare Krishna and Transcendental Meditation (TM),” in *The New Cults*, ed Walter R Martin (Santa Ana, CA: Vision House, 1980), pp 93, 94.)²¹⁹

The court cited a number of Supreme Court cases to support its conclusion that even a small and unknown sect that denies its religious character may be defined as religious for purposes of the First Amendment.²²⁰ The matter then went on appeal to the Third Circuit

²¹⁶ 319 US 624 (1943).

²¹⁷ 319 US 624, 642 (1943) per Jackson J, who delivered the opinion of the court.

²¹⁸ 440 FSupp 1284 (DNJ 1977) [*Malnak I*].

²¹⁹ 440 FSupp 1284, 1312-13 (DNJ 1977). There are several other court cases which clearly establish that a belief-system which excludes a belief in the theistic God of Judaism, Christianity, or Islam may nevertheless be “religious”. For an overview of those cases see Whitehead and Conlan (1978) and Geisler (1983:162-5).

²²⁰ See 440 FSupp 1284, 1313-4 (DNJ 1977) (citing *Engel v Vitale*, 370 US 421 (1962) (a school prayer case holding that prayers invoking even a “generic” God violated the Establishment Clause in this context); *Torcaso v Watkins*, 367 US 488 (1961) (holding unconstitutional a statute requiring appointees to state office to profess a belief in God, because it discriminated against nonreligious persons and non-theistic religious persons); and

Court.²²¹ In affirming, in a per curiam opinion, the decision of the court below,²²² the Third Circuit Court relied largely on the district court's reasoning. However, in a lengthy concurring opinion that would later be adopted by the Third, Eighth, Ninth and Tenth Circuit Courts of Appeals and find fairly wide acceptance with other US courts as well,²²³ and that would also find favour with at least some of the justices of the High Court of Australia,²²⁴ Circuit Judge Arlin M Adams chose to "define" religion in a way that was slightly different than that in the US Supreme Court cases of *Seeger*²²⁵ and *Welsh*.²²⁶

The question before the Court of Appeals, as posited in the per curiam decision, was as follows:

This appeal requires us to decide whether the district court erred in determining that the teaching of a course called the Science of Creative Intelligence Transcendental Meditation (SCI/TM) in the New Jersey public high schools . . . constituted an establishment of religion in violation of the first amendment of the United States Constitution.²²⁷

In his concurring opinion Judge Adams proposed a modern definition of religion based on three indicia,²²⁸ stating the question presented as "whether a particular belief-system should be considered a religion for first amendment purposes," and "how far the

Welsh v United States, 398 US 333 (1970) and *United States v Seeger*, 380 US 163 (1965) (conscientious objector cases defining "religion" broadly for purposes of statutory, rather than constitutional, construction)).

²²¹ See *Malnak v Yogi* 592 F2d 197 (3d Cir 1979) ["Malnak II"].

²²² 592 F2d 197, 198 (3d Cir 1979). Judge Adams wrote a detailed concurring opinion at 200-15, reviewing traditional and contemporary legal definitions of religion and proposing at 207-9 three "helpful indicia" to supplement the "definition by analogy" approach favored by the district court. The Third Circuit explicitly adopted Judge Adams' approach in *Africa v Pennsylvania* 662 F2d at 1031, cert denied, 456 US 908 (1982).

²²³ See, eg, *Africa v Commonwealth of Pennsylvania* 520 FSupp 967, 970 (EDPenn 1981), affd 662 F2d 1025, 1033-4 (3rd Cir 1981); *Van Schaick v Church of Scientology* 535 F Supp 1125, 1144 (DMass 1982); *Church of the Chosen People v United States* 548 FSupp 1247, 1252-3 (DMinn 1982); *Jacques v Hilton* 569 FSupp 730, 733 (DNJ 1983), affd 738 F2d 422 (3d Cir 1984); *May v Cooperman* 572 FSupp 1561, 1568-9 (DNJ 1983), affd 780 F2d 240 (3d Cir 1985); *Wiggins v Sargent* 753 F2d 663, 666 (8th Cir 1985); *Grove v Mead School District No 344* 753 F2d 1528, 1534 (9th Cir 1985); *Dettmer v Landon* 799 F2d 929, 931 (4th Cir 1986); *Church of Scientology Flag Services v City of Clearwater* 756 FSupp 1498, 1509-10 (MD Fla 1991), affd in part, vacated in part, & revd in part on other grounds 2 F3d 1514 (11th Cir 1993); *Alvarado v City of San Jose* 94 F3d 1223, 1227 (9th Cir 1994); *United States v Meyers* 906 FSupp 1495, 1503 (D Wyo 1995), affd 95 F3d 1475, 1483 (10th Cir 1996); *Mitchell v Angelone* 82 FSupp 2d 485, 492 (ED Va 1999); *Altman v Bedford Central School District* 45 F Supp 2d 368, 378 (SDNY 1999), affd in part, vacated in part, & revd in part on other grounds 245 F 3d 245 (2d Cir 2001); *Love v Reed* 216 F3d 682, 687 (8th Cir 2000); *DeHart v Horn* 227 F3d 47, 52, fn 3 (3rd Cir 2000). US state courts have also applied directly or indirectly the analysis in *Malnak*: see, eg, *Christofferson v Church of Scientology* 644 P 2d 577, 601 (Or App 1982); *Needham Pastoral Counseling Center v Board of Appeals of Needham* 557 NE2d 43, 45 (Mass App 1990). The author is not aware of any US case in which the court has expressly or impliedly rejected the approach taken by Judge Adams in *Malnak II*.

²²⁴ See *Church of the New Faith v Commissioner of Pay-roll Tax (Vic)* (1983) 154 CLR 120 per Wilson and Deane JJ.

²²⁵ 380 US 163 (1965).

²²⁶ 398 US 333 (1970).

²²⁷ 592 F2d 197, 198 (3d Cir 1979).

²²⁸ 592 F2d 197, 207-10 (3d Cir 1979).

constitutional definition of religion extends beyond Theistic formulation”.²²⁹ His Honour stated that one must look to the familiar religions as models in order to ascertain, by comparison, “whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted ‘religions.’”²³⁰ In other words, definition by analogy.

In an attempt to determine when a belief “occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption”²³¹ Judge Adams identified three indicia of religion, the first being:

The first and most important of these indicia is the nature of the ideas in question. This means that a court must, at least to a degree, examine the content of the supposed religion, not to determine its truth or falsity, or whether it is schismatic or orthodox, but to determine whether the subject matter it comprehends is consistent with the assertion that it is, or is not, a religion.²³²

The second indicia identified by his Honour was as follows:

Thus, the “ultimate” nature of the ideas presented is the most important and convincing evidence that they should be treated as religious. Certain isolated answers to “ultimate” questions, however, are not necessarily “religious” answers, because they lack the element of comprehensiveness, the second of the three indicia. A religion is not generally confined to one question or one moral teaching; it has a broader scope. It lays claim to an ultimate and comprehensive “truth.”²³³

The third indicia identified by his Honour was follows:

A third element to consider in ascertaining whether a set of ideas should be classified as a religion is any formal, external, or surface signs that may be analogized to accepted religions. Such signs might include formal services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation, observation of holidays and other similar manifestations associated with the traditional religions. Of course, a religion may exist without any of these signs, so they are not determinative, at least by their absence, in resolving a question of definition. But they can be helpful in supporting a conclusion of religious status given the important role such ceremonies play in religious life.²³⁴

Various commentators (see, especially, Penalver 1997:Online, the author of “Note, ‘Constitutional ‘Religion’: A Survey of First Amendment Definitions of Religion” 2001:139-

²²⁹ 592 F2d 197, 203 (3d Cir 1979).

²³⁰ 592 F2d 197, 207 (3d Cir 1979).

²³¹ *United States v Seeger* 380 US 163, 166 (1965).

²³² 592 F2d 197, 208, fn omitted (3d Cir 1979).

²³³ 592 F2d 197, 208-9, fn omitted (3d Cir 1979).

²³⁴ 592 F2d 197, 209, fns omitted (3d Cir 1979).

44, and Feofanov 1994:375-7) have opined that Judge Adams's approach was the most influential judicial opinion in the past several decades in terms of defining religion.

In *International Society for Krishna Consciousness v Barber*²³⁵ the Second Circuit Court of Appeals was called upon to decide whether the Hare Krishna faith as practised by the International Society for Krishna Consciousness was entitled to protection under the First Amendment. The court found that the Hare Krishna movement had its roots in the diverse and ancient Hindu faith²³⁶ and that thousands of devotees had been attracted from all over the world. In addition, the Hare Krishna faith had an elaborate and articulate body of religious doctrine. Further, members of the sect forsook the pleasures of the material world, donned special clothing, changed their diet, rose at 4 am to chant, and often endured scorn and derision from family, friends and the public generally in pursuit of their beliefs. Having regard to all of the foregoing the court determined that the faith was entitled to First Amendment protection as a religion.

In *Africa v Pennsylvania*²³⁷ the 3rd Circuit Court of Appeals, in a unanimous decision authored by Judge Adams, used the "three useful indicia" guideline proposed in his Honour's *Malnak* concurrence²³⁸ to decide that a prisoner claiming a Free Exercise exemption on the grounds that he was an adherent of the MOVE organization - the tenets of which required that a person eat nothing but raw food - had failed to show that his belief or practice was religious for First Amendment purposes.²³⁹ At the outset, the court observed:

²³⁵ 650 F2d 430 (2d Cir 1981).

²³⁶ According to A C Bhaktivedanta Swami Prabhupāda ([1968] 1998:117,123) the Krishna consciousness movement has nothing to do with the Hindu religion or any religion for that matter: "When attempting to place the Krsna [sic] consciousness movement within a convenient historical-cultural context, many people identify the movement with Hinduism. But this is misleading. Srīla Prabhupāda disavows connection with the pantheism, polytheism, and caste consciousness that pervades modern Hinduism. Although Krsna consciousness and modern Hinduism share a common historical root – India's ancient Vedic culture – Hinduism has become, along with the other 'great religions,' a sectarian establishment, whereas Krsna consciousness is universal and transcends relative, sectarian designations. ... The ultimate goal of this movement is to teach people to love God. ... The Krsna consciousness movement has nothing to do with the Hindu religion or any system of religion. ... One should clearly understand that the Krsna consciousness movement is not preaching the so-called Hindu religion. We are giving a spiritual culture that can solve all the problems of life, and therefore it is being accepted all over the world."

²³⁷ 662 F2d 1025, 1031 (3rd Cir 1981), cert denied, 456 US 908 (1982).

²³⁸ 592 F2d at 207-10.

²³⁹ 662 F2d 1025, 1032-6.

Few tasks that confront a court require more circumspection than that of determining whether a particular set of ideas constitutes a religion within the meaning of the first amendment.²⁴⁰

Judge Adams chose to rely on the test that he had devised in *Malnak* in his concurring opinion in that case, the test of a “religion” articulated by the court being as follows:

First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching. Third, a religion often can be recognized by the presence of certain formal and external signs.²⁴¹

Applying these factors the Third Circuit panel found that although the plaintiff’s beliefs were sincerely held²⁴² the MOVE organization did not satisfy “the ‘ultimate’ ideas”,²⁴³ comprehensiveness, or structural characteristics criterion.²⁴⁴ With respect to the ultimate concerns criteria, Judge Adams, speaking for his two colleagues, explained:

Save for its preoccupation with living in accord with the dictates of nature, MOVE makes no mention of, much less places any emphasis upon, what might be classified as a fundamental concern. MOVE does not claim to be theistic: indeed it recognizes no Supreme Being and refers to no transcendental or all-controlling force. Moreover, unlike other recognized religions, with which it is to be compared for first amendment purposes, MOVE does not appear to take a position with respect to matters of personal morality, human mortality, or the meaning and purpose of life. The organization, for example, has no functional equivalent of the Ten Commandments, the New Testament Gospels, the Muslim Koran, Hinduism’s Veda, or Transcendental Meditation’s Science of Creative Intelligence. Africa insists that he has discovered a desirable way to conduct his life; he does not contend, however, that his regimen is somehow morally necessary or required. Given this lack of commitment to overarching principles, the MOVE philosophy is not sufficient analogous to more “traditional” theologies.²⁴⁵

The court explained further why the plaintiff’s beliefs were not, in its opinion, religious:

Despite having concluded that MOVE does not deal with “ultimate ideas,” we concede that the matter is not wholly free from doubt. Appointed counsel for Africa argues that MOVE members so share a fundamental concern, namely, an all-consuming belief in a “natural” or “generating” way of life—a way of life that ultimately cannot be reconciled with “civilization” itself. According to counsel, Africa’s insistence on keeping “in touch with life’s vibration” amounts to a form of pantheism, wherein the entity of God is the world itself, and God is “swallowed up in that unity which may be designated ‘nature’” . . . [MOVE’s] return to nature is not simply a “preferred” state. It is the only state. It is the state of being in pure harmony with nature. This, MOVE calls godly. This is pantheism.” [Citation.] We decline to accept such a characterization of Africa’s views, however. We recognize that, under certain circumstances, a pantheistic-based philosophy might qualify for protection under the free exercise clause.

²⁴⁰ 662 F2d 1025, 1031.

²⁴¹ 662 F2d 1025, 1032.

²⁴² 662 F2d 1025, 1030-1.

²⁴³ 662 F2d 1025, 1033.

²⁴⁴ 662 F2d 1025, 1035.

²⁴⁵ 662 F2d 1025, 1033.

From the record in this case, though, we are not persuaded that Africa is an adherent of pantheism, as that word is commonly defined. His mindset seems to be far more the product of a secular philosophy than of a religious orientation. His concerns appear personal (e.g., he contends that a raw food diet is “healthy” and that pollution and other such products are ‘hazardous’) and social (e.g., he claims that MOVE is a “revolutionary” organization, ‘absolutely opposed to all that is wrong’ and unable to accept existing regimes), rather than spiritual or other-worldly. Indeed, if Africa’s statements are deemed sufficient to describe a religion under the Constitution, it might well be necessary to extend first amendment protection to a host of individuals and organizations who espouse personal and secular ideologies, however much those ideologies appear dissimilar to traditional religious dogmas.²⁴⁶

In other words, MOVE was more concerned with worldly concerns (ie reforming society) than “spiritual or other-worldly” ones. The court further noted:

The Supreme Court would appear to have foreclosed such an expansive interpretation of the free exercise clause. In *Wisconsin v Yoder*, the Court concluded that Wisconsin could not require members of the Amish sect to send their children to school beyond the eighth grade, where there was uncontested evidence that such a course was inconsistent with the Amish religion. The Court arrived at this result only after conducting a searching inquiry into the history and customs of the Amish people and into the nature of their religious teachings and practices. In the course of his opinion for the Court, Chief Justice Burger stressed that the objections of the Amish to compulsory secondary education derived from “deep religious conviction(s)” rather than from a “personal” or “secular” philosophy.²⁴⁷

The court went on to conclude:

[I]t is crucial to realize that the free exercise clause does not protect all deeply held beliefs, however “ultimate” their ends or all-consuming their means. An individual or group may adhere to and profess certain political, economic, or social doctrines, perhaps quite passionately. The first amendment, though, has not been construed, at least as yet, to shelter strongly held ideologies of such a nature, however all-encompassing their scope. As the Supreme Court declared in *Yoder*, “[a] way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation . . . if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief.” 406 US at 215.²⁴⁸

The “formal and external signs” of a religion that were listed by the court included the following:

„, formal services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation, observance of holidays and other similar manifestations associated with the traditional religions.²⁴⁹

²⁴⁶ 662 F2d 1025, 1033-4, fns omitted.

²⁴⁷ 662 F2d 1025, 1034.

²⁴⁸ 662 F2d 1025, 1034.

²⁴⁹ 662 F2d 1025, 1035-6, quotations omitted.

MOVE was altogether lacking in these structural characteristics.²⁵⁰ Penalver (1997:Online) correctly notes that “[i]nstead of a religion, [Justice] Adams held, MOVE would be better described as ‘philosophical naturalism.’”

The *Malnak/Africa* approach of “definition by analogy” would appear to be particularly useful where the reviewing court is confronted with an “unconventional” faith. The court then looks to the more familiar, accepted and unquestioned religions as models to ascertain, by comparison, whether the particular belief system that is asserted to be religious confronts the same concerns, or serves the same purposes, as the firstmentioned religions.²⁵¹

In *Young Life Campaign v Patino*²⁵² the California Court of Appeal for the Third Appellate District was called upon to consider whether a particular organization was a “church” within the meaning of the Unemployment Insurance Code. The court decided to adopt an approach used by the Internal Revenue Service to determine what is a “church”, which the Court of Appeal described as follows:

Rather than defining “church,” the IRS admits its inability to formulate a definition, and applies criteria derived from the forms and practices observed in recognized churches, without giving controlling weight to any.²⁵³

The criteria for defining a church applied by the Internal Revenue Service were set forth in a footnote and included:

(1) a distinct legal existence, (2) a recognized creed and form of worship, (3) a definite and distinct ecclesiastical government, (4) a formal code of doctrine and discipline, (5) a distinct religious history, (6) a membership not associated with any other church or denomination, (7) a complete organization of ordained ministers ministering to their congregants, (8) ordained ministers selected after completing prescribed courses of study, (9) a literature of its own, (10) established places of worship, (11) regular congregations, (12) regular religious services, (13) Sunday schools for the religious instruction of the young, (14) schools for the preparation of its ministers.²⁵⁴

The Court of Appeal noted:

A similar approach to the meaning of “religion” was recently taken in an illuminating law review note: “Religion can be described and exemplified in ways that disclose ‘a complicated network of similarities overlapping and criss crossing.’ Unraveled, the various strands do not

²⁵⁰ 662 F2d 1025, 1035.

²⁵¹ See eg *DeHart v Horn* 227 F3d 47, 52, n3.

²⁵² 122 Cal App 3d 559 (1981).

²⁵³ 122 Cal App 3d 559 at 574-5 (1981), fn omitted.

²⁵⁴ 122 Cal App 3d 559 at 574 (1981).

amount to 'religion' for the meaning of the network resides in the interweaving itself. Thus, it is exemplary and not exhaustive to say that religion involves traditional theistic beliefs, or belief in something parallel to an orthodox conception of God, or an ultimate concern, or a set of beliefs that 'address themselves to basic questions about the nature of reality and the meaning of human existence.' A non-analytic understanding of religion is not boundless, for the network of similarities always includes a binding of the individual to something unrelated to individuality, through the intense operation of faith. No one element or set of elements constitutes a necessary and sufficient condition for religion; presence or absence of an element can neither establish a religion, nor prevent a belief from becoming a religion."²⁵⁵

In *Thomas v Review Board of the Indiana Employment Security Division*,²⁵⁶ a decision of the United States Supreme Court, the petitioner, a Jehovah's Witness, quit his job at a company that manufactured weapons, asserting that his religious beliefs prevented him from participating in the production of weapons. He then applied for unemployment compensation benefits under the Indiana Employment Security Act.

The Supreme Court, reversing the decision of the Indiana Supreme Court which had held that the petitioner's belief was more "personal philosophical choice" than religious belief,²⁵⁷ ultimately held that the state's denial of unemployment compensation benefits to the petitioner violated his First Amendment right to free exercise of religion. Chief Justice Burger, who delivered the opinion of the court, stated:

Only beliefs rooted in religion are protected by the Free Exercise Clause, which, by its terms, gives special protection to the exercise of religion. *Sherbert v Verner, supra; Wisconsin v Yoder* 406 US 205, 215-216 (1972). The determination of what is a "religious" belief or practice is more often than not a difficult and delicate task, as the division in the Indiana Supreme Court attests. However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.²⁵⁸

The Chief Justice then went on to state:

²⁵⁵ 12 Cal App 3d 559 at 575, fn 17, quoting "Note, 'Mind Control' or Intensity of Faith: The Constitutional Protection of Religious Beliefs" (1978:760-1), fns omitted.

²⁵⁶ *Thomas v Review Board of the Indiana Employment Security Division* 450 US 707 (1981).

²⁵⁷ "A personal philosophical choice, rather than a religious choice, does not rise to the level of a first amendment claim." 391 NE2d at 1131. On appeal to the US Supreme Court Burger CJ noted: "The Indiana court also appears to have given significant weight to the fact that another Jehovah's Witness had no scruples about working on tank turrets; for that other Witness, at least, such work was 'scripturally' acceptable. Intrafaith differences of that kind are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences in relation to the Religion Clauses. One can, of course, imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause; but that is not the case here, and the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect. Particularly in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation." 450 US 707, 715-6.

²⁵⁸ 450 US 707, 713-4, fn omitted.

The narrow function of a reviewing court in this context is to determine whether there was an appropriate finding that petitioner terminated his work because of an honest conviction that such work was forbidden by his religion. Not surprisingly, the record before the referee and the Review Board was not made with an eye to the microscopic examination often exercised in appellate judicial review. However, judicial review is confined to the facts as found and conclusions drawn. On this record, it is clear that Thomas terminated his employment for religious reasons.²⁵⁹

The court also made the point that the guarantee of free exercise was not limited to beliefs that were shared by all of the members of the particular sect or faith.²⁶⁰

The analysis in *Africa* was adopted by the Eighth Circuit Court of Appeals in *Wiggins v Sargent*.²⁶¹ The question before the court in *Wiggins* was whether the Arkansas Department of Correction (“ADC”) violated several inmates’ First Amendment rights by prohibiting their receipt of religious literature and correspondence with faith-based leaders. The district court had held that the inmates’ beliefs were not “religious” in nature. The Court of Appeals found the district court may have erred in its conclusion to the contrary and remanded the matter for further consideration.²⁶² The Court of Appeal held:

The district court was correct in noting that only sincerely held beliefs which are “rooted in religion” are protected by the free exercise clause. [Citations.] First amendment religious protection is not extended to ‘so-called religions which tend to mock established institutions and are obviously shams and absurdities and whose members are patently devoid of religious sincerity.’ [Citation.] . . .

From a review of the limited evidence presented at the hearing, we believe that the district court may have erred in its conclusion that the inmates’ beliefs are purely secular. Followers of the churches involved here base their beliefs directly on literal interpretations of fundamentalist Christian theology. They believe that the Bible teaches that race mixing is a sin. However “unpalatable” such ideas are, it is not a court’s prerogative to determine the validity of such beliefs. The belief system here has its own orders of worship and Articles of Faith, not to mention the fact that it has outside-the-prison organization and followers. It has its own religious dogma, hierarchy, and mandated lifestyle. It also appears that the inmates’ religion may be comprehensive and that it may address fundamental and ultimate questions. Cf *Africa v Commonwealth of Pennsylvania* [supra] 662 F2d 1025²⁶³

The Court of Appeals stressed that:

The determination of whether a belief is religious or not is an extremely delicate task which must be approached with caution.²⁶⁴

²⁵⁹ 450 US 707, 716.

²⁶⁰ 450 US 707, 715-6.

²⁶¹ 753 F2d 663 (8th Cir 1985).

²⁶² 753 F2d 663 at 666-7 (8th Cir 1985).

²⁶³ 753 F2d 663 at 666 (8th Cir 1985), fn omitted. See also *United States v DeWitt* 95 F3d 1374, 1375-6 (8th Cir 1996) in which the accused’s pursuit of out-of-body travel through the use of drugs not rooted in religion were not compelled by any belief or conviction other than his own curiosity and the defendant was not concerned about nature of God.

²⁶⁴ 753 F2d 663 at 666 (8th Cir 1985).

From Babalu Aye to AA, Quetzalcoatl and beyond

In *Church of Lukumi Babalu Aye, Inc and Ernesto Pichardo v City of Hialeah*²⁶⁵ the United States Supreme Court was called upon to determine whether certain city ordinances prohibiting religious animal sacrifice violated the First Amendment's Establishment Clause.

The petitioner Church of the Lukumi Babalu Aye, Inc was a not-for-profit corporation organized under Florida law in 1973. The church and its congregants practised the Santeria religion that involved as a central element animal sacrifice and asserted their right to do so despite the municipal ordinances.²⁶⁶ Unlike the law the subject of *Employment Division, Department of Human Resources of Oregon v Smith*²⁶⁷ the ordinances prohibiting religious animal sacrifice appeared to be specifically directed at the religious practice of the church and its congregants.²⁶⁸

Justice Kennedy, who delivered the majority of the opinion of the court, stated:

The city does not argue that Santeria is not a "religion" within the meaning of the First Amendment. Nor could it. Although the practice of animal sacrifice may seem abhorrent to some, "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v Review Bd of Indiana*

²⁶⁵ 508 US 520 (1993). Argued November 4 1992; decided June 11 1993.

²⁶⁶ Santeria religion originated in the 19th century. When hundreds of thousands of members of the Yoruba people were brought as slaves from western Africa to Cuba, their traditional African religion absorbed significant elements of Roman Catholicism. The resulting syncretion, or fusion, is Santeria, "the way of the saints." The Cuban Yoruba express their devotion to spirits, called orishas, through the iconography of Catholic saints, Catholic symbols are often present at Santeria rites, and Santeria devotees attend the Catholic sacraments. 723 FSupp 1467, 1469-1470 (SD Fla 1989); 13 *Encyclopedia of Religion* 66 (M Eliade ed, 1987); 1 *Encyclopedia of the American Religious Experience* 183 (C Lippy & P Williams eds, 1988). According to Santeria teaching, the orishas are powerful, but not immortal. They depend for survival on animal sacrifice. See 723 FSupp at 1471-1472; 13 *Encyclopedia of Religion* at 66. The religion was brought to the United States of America most often by exiles from the Cuban revolution.

²⁶⁷ 494 US 872 (1990).

²⁶⁸ In *Rupert v Director, US Fish and Wildlife Service* 957 F2d 32 (1st Cir 1992) the appellant, who was the pastor of an all-race Native American church that required the use of eagle feathers during certain worship, was denied a permit under the *Bald Eagle Protection Act* to obtain eagle feathers because he was not a member of a recognized tribe. He then challenged the constitutionality Act as a violation of the First Amendment's Establishment Clause because the regulations made under the Act provided for a denominational preference. The court, applying an equal protection analysis on account of the special semi-sovereign status of Native Americans, held that the limitation on the use of eagle parts to Native Americans was rationally related to the government's interest in preserving the eagle population as well as the special religious and cultural interests of Native Americans. See also *Peyote Way Church of God Inc v Thornburgh* 922 F2d 1210, 1217 (5th Cir 1991) wherein the court stated that the "unique guardian-ward relationship between the federal government and Native American tribes precludes the degree of separation of church and state ordinarily required by the First Amendment"; and *United States v Warner* 595 FSupp 595, 600 (DND 1984) in which a peyote exemption was held to be valid given the "governmental duty to preserve Indian culture and religion".

Employment Security Div 450 US 707, 714 (1981). Given the historical association between animal sacrifice and religious worship ... petitioners' assertion that animal sacrifice is an integral part of their religion "cannot be deemed bizarre or incredible." *Frazer v Illinois Dept of Employment Security* 489 US 829, 834, n 2 (1989). Neither the city nor the courts below, moreover, have questioned the sincerity of petitioners' professed desire to conduct animal sacrifices for religious reasons. We must consider petitioners' First Amendment claim.

The court proceeded to scrutinize the city ordinances, but they did not survive close scrutiny.²⁶⁹ Ultimately, the court went on to hold that the city ordinances violated the First Amendment's Establishment Clause primarily on the basis that the ordinances were not neutral in their operation by reason that they had, as their fundamental object, the suppression of what was a central element of the Santeria religion practised by the church,²⁷⁰ and were also not of general applicability.²⁷¹ Regrettably, the case provides little assistance as regards the meaning of the word "religion" for legal purposes. As Feofanov (1994: ...) has pointed out the court "completely ignored the definitional issue". Nevertheless, the court's decision makes it clear that non-traditional belief and worship systems are still entitled to First Amendment protection provided they are rooted in legitimate religious beliefs.²⁷² In the case of the Church of Lukumi Babalu Aye perhaps the critical factor was the abovementioned long and unquestionable association between animal sacrifice and religious worship.

Although the question of whether or not the plaintiff's actions were based on his religious beliefs was not at issue in *Smith v Fair Employment and Housing Commission*²⁷³ the California Supreme Court, in a plurality opinion authored by Associate Justice Kathryn Mickle Werdegard, stated that a religious belief is something other than "a philosophy or a way of life".²⁷⁴ Her Honour went on to cite²⁷⁵ *Thomas v Review Board*.²⁷⁶

[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.²⁷⁷

²⁶⁹ 508 US 520, 546-7 (1993).

²⁷⁰ 508 US 520, 542 (1993).

²⁷¹ 508 US 520, 545-6 (1993).

²⁷² For example, in *Luckette v Lewis* 883 FSupp 471 (D Ariz 1995) a church known as the Freedom Church of Revelation was held to be a legitimate religion; "although [the] plaintiff's religion may not be an 'established' religion in the sense that it has millions of adherents or has been in existence for centuries, [the] plaintiff has demonstrated that his religion is principled and legitimate." 883 FSupp 471, 478 (D Ariz 1995).

²⁷³ 12 Cal 4th 1143 (1996).

²⁷⁴ 12 Cal 4th 1143 at 1166 (1996).

²⁷⁵ (1996) 12 Cal 4th 1143 at 1167-8.

²⁷⁶ (1981) 450 US 707.

²⁷⁷ (1981) 450 US 707 at 714.

In *United States v Meyers*²⁷⁸ the Tenth Circuit Court of Appeals was called upon to consider the defendant's claim that he sincerely believed that his religion commanded him to use, possess, grow and distribute marijuana for the good of mankind and the planet earth. (The defendant had been convicted of conspiracy to possess with intent to distribute marijuana and certain other similar or related offences.²⁷⁹)

In determining whether the defendant's beliefs were religious, the Tenth Circuit panel held that whether or not a belief system constitutes a religion depends on a variety of factors, including the following: (a) whether the beliefs constitute ultimate ideas addressing fundamental questions of life, (b) whether the beliefs are "metaphysical" in nature (bearing in mind that not all religions are),²⁸⁰ (c) whether the beliefs are a moral and ethical system of a way of life, (d) whether the belief system is sufficiently comprehensive, and (e) whether the beliefs are accompanied by accouterments of religion such as holy places, holy ceremonies, a prophet or teacher who is considered divine. In addition, the court considered the following factors paralleling traditional religions:

- whether fundamental questions about "life, purpose and death" were addressed;
- whether a reality transcending the physical world was addressed; whether a particular manner of acting or way of life was prescribed;
- whether the beliefs were founded or significantly influenced by a deity, teacher, seer, or prophet;
- whether seminal, elemental, fundamental, or sacred writings were embraced;
- whether there were clergy, ministers, priests, monks, or other keepers of knowledge;
- the existence of ceremonies and rituals;
- whether holidays were observed;
- whether physical appearance was addressed; and

²⁷⁸ 95 F3d 1475 (10th Cir 1996).

²⁷⁹ See 906 FSupp 1494 (D Wyo 1995).

²⁸⁰ The court stated that religious beliefs are *often* "metaphysical" in nature, that is, "they address a reality which transcends the physical and immediately apparent world ... another dimension, place, mode, or temporality". 95 F3d 1475, 1483 (10th Cir 1996) per Senior Circuit Judge Barrett.

- whether there was any mission work or proselytizing.

The Court of Appeals adopted²⁸¹ the district court's analysis²⁸² of the matter:

Marijuana's medical, therapeutic, and social effects are secular, not religious Here, the Court cannot give Meyers' "religious" beliefs much weight because those beliefs appear to be derived entirely from his secular beliefs. In other words, Meyers' secular and religious beliefs overlap only in the sense that Meyers holds secular beliefs which he believes so deeply that he has transformed them into a "religion."²⁸³

Further, although Meyers might sincerely believe that his beliefs were religious, sincerity alone was not sufficient to make the beliefs "religious". The court of appeals concluded by noting that if it were to recognize Meyers' beliefs as religious, it might soon find itself on a "slippery slope" in that any person who was cured of an ailment by a "medicine" that had pleasant side-effects could claim that they had founded a constitutionally or statutorily protected religion based on the beneficial "medicine."

On 11 June 1996, the New York Court of Appeals ruled in *Griffin v Coughlin*²⁸⁴ that the substance abuse program then in use by the New York Department of Corrections (viz Alcoholics Anonymous ["AA"])²⁸⁵ was unconstitutional because, after a "fair reading" of the doctrinal literature of the fellowship, the 12-step program was found to be "unequivocally religious". The court held that mandated participation in Alcoholics Anonymous constituted an unconstitutional violation of the Establishment Clause of the First Amendment, as well as the "free exercise of religion" clause of the First Amendment (even though, as regards the latter, the case had not been pleaded as such).

AA has never claimed to be either a religion or religious, nor does it purport to be a substitute or alternative for religion or any person's particular religion. Spiritual, yes, but

²⁸¹ At 95 F3d 1484.

²⁸² See 906 FSupp 1494.

²⁸³ 906 FSupp 1494, 1508.

²⁸⁴ 673 NE2d 98 (NY 1996), cert denied 117 S Ct 681 (1997), [Online] <<http://www.legalcasedocs.com/briefcase.cgi/Email=ian@law.uts.edu.au/open=120251091.125000.htm>> (viewed July 24 2006).

²⁸⁵ Alcoholics Anonymous was founded by stockbroker Bill Wilson and physician Dr Robert (Bob) Smith in Akron, Ohio on 10 June 1935. Originally, AA meetings were held under the auspices of the conservative evangelical religious movement the Oxford Group but at the end of 1937 AA parted in friendship from the Oxford Group. See Hartigan [2000] 2001.

religious, never!²⁸⁶ Indeed, Bill Wilson, AA's cofounder has this to say about certain misgivings that expressed in relation to whether AA was a new religion (Wilson 1960:194):

If these misgivings had real substance, they would be serious indeed. But, Alcoholics Anonymous cannot in the least be regarded as a new religion. Our Twelve Steps have no theological content, except that which speaks of "God as we understand Him." This means that each individual AA member may define God according to whatever faith or creed he may have. Therefore there isn't the slightest interference with the religious views of any of our membership. The rest of the Twelve Steps define moral attitudes and helpful practices, all of them precisely Christian in character. Therefore, as far as the steps go, the steps are good Christianity, indeed they are good Catholicism, something which Catholic writers have affirmed more than once.

Neither does AA exert the slightest religious authority over its members. No one is compelled to believe anything. No one is compelled to meet membership conditions. No one is obliged to pay anything. Therefore we have no system of authority, spiritual or temporal, that is comparable to or in the least competitive with the Church. At the center of our society we have a Board of Trustees. This body is accountable yearly to a Conference of elected Delegates. These Delegates represent the conscience and desire of AA as regards functional or service matters. Our Tradition contains an emphatic injunction that these Trustees may never constitute themselves as a government - they are to merely provide certain services that enable AA as a whole to function. The same principles apply at our group and area level.

Dr Bob, my co-partner, had his own religious views. For whatever they may be worth, I have my own. But both of us have gone heavily on the record to the effect that these personal views and preferences can never under any conditions be injected into the AA program as a working part of it. AA is a sort of spiritual kindergarten, but that is all. Never should it be called a religion.

Years earlier, in May 1949, in a speech delivered at the 105th Annual Meeting of the American Psychiatric Association in Montreal, Quebec that was later published in the *American Journal of Psychiatry*, Wilson (1949:Online) had stated:

Alcoholics Anonymous is not a religious organization; there is no dogma. The one theological proposition is a "Power greater than one's self." Even this concept is forced on no one. The newcomer merely immerses himself in our society and tries the program as best he can. Left alone, he will surely report the onset of a transforming experience, call it what he may. Observers once thought AA could only appeal to the religiously susceptible. Yet our membership includes a former member of the American Atheist Society and about 20,000 others almost as tough. The dying can become remarkably open-minded. Of course we speak little of conversion nowadays because so many people really dread being God-bitten. But conversion, as broadly described by James, does seem to be our basic process; all other devices are but the foundation. When one alcoholic works with another, he but consolidates and sustains that essential experience.

In what is known and referred to as the "Big Book" of Alcoholics Anonymous, entitled

²⁸⁶ In *Commonwealth of Australia v Tasmania* (the Tasmanian Dam Case) (1983) 158 CLR 1 Brennan J thrice used the joint expressions "religion" and "spiritual beliefs" such as to suggest that he saw some sort of a difference between them. His Honour did not, however, amplify on the matter.

Alcoholics Anonymous,²⁸⁷ there are numerous references to AA's "spiritual basis"²⁸⁸ and to there being a distinction between "religion" on the one hand and "spirituality" on the other, with the emphasis in AA being on the latter (*Alcoholics Anonymous* 1976:27, 43, 74, 83, 93-4, 95 and 158, original emphasis):

... [W]hile his religious convictions were very good, in his case they did not spell the necessary vital spiritual experience.

"... Though not a religious person, I have profound respect for the spiritual approach in such cases as yours. For most cases, there is virtually no other solution."

... Though we have no religious connection, we may still do well to talk with someone ordained by an established religion. ...

The spiritual life is not a theory. *We have to live it.*

We represent no particular faith or denomination. We are dealing only with general principles common to most denominations.

If he thinks he can do the job in some other way, or prefers some other spiritual approach, encourage him to follow his own conscience.

He had begun to have a spiritual experience.

But what is "spirituality"? Spirituality²⁸⁹ (which does not require nor depend upon any notions of supernaturalism) refers to non-physical and non-transient things such as faith, hope and charity as well as states of affairs or human consciousness which, going "beyond words", are only partially (if at all) graspable by human concepts - things that cannot be seen but which are otherwise capable of being apprehended, if not fully understood. One consulting psychologist, who admits she is not religious, has written (see Cleveland and G 1992:26):

Lots of us confuse spirituality and religion. The words are often used interchangeably and we must realize that they shouldn't be, for they have different meanings. To call religion spiritual is true, but religion is only one source of spiritual power. There are many, many others.

The word *spirit* comes from the Latin word that means *breath, life, vigor*. We call something spiritual when it represents life or when it enhances life.

²⁸⁷ *Alcoholics Anonymous*, 3rd ed (1976). (There is now a 4th edition of the "Big Book", published in 2001. However, references in this thesis to page numbers of the "Big Book" are references to page numbers in the 3rd edition of that work, as that was the edition referred to and cited by the various courts in the cases mentioned and is still very much in use in AA groups.)

²⁸⁸ See eg pp 118, 135, 162. See also Wilson 1967:27: "We of AA obey spiritual principles"

²⁸⁹ The English word "spirit" comes from the Latin *spiritus* meaning, among other things, breath, breathing, air, inspiration, character, spirit, life, vigor, and courage.

Spirituality is a composite word referring to the “domain where mind, personality, purpose, ideals, values and meanings dwell” (Kaplan 1958:10). Martin (1979), an acknowledged authority on spirituality and addictive disease, makes it clear that spirituality, which in the first instance has little or nothing to do with God, has *everything* to do with the development of the mind, the emotions and the will. In his view, religion and spirituality are not, however, diametrically opposed, rather one is the fulfillment of the other.²⁹⁰

Quaker writer Parker J Palmer (of the University of Colorado at Boulder) has described spirituality as a “longing to be connected with the largeness of life”, that is, to something larger than one’s ego (in AA, a “higher power” or “power-not-oneself”) (Palmer 2005:Online). Catholic priest Chylko (1999:6, 8) with the imprimatur of his church, has written:

Increasingly, I have come to view spirituality in terms of relationship – of how we relate to God, to other people, and to ourselves. Since we already have a way of relating to ourselves, to other people, and to God, each of us already has a spirituality. ...Our spirituality is made up of all those qualities of mind and character that make us who we are: our values, our desires, our feelings, and our dreams.

Perhaps the main difference between spirituality and religion is the freedom to choose one’s own path towards wholeness, recovery and “enlightenment”. In that regard, AA’s Twelve Steps are “*suggested as a program of recovery*” (*Alcoholics Anonymous* 1976:59, emphasis added). As is said often in AA, there are no “musts”. The following (extracted from the Online article *Spirituality versus Religion*, in “Spirituality (For Skeptics)”) is also illuminative:

Religion is the institutionalized or formal practice of a particular spiritual tradition’s beliefs, ethics, and rituals. Depending on the spiritual texts it is based on, the structure of the institutions, and the individuals involved, religion can range from being a positive means of sharing spiritual practice to a destructive vehicle for systematic oppression and exploitation. Spirituality, on the other hand, does not necessarily entail any adherence to a religious tradition whatsoever. It is the participation in spiritual matters, whether in the context of a structured group who base their entire faith on a single religious text, or in the context of a solitary spiritual seeker who establishes and interprets their own encounters with spiritual phenomena.

On that basis, it is submitted that AA is *spirituality* and its program one of spiritual enrichment in which recovering alcoholics come together for solidarity and mutual support.

²⁹⁰ In Judaism, especially, spirituality is not intended to be a solitary affair but rather “a relationship with other human beings and with God” (Wolpe 1995:10).

As mentioned previously, Catholic priest and recovery expert Martin (1979) sees religion, or, more specifically, a religion, viewed objectively, as a group of people all functioning under the same creed, code and cult who make the spiritual life specific so that they can live it in community. In other words, religion, which, according to Martin, involves a unity of thinking (cf creed), functioning (cf code) and worship (cf cult), is the logical conclusion of the spiritual life. Although Martin strongly denies that AA is a religion in itself, he does hold the view that when a member of AA does the 11th Step²⁹¹ that person is indeed living the personal virtue of religion which, says Martin (1979), means rendering unto God²⁹² the things that are God's. Martin refers to that as subjective or personal religion, and it involves both an attitude of gratitude as well as paying one's dues or debts to God as one understands God. On that basis, it is submitted that AA is definitely spirituality.

Notwithstanding the many protestations by AA, its founders and its members to the contrary over the years that AA is *not* a religion, Levine J on behalf of the majority of the New York Court of Appeals²⁹³ in *Griffin* had this to say about the "religion" of Alcoholics Anonymous:

... [The] dominant theme is unequivocally religious, certainly in the broad definitional sense as 'manifesting faithful devotion to an acknowledged ultimate reality or deity' (*Webster's New Collegiate Dictionary* 995 [9th ed 1990]). Indeed, the AA basic literature most reasonably would be characterized as reflecting the traditional elements common to most theistic religions. Thus, God is named or referred to in five of the 12 steps. 'Working' the 12 steps includes confessing to God the 'nature of our wrongs' (Step 5), appealing to God 'to remove our shortcomings' (Step 7) and seeking 'through prayer and meditation' to make 'contact' with God and achieve 'knowledge of His Will' (Step 11 [emphasis supplied]). The 12 Traditions include a profession of belief that 'there is one ultimate authority - a loving God as He may express Himself in our group conscience.'

While AA literature declares an openness and tolerance for each participant's personal vision of God ('as we understood Him' [Steps 3 and 11] [emphasis in the original]), the writings demonstrably express an aspiration that each member of the movement will ultimately commit to a belief in the existence of a Supreme Being of independent higher reality than humankind. Thus, in the AA Big Book -- the basic text of AA -- Chapter I, 'Bill's Story,' describes the spiritual transformation of one of the co-founders of A.A., in which he finally achieved salvation from his alcoholism: by 'enter[ing] upon a new relationship with my Creator ... It meant destruction of self-centeredness. I must turn in all things to the Father of Light who presides over us all' (AA Big Book, at 13-14). In Chapter 4, entitled 'We Agnostics' the theme is unambiguously proselytizing:

²⁹¹ "Sought through prayer and meditation to improve our conscious contact with God as we understood Him, praying only for knowledge of His will for us and the power to carry that out." Courtesy Alcoholics Anonymous World Services Inc.

²⁹² Or Allah, the Supreme Being, Pure Being, or whatever. Martin uses all of these expressions.

²⁹³ The New York Supreme Court for Ulster County had dismissed Griffin's complaint and that decision had been affirmed by the Appellate Division [see 626 NYS2d 1011 (NY App Div 1995)], largely on the basis that it was AA's stated policy not to promote any particular conception of God.

'As soon as we admitted the possible existence of a Creative Intelligence, a Spirit of the Universe underlying the totality of things, we began to be possessed of a new sense of power and direction, provided we took other simple steps. We found that God does not make too hard terms with those who seek Him' (*id* at 46).

'Instead of regarding ourselves as intelligent agents, spearheads of God's ever advancing creation, we agnostics and atheists chose to believe that our human intelligence was the last word, the alpha and the omega, the beginning and end of all. Rather vain of us, wasn't it?'

'We, who have traveled this dubious path, beg you to lay aside prejudice, even against organized religion. We have learned that whatever the human frailties of various faiths may be, those faiths have given purpose and direction to millions. People of faith have a logical idea of what life is all about' (*id* at 49).

AA's Twelve Steps/Twelve Traditions volume, describing the spiritual evolution of atheists and agnostics through working the 12 steps, states:

'Consequently, in Step Three, we turned our will and our lives over to the care of God as we understood Him. For the time being, we who were atheists or agnostics discovered that our own group, or AA as a whole, would suffice as a higher power. Beginning with Step Four, we commenced to search out the things in ourselves which had brought us to physical, moral, and spiritual bankruptcy' (*AA Twelve Steps and Twelve Traditions*, at 107)

... ..

'So, practicing these Steps, we had spiritual awakening about which finally there was no question. Looking at those who were only beginning and still doubted themselves, the rest of us were able to see the change setting in. From great numbers of such experiences, we could predict that the doubter who still claimed that he hadn't got the "spiritual angle," and who still considered his well-loved AA group the higher power, would presently love God and call Him by name' (*id* at 109 [emphasis supplied]).²⁹⁴

Alcoholics Anonymous was virtually accused of using a "bait-and-switch" technique in relation to God, moving from a rather vague concept of a "power greater than ourselves" (Step 2) to a more specific "God as we understand Him" (Step 3) to "God" *simpliciter* (Step 5). In due course, the court in *Griffin* stated, "[f]ollowers are urged to accept the existence of God as a Supreme Being, Creator, Father of Light and Spirit of the Universe".²⁹⁵

It was, the Court held, "beyond peradventure" that "doctrinally and as actually practiced in the 12-step methodology, adherence to the AA fellowship entails engagement in religious activity and religious proselytization".²⁹⁶ When mandated or forced in any way, 12-step

²⁹⁴ 673 NE2d 98, [Online]

<<http://www.legalcasedocs.com/briefcase.cgi/Email=ian@law.uts.edu.au/open=120251091.125000.htm>> (viewed July 24 2006).

²⁹⁵ 673 NE2d 98, [Online]

<<http://www.legalcasedocs.com/briefcase.cgi/Email=ian@law.uts.edu.au/open=120251091.125000.htm>> (viewed July 24 2006).

²⁹⁶ 290 NE2d 98, [Online]

participation was found to be a violation of the most fundamental rights guaranteed under the US Constitution.²⁹⁷ However, speaking for the majority, Levine J was in “no doubt” that the Department of Correctional Services could validly construct a rehabilitation model containing incentives and penalties as in the subject AA-based program “provided it offered a secular alternative to the AA component”.²⁹⁸

Judge Bellacosa, joined by Judge Ciparick, vigorously dissented, stating that the ASAT Program was “a rationally justified and voluntary means of serving the important and predominantly secular State goal of treating and reducing inmate substance abuse”²⁹⁹ and that “to the extent that it incorporates suggested aspects of the AA Twelve Step Program that some may perceive as somewhat religious, [the Program] remains overwhelmingly secular in philosophy, objective and operation”.³⁰⁰ As to the assertion that AA was “unequivocally religious”, his Honour reviewed the history of AA and its operating principles:

A brief overview of AA history and its operating principles contradicts the predicate assumptions that drive petitioner's tenuous theory. AA was founded in 1935 as a general concept under which community groups of independent individuals voluntarily join together in common experience and discipline to try to stay sober. The two basic texts of AA are *Alcoholics Anonymous* (Alcoholics Anonymous World Services, Inc [3d Edition, 1976] ["The Big Book, The Basic Text for Alcoholics Anonymous"]) and *Twelve Steps and Twelve Traditions* (Alcoholics Anonymous World Services, Inc [3d Edition, 1981]), which were originally published in 1939 and 1952, respectively. Substantially, if not overwhelmingly, they reflect suggested secular and spiritual guideposts, not compulsory religious commandments or tenets of some New-Age or even Old-Time religion.³⁰¹

...

A fair review of the totality of the AA message and mission reasonably supports our acceptance of its published and principled representation that its renowned singular aim is simply to help people help themselves in attaining and maintaining sobriety -- a salutary

<<http://www.legalcasedocs.com/briefcase.cgi/Email=ian@law.uts.edu.au/open=120251091.125000.htm>> (viewed July 24 2006).

²⁹⁷ The particular recovery program was not AA *per se* but a program known as the Alcohol and Substance Abuse Treatment Program (ASAT). It was, however, fairly and squarely AA-based.

²⁹⁸ 290 NE2d 98, [Online]

<<http://www.legalcasedocs.com/briefcase.cgi/Email=ian@law.uts.edu.au/open=120251091.125000.htm>> (viewed July 24 2006).

²⁹⁹ 290 NE2d 98, [Online]

<<http://www.legalcasedocs.com/briefcase.cgi/Email=ian@law.uts.edu.au/open=120251091.125000.htm>> (viewed July 24 2006).

³⁰⁰ 290 NE2d 98, [Online]

<<http://www.legalcasedocs.com/briefcase.cgi/Email=ian@law.uts.edu.au/open=120251091.125000.htm>> (viewed July 24 2006).

³⁰¹ 290 NE2d 98, [Online]

<<http://www.legalcasedocs.com/briefcase.cgi/Email=ian@law.uts.edu.au/open=120251091.125000.htm>> (viewed July 24 2006).

public objective pursued through personal, voluntary and secular means. Empirical data makes this goal an especially demonstrable imperative for a rehabilitative correctional facility population. Our examination of the deistic references and semantical icons from the AA Twelve Steps discloses a concededly³⁰² spiritually-accented landscape, but not a constitutionally objectionable religious core.

...

AA principles unquestionably arise from a secular philosophy and psychology, which espouse a fellowship of different individuals sharing their experiences in a confidential and voluntary manner that can mutually reinforce the individual desire and effort to overcome a terrible addiction and propensity more readily than if people tried to survive and conquer the disabling disease alone. The transcendent, human, spiritual qualities of this commitment and endeavor do not thrust the experience into a religious realm. Nor does the recognition and acceptance of some "Higher Power," outside of the "Ego," constitutionally connote a theistic ontology ...³⁰³

...

Many people may believe that AA is an entity of spiritual essence or experience. Referenced incorporation of its literature into ASAT to forge a religious alchemy that implicates the Establishment Clause of the First Amendment by some foreboding compulsion feature, however, is not justified or proven. Greater quantum and quality should be required to cross that constitutionally blurred barrier. Indeed, the repeated evocation of a generalized deity figure and symbol or some nondenominational, secular alternative "Higher Power" fail to support this profound absorption of AA and ASAT into the territory of a compulsory, constitutionally-forbidden religious encounter. ...³⁰⁴

As mentioned above, Judge Bellacosa, unlike the majority, found that the recovery program satisfied the *Lemon* test. That test was formulated by Chief Justice Warren Burger in the majority opinion in *Lemon v Kurtzman*.³⁰⁵ *Lemon* dealt with Rhode Island and Pennsylvania programs that supplemented the salaries of teachers in religiously based private schools for teaching secular subjects. The Supreme Court struck down both programs as violating the First Amendment's Establishment Clause. The purpose of the *Lemon* test is to determine when a law has the effect of establishing religion. The test, which has served as the foundation for many of the United States Supreme Court's post-1971 establishment clause rulings, as first articulated by Chief Justice Burger has three parts:

³⁰² 290 NE2d 98, [Online]

<<http://www.legalcasedocs.com/briefcase.cgi/Email=ian@law.uts.edu.au/open=120251091.125000.htm>> (viewed July 24 2006).

³⁰³ 290 NE2d 98, [Online]

<<http://www.legalcasedocs.com/briefcase.cgi/Email=ian@law.uts.edu.au/open=120251091.125000.htm>> (viewed July 24 2006).

³⁰⁴ 290 NE2d 98, [Online]

<<http://www.legalcasedocs.com/briefcase.cgi/Email=ian@law.uts.edu.au/open=120251091.125000.htm>> (viewed July 24 2006).

³⁰⁵ 403 US 602 (1971).

First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, *Board of Education v Allen* 392 US 236, 243 (1968); finally, the statute must not foster "an excessive government entanglement with religion." [*Walz v Tax Commission* 397 US 664 at 674.]³⁰⁶

Applying the *Lemon* test to the particular recovery program Judge Bellacosa concluded that it had the secular legislative purpose of treating and reducing substance abuse among inmates,³⁰⁷ had the principal effect of preparing alcohol-dependent inmates for a return to society,³⁰⁸ and did not delegate the state's authority so as to give rise to impermissible governmental entanglement with religion.³⁰⁹

It is submitted that there is a weakness in the majority's opinion concerning the unconstitutionality of coercion. In the view of the majority, it was the coercive use of AA that was unconstitutional. However, Apanovitch (1998) has cogently argued that whilst the court, along with other courts, was "correct to emphasize coercion", it was "wrong to *require* coercion as a necessary element of an Establishment Clause claim" (Apanovitch 1998:Online). In other words, assuming for the moment that the majority was correct in its view that the subject recovery program was "unequivocally religious" the availability of an optional secular program should not foreclose an argument that the state is still endorsing the supposedly religious message of AA.³¹⁰ Be that as it may, the majority's view that AA was unequivocally religious can be criticized for placing far too much reliance on those parts of the "Big Book" written by Bill Wilson that reflect his *own* personal means of recovery and his *own* personal spiritual beliefs. Those courts that have placed great weight on the various abovementioned pronouncements scattered throughout the entirety of AA literature that AA is a spiritual program and that determined that AA should not be

³⁰⁶ 403 US 602, 612-3 per Burger CJ. When the three-pronged *Lemon* test, which was developed for interpreting the First Amendment's Establishment Clause, is "applied with particular rigor, the test yields one result, yet when applied in a less-exacting way to the same set of facts, the test can be made to yield an equally plausible, but contradictory result" (Hall 1992:719).

³⁰⁷ 673 NE 2d 98 at 118-9.

³⁰⁸ 673 NE 2d 98 at 119-21.

³⁰⁹ 673 NE 2d 98 at 122.

³¹⁰ Apanovitch is also very critical of those courts that have applied the test in *Turner v Saffley* 482 US 78 (1987) in which the US Supreme Court held that a prison regulation that impinged on an inmate's constitutional rights would be valid if the regulation was "reasonably related to legitimate penological interests". Apanovitch cogently argues that when this "rational relationship" test is applied to government action, "governmental actions are struck down only if the government has acted in a completely arbitrary and irrational fashion or if the action was in pursuit of an illegitimate objective". He also argues that under the so-called "doctrine of unconstitutional conditions", it is constitutionally impermissible for government to use religion as a basis of classification of duties, penalties, privileges or benefits, and refers to *Frost & Frost Trucking Co v Railroad Comm'n* 271 US 583 (1926) and *McDaniel v Paty* 435 US 618 (1978).

categorized as a religion have, it is submitted, got it right.³¹¹ Whilst a body's own subjective views as to whether it regards itself as a religion should not be determinative of the issue, the courts, although they must decide the matter for themselves, should be slow to categorize as a religion any body that does not claim to be one *and* can reasonably be seen, objectively assessed, to be otherwise. In addition, it is most regrettable that the majority of the court failed to recognize that AA's concept of a Higher Power accommodates all types and sources of spiritual power. Even an atheistic consulting psychologist working in the field of addictive disease who has written a helpful book about AA states (see Cleveland and G 1992:5, 26):

We believe the 12-Step program suggests a practical philosophy for each of us – a philosophy of living. We also believe this program needs to be kept separate from any religious implications. In order to work the Steps, what we think about God doesn't matter but what we believe about our own whole self does.

...

The Higher Power of the original 12 Steps is a spiritual idea. A Higher Power can be a God or another kind of symbol. It can be goodness, love, a friend or an idea. It can be our own intellectual curiosity. It can even be the 12-Step program itself.

When we open ourselves to the power of spiritual resources, we open ourselves to an abundance of help beyond our comprehension. Each of us will find different powers, and those we use may change from day to day.

On 6 January 1997 the United States Supreme Court denied the NY State Department of Corrections' request to hear an appeal in the *Griffin* case.³¹² The case now stands as persuasive but not mandatory authority for civil courts outside the state of New York considering the constitutionality of government required 12-step attendance. This decision does not, however, prevent the US Supreme Court from considering the same issue at a later time, although its refusal to hear an appeal from the decision of the NY Court of Appeals strongly indicates that the Supreme Court was of the view that it was *more probable than not* that the decision of the court below was unlikely to be disturbed on

³¹¹ See eg *Jones v Smid* No 4-89-CV-20857, 1993 WL 719562 (SD Iowa Apr 29 1993). Other courts have concluded that AA practices are not constitutionally religious, although those practices may partake of mixed secular and spiritual qualities: see eg *O'Connor v State of California* 856 FSupp 303; *Stafford v Harrison* 766 FSupp 1014, 1016; *Feasel v Willis* 904 FSupp 582, 586. In *O'Connor v Orange County and the State of California* 855 FSupp 303 (D Cal 1994) the district court held that despite the ostensible religiosity of AA and the religious aspects of O'Connor's own AA experience state endorsement of a program that merely incorporated God (in particular, "God as you understand [God]") did not give rise to an Establishment Clause violation; the court stated that it was "undisputed that the primary purpose of requiring attendance at self-help meetings such as AA is to prevent drunk driving and the tragic injuries and deaths that result from it, while at the same time providing treatment for individuals with substance abuse problems. The 'principal and primary effect' of encouraging participation in AA is not to advance religious belief but to treat substance abuse." *O'Connor v State of California* 856 FSupp 303, 307, emphasis added. See also *Boyd v Coughlin* 914 FSupp 828 (NDNY 1996).

³¹² 117 S Ct 681 (1997).

appeal.³¹³

In *Alvarado v City of San Jose*,³¹⁴ a 1994 decision of the United States 9th Circuit Court of Appeals, the plaintiffs appealed a summary judgment of a district court in favour of the City of San Jose and the City Development Agency (collectively, "the City") in their action alleging that the City's installation and maintenance of a certain "Plumed Serpent" sculpture in a city park violated the Establishment Clause of the First Amendment and Articles I S 4 and XVIS 5 of the California Constitution. The district court had concluded that while the statue had some "religious significance", it did not promote or endorse religion in violation of either the state or federal constitutions. On appeal, the judgment of the district court was affirmed.

In his judgment, Circuit Judge Nelson outlined the nature of the objections to the sculpture:

... Disputants and historians agree that Quetzalcoatl was originally a Mesoamerican creator-deity represented by the Plumed Serpent, among other symbols, as early as 1200 BC; that Quetzalcoatl, also known as Kukulcan, was worshipped in Aztec and Mayan cultures from about 100-300 AD until the time of the Spanish conquest; that in the tenth (some say the twelfth) century A.D., a fair-haired Aztec priest or ruler named Topiltzin adopted the name Quetzalcoatl and urged his followers to abandon the practice of human sacrifice; that five centuries later, some Aztecs took the fair-haired Spanish conquistador Fernando Cortes to be the reincarnation of Topiltzin-Quetzalcoatl; and that the Aztecs and their religion died out in the sixteenth century with the Spanish conquest of what is now Mexico. In dispute here is the current religious significance, if any, of Quetzalcoatl or the Plumed Serpent. Plaintiffs submit "New Age" and Mormon writings to support their claim that worship of this ancient deity is a going concern.³¹⁵

The court had this to say on the question of whether the movement and belief systems known as "New Age" were a religion:

Review of the materials submitted by the plaintiffs concerning New Age beliefs leads us to conclude that neither [*Africa v Commonwealth of Pennsylvania* 662 F2d 1025] nor [*Malnak v Yogi* 592 F2d 197 (3d Cir 1979) ("Malnak II")] supports the contention that there is a cognizable religious interest at issue here. The texts presented are comprised mainly of

³¹³ The *Griffin* case is only one of a number of similar US cases dealing with 12-step programs such as Alcoholics Anonymous and Narcotics Anonymous. Others include *Warner v Orange County Department of Probation (Warner I)* 827 FSupp 261 (SDNY 1993), *Warner v Orange County Department of Probation (Warner II)* 870 FSupp 69 (SDNY 1994) affd 95 F3d 202 (2d Cir 1996), *Warner v Orange County Department of Probation (Warner III)* 115 F3d 1068 92d Cir 1997), *Warner v Orange County Department of Probation (Warner IV)* 968 FSupp 917 (SDNY 1997), *O'Connor v Orange County and the State of California* 855 FSupp 303 (CD Cal 1994), *Kerr v Farrey* 95 F3d 472 (7th Cir 1996), *Arnold v Tennessee Board of Paroles; Evans v Tennessee Board of Paroles* 956 SW2d 478 (Tenn 1997), and *Rauser v Horn* 241 F3d 330 (3d Cir 2001). The court in *Stafford v Harrison* 766 FSupp 1014, 1017 (D Kan 1991) had found that an inmate's required participation in an AA-type program did not violate the First Amendment's Establishment Clause. However, the *Warner* court criticized *Stafford* as misapplying constitutional law.

³¹⁴ 94 F3d 1223 (9th Cir 1994).

³¹⁵ 94 F3d 1223, 1226 (9th Cir 1994).

writings by two authors, Jose Arguelles and Hunbatz Men, who are specifically concerned with Mayan culture and symbolism, and whose works are published by The Bear & Co., which plaintiffs describe as a New Age press. Plaintiffs also include excerpts from other writings which offer general definitions of the New Age "movement":

Some [New Agers] emphasize spiritual healing. . . . Other[s] are among the most ardent environmentalist. . . . Finally, there are the mystics of the movement, whose beliefs include ideas drawn from every religious tradition. . . .

As the amazing variety shows, the New Age is a very flexible, amorphous, spontaneous movement.

There is no national organization, no hierarchy, no clearinghouse for information. People become part of the movement by studying books, visiting small institutes, joining study groups, attending seminars, and working with the thousands of New Age therapists, teachers, healers, and gurus scattered around the country. A typical believer draws on these different interests to create his own, personal way of thinking about himself and the world around him.

(ER 380, from Michael D'Antonio, *Heaven on Earth* 17-18 (Crown Publishers, 1992) (emphasis added).)

[T]he New Age is large and complex and filled with millions of seekers. . . . If they were somehow brought together in a church-like organization, these serious and almost-serious New Agers would constitute the third largest religious denomination in America.

(ER 177, from *id* at 13 (emphasis added).)

The New Age represents social, political, economic, psychological, and spiritual efforts to recognize and include all that our modern society has tended to exclude.

(ER 194, from David Spangler, *Defining the New Age* (emphasis added) (publisher information and page not given).)

The picture of the New Age that emerges is one of individual efforts to "find" or heal oneself, physically and spiritually, with the help of symbols drawn from an infinite store of texts, visual sources and "beliefs drawn from every religious tradition." (ER 380.) The New Age proponents cited by plaintiffs clearly indicate that there is no New Age organization, church-like or otherwise; no membership; no moral or behavioral obligations; no comprehensive creed; no particular text, rituals, or guidelines; no particular object or objects of worship; no requirement or suggestion that anyone give up the religious beliefs he or she already holds. In other words, anyone's in and "anything goes."³¹⁶

So it seems that the New Age movement is too diffuse and unorganised to be a "religion" *per se*. The court went on to address its mind to the question of what constituted a "religion" and referred to the majority analysis as well as Judge Adams' concurrence in *Malnak II*:

We are hard put to imagine a more unworkable definition of religion or religious symbol or believer for purposes of the Establishment Clause or Free Exercise than that which is offered here. Few governmental activities could escape censure under a constitutional definition of "religion" which includes any symbol or belief to which an individual ascribes "serious or almost-serious" spiritual significance. "[I]f anything can be religion, then anything the government does can be construed as favoring one religion over another, and . . . the government is paralyzed. . . ." 6 *Seton Hall Const L J* at 70. While the First Amendment must be held to protect unfamiliar and idiosyncratic as well as commonly

³¹⁶ 94 F3d 1223, 1229-30 (9th Cir 1994), fn omitted.

recognized religions, it loses its sense and thus its ability to protect when carried to the extreme proposed by the plaintiffs.

Plaintiffs' proposed identification of New Age beliefs with religion for Establishment Clause purposes does not stand up to either the majority analysis in *Malnak II* or Judge Adams' concurrence, which became the law of the Third Circuit in *Africa*. There is no text, creed or organized group such as the court considered in *Malnak II*, only a sculpture with which plaintiffs have associated a number of unrelated texts and statements of individual response to the work. Under *Africa*, the New Age concepts presented by the plaintiffs, while they invoke "ultimate concerns," fail to demonstrate any shared or comprehensive doctrine or to display any of the structural characteristics or formal signs associated with traditional religions. See 662 F2d at 1032-36.³¹⁷

No text, creed or organized group, no shared or comprehensive doctrine, and none of the structural characteristics or formal signs associated with a traditional religion. In short, none of the Adams' indicia of a religion. But that was not the end of the matter. The plaintiffs also argued that the Plumed Serpent invoked Mormon religious beliefs. The court was equally dismissive of that argument:

While Mormons are clearly a recognized religious group, the evidence presented by the plaintiffs does not support a First Amendment argument. The writings suggest that, according to certain Mormons, ancient worshippers of Quetzalcoatl were in fact worshipping Christ. Historically, Mormon missionaries taught that Christ had revealed himself to native Mesoamericans in the form of Quetzalcoatl or the Plumed Serpent long before he appeared to man in the human form known to Christians. This attribution of Christian or Christ-like qualities to ancient religious symbols and practices does not, however, create an inference that Mormons themselves worship Quetzalcoatl or the Plumed Serpent.³¹⁸

In summary, the plaintiffs failed to raise an inference that the statue reflected Mormon beliefs or that the New Age, as characterized by the plaintiffs, constituted a discernible "religion" for purposes of Establishment Clause analysis. Accordingly, the court held that the City's installation and maintenance of the sculpture did not violate either the First Amendment Establishment Clause or the California Constitution.

In *Dettmer v Landon*,³¹⁹ a decision of the 4th Circuit Court of Appeals, an inmate (Dettmer) incarcerated at a correctional centre in State Farm, Virginia claimed that his First Amendment right to the free exercise of his religion, the Church of Wicca,³²⁰ was violated by prison officials who refused to give him any access to his religion's worship materials. The prison officials claimed, firstly, that provision of the religious materials (including

³¹⁷ 94 F3d 1223, 1230 (9th Cir 1994).

³¹⁸ 94 F3d 1223, 1231 (9th Cir 1994).

³¹⁹ 799 F2d 929 (4th Cir 1986).

³²⁰ The church's members are commonly referred to as witches and warlocks.

candles and incense) would be hazardous to prison security and, secondly, that the Church of Wicca was not a religion entitled to First Amendment protection.

In determining whether the Church of Wicca was a religion³²¹ protected by the free exercise clause of the first amendment, the district court considered whether the Church occupied a place in the lives of its members "parallel to that filled by the orthodox belief in God" in religions more widely accepted in the United States.³²²

The district court in 1985 had found³²³ that members of the Church of Wicca "adhere[d] to a fairly complex set of doctrines relating to the spiritual aspect of their lives."³²⁴ These doctrines concerned ultimate questions of human life, as did the doctrines of recognized religions.³²⁵ The district court also found that the contents of many of these doctrines paralleled those of more conventional religions.³²⁶ The Church of Wicca, the court found, believed in another world and had a "broad concern for improving the quality of life for others."³²⁷ Dettmer testified to his belief in a "supreme being."

The district court had concluded:

Members of the Church of Wicca sincerely adhere to a fairly complex set of doctrines relating to the spiritual aspect of their lives, and in doing so they have "ultimate concerns" in much the same way as followers of more accepted religions. Their ceremonies and leadership structure, their rather elaborate set of articulated doctrine, their belief in the concept of another world, and their broad concern for improving the quality of life for others gives them at least some facial similarity to other more widely recognized religions. While there are certainly aspects of Wiccan philosophy that may strike most people as strange or incomprehensible, the mere fact that a belief may be unusual does not strip it of constitutional protection. Accordingly, the Court concludes that the Church of Wicca, of which the plaintiff is a sincere follower, is a religion for the purpose of the free exercise clause.³²⁸

The district court had also noted that members of the Church of Wicca worshipped both individually and corporately and also followed spiritual leaders. Dettmer testified that he

³²¹ In the Georgia Supreme Court case of *Roberts v Ravenwood Church of Wicca* 249 Ga 348, 292 SE 2d 657 (Ga 1982) the Wiccan Church was recognized as a "church". Similarly, in *Maberry v McKune* 24 FSupp2d 1222 (D Kan 1988) a Kansas court decided that Wicca was a religion that was dedicated to the earth and the Goddess and was just as entitled to First Amendment protection as were the more traditional religions. See also *People v Umerska* 94 Mich App 799, 289 NM 858 (1980).

³²² See *United States v Seeger* 380 US 163, 166, 13 L Ed 2d 733, 85 S Ct 850 (1964).

³²³ See 617 FSupp 592 (Dst Ct East Dst Va 1985).

³²⁴ 617 F Supp 592, 596.

³²⁵ See *Africa v Pennsylvania* 662 F2d 1025, 1032 (3d Cir 1982); *International Society for Krishna Consciousness Inc v Barber* 650 F2d 430, 440 (2d Cir 1981); *Malnak v Yogi* 592 F2d 197, 208 (3d Cir 1979) (Adams J concurring).

³²⁶ 617 FSupp 592, 596.

³²⁷ 617 FSupp 592, 596.

³²⁸ 617 FSupp 592, 596. See also, on appeal, 799 F2d 929, 931 (4th Cir 1986).

planned to conduct ceremonies privately and hoped to have the aid of a spiritual leader from the outside community in conducting ceremonies for other inmates. He had sought guidance from Wiccan leaders and for several years and had been studying the doctrines of the Church of Wicca as expressed by these leaders in books, pamphlets and a correspondence course of study. Another objective criterion showing the Church of Wicca to be parallel to recognized religions is witchcraft's long history.³²⁹

The prison officials appealed this case and in 1986, the case was heard by the 4th Circuit Court of Appeals.

On appeal, the government contended that the doctrine of the Church of Wicca was not a religion because it was a "conglomeration" of "various aspects of the occult, such as faith healing, self-hypnosis, tarot card reading, and spell casting, none of which would be considered religious practices standing alone."³³⁰ The government argued essentially that because it found witchcraft to be illogical and internally inconsistent, witchcraft could not be a religion. However, the Court of Appeals noted that the Supreme Court had held to the contrary that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection."³³¹

The government also argued that even if Dettmer's beliefs could be termed "religious," his rites were not. The government characterized Dettmer's practices as more akin to meditation than to religion. It asserts that Wiccan meditation is "primarily designed to assist the practitioner to master the concept of positive thinking and to find internal contentment." Dettmer testified, however, that he meditated to "call down power" from "the supreme being" and other deities. The parties stipulated to Dettmer's sincerity. In the opinion of Senior Court Judge Butzner the district court had "properly concluded that Dettmer's meditation ceremonies are religious":³³²

³²⁹ Cf *International Society for Krishna Consciousness Inc v Barber* 650 F2d 430 at 440. The Court of Appeals referred to a handbook for chaplains published by the United States (that had been tendered in which it was stated that witchcraft enjoyed a following in Northern Europe during the Middle Ages as an ancient pagan faith, losing public expression when systematic persecution began in the 15th century. It regained some popularity after repeal of English witchcraft laws.

³³⁰ 799 F2d 929, 932.

³³¹ *Thomas v Review Board* 450 US 707, 714, 67 L Ed 2d 624, 101 S Ct 1425 (1981).

³³² See *Malnak v Yogi* 592 F2d 197, 198 n2 and 199 (3d Cir 1979) (Adams J concurring). The government also contended that Dettmer's rites were not protected by the first amendment because he had not proved that the items he requested are required by the Church of Wicca. However, the Court of Appeals stated: "Religious observances need not be uniform to merit the protection of the first amendment. The Supreme Court has recognized that differing beliefs and practices are not uncommon among followers of a particular creed.

We agree with the district court, 617 FSupp 592 (1985), that the Church of Wicca occupies a place in the lives of its members parallel to that of more conventional religions. Consequently, its doctrine must be considered a religion. See *Seeger* 380 US at 166; *Malnak* 592 F2d at 207-10 (Adams J concurring).³³³

The Court of Appeals ultimately affirmed in part and reversed in part the decision of the district court. In that regard, although the court reaffirmed that Wicca was a religion the court denied Dettmer the right to have the items he requested based on the fact that even though prisoners of more conventional religions had the benefit of incense, candles and other religious paraphernalia in and for the purposes of their religious services and observances none of those prisoners ever touched them; the preacher or minister always handled them, and never the prisoners themselves.³³⁴

In *DeHart v Horn*,³³⁵ a decision of the 3rd Circuit Court of Appeals, an inmate (DeHart) incarcerated at the Pennsylvania State Correctional Institute ("SCI") at Greene commenced a civil rights action against the Commissioner of the Department of Corrections of Pennsylvania and the superintendent of SCI at Greene as a result of their failure to provide him with a diet consistent with his Buddhist religious beliefs. DeHart appealed the final order of the district court granting the defendants' motion for summary judgment, insisting that the defendants' failure to accommodate his religious belief, which required him to follow a vegetarian diet, violated both his right to free religious expression under the First Amendment and his right to equal protection of the law under the Fourteenth Amendment.³³⁶

Thomas v Review Board 450 US [707] at 715 (1981). 'It is not within the judicial function and judicial competence to inquire whether the petitioner or [another practitioner] more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation.' 450 US at 716. See also *Barrett v Virginia* 689 F2d 498, 501 n 5 (4th Cir 1982)."

³³³ 799 F2d 929, 932.

³³⁴ Thus, the decision to prohibit Dettmer from possessing the items that he sought was found not to discriminate against him because of his unconventional beliefs. See *Cruz v Beto* 405 US 319 (1972) in which the plaintiff inmate, a Buddhist, complained that adherents of other religions were permitted to exercise their religious faiths in ways that he was not. Allegedly, the prison encouraged participation in other religious programs but discouraged the practice of Buddhism. The plaintiff's complaint was dismissed for failure to state a claim. The Supreme Court reversed, observing: "If Cruz was a Buddhist and if he was denied a reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow prisoners who adhere to conventional religious precepts, then there was palpable discrimination by the State against the Buddhist religion. . . . The First Amendment, applicable to the States by reason of the Fourteenth Amendment, *Torcaso v Watkins* 367 US 488, 492-493 [(1961)], prohibits government from making a law "prohibiting the free exercise" of religion. If the allegations of this complaint are assumed to be true, as they must be on the motion to dismiss, Texas has violated the First and Fourteenth Amendments." *Cruz* at 322.

³³⁵ 227 F3d 47 (3rd Cir 2000).

³³⁶ Interestingly, in *Spies v Voinovich* 173 F3d 398 (6th Cir 1999) the Sixth Circuit Court of Appeals rejected an inmate's claim that as a Zen Buddhist he was required to maintain a vegan diet, holding that Zen Buddhism did not require a vegan diet and that the vegetarian diet provided by the correctional facility was more than

Circuit Judge Stapleton delivered the opinion of the Court of Appeals:

In this case, DeHart asserts that his dietary requirements are derived from his Buddhist beliefs, thus implicating the First Amendment's guarantee of the free exercise of one's religion. The mere assertion of a religious belief does not automatically trigger First Amendment protections, however. To the contrary, only those beliefs which are both sincerely held and religious in nature are entitled to constitutional protection ...³³⁷

The court ultimately proceeded to reverse the judgment of the district court and remanded the case for further proceedings consistent with its opinion.

In *Love v Reed*,³³⁸ a 2000 decision of the 8th Circuit Court of Appeals, an inmate (Love) incarcerated in the Arkansas Department of Corrections ("ADC") had filed an action in the district court alleging violation of his free exercise of religion as guaranteed in the First Amendment by reason of the ADC's refusal to accommodate him by providing him with sandwich makings on Saturday. The district court concluded that the ADC's refusal to accommodate Love constituted a violation of his constitutional rights.

When Love was first incarcerated in 1982 Love identified his religion as "Catholic". However, during the course of his incarceration his religious beliefs changed and he subsequently became a self-proclaimed adherent of the "Hebrew religion", although he did not necessarily consider himself at that point to be Jewish; indeed, he did not formally ascribe to any organized religion. He was simply a student of the Old Testament of the Christian Bible (that is, the Hebrew Bible), and his religious beliefs derived from his *own* interpretation of that text.

sufficient. Nevertheless, the court stated: "[I]n pointing out that veganism is not required of Zen Buddhists, we are not stating that Spies's veganism is not a sincerely-held religious belief." 173 F3d 398 at 407.

³³⁷ 227 F3d 47, 51, fn ref omitted. In *Africa v Commonwealth of Pennsylvania* 662 F2d 1025 at 1032 it was stated (quoting *Malnak v Yogi* 592 F2d 197, 207 (Adams J concurring)) that in determining whether a particular, non-traditional belief or practice is religious in nature, "the courts have 'look[ed] to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted 'religions.'" In *Turner v Saflley* 482 US 78, 89 (1987) the US Supreme Court articulated the standard for reviewing a prison regulation challenged on constitutional grounds: "[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." This test is intended to effect an accommodation between two well-established principles. "The first of these principles is that federal courts must take cognizance of the valid constitutional claims of prison inmates." *Turner* at 84. The "second . . . is the recognition that 'courts are ill equipped to deal with the increasingly urgent problems of prison administration' and [that] separation of powers concerns counsel a policy of judicial restraint." *Turner* at 84-85 (quoting *Procunier v Martinez* 416 US 396, 405 (1974)).

³³⁸ 216 F3d 682 (8th Cir 2000).

The prison officials appealed the district court's decision, alleging, firstly, that Love's belief system was not a "religion" so as to be protected by the First Amendment, secondly, that even if the Court were to find Love's beliefs to constitute a religion, the ADC's rules did not impinge upon Love's free exercise of that religion, and, thirdly, that even if the Court were to find that the ADC's policies did impinge upon Love's free exercise of religion, those policies were reasonably related to a legitimate penological interest and therefore should be sustained.³³⁹

The Court of Appeals proceeded to affirm the district court, finding that the ADC's policies did constitute an infringement of Love's constitutional rights. Before so doing, the court first considered whether the district court erred in finding that Love's beliefs constituted a sincerely held religious belief protected by the First Amendment. In that regard, the court noted that the appellants did not doubt that Love's beliefs are sincere but only that his belief system as described in the record should not be considered a religion. The court stated:

First Amendment protection only attaches to beliefs rooted in religion, as opposed to purely secular beliefs or personal preferences. See *Thomas v Review Board of the Indiana Employment Security Division* 450 US 707, 713 (1981); *Ochs v Thalacker* 90 F3d 293, 296 (8th Cir 1996). "The determination of what is a "religious" belief or practice is more often than not a difficult and delicate task However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas*, 450 US at 714.³⁴⁰

The ADC had cited *Africa v Commonwealth of Pennsylvania*³⁴¹ as defining the three "useful indicia" of a religion for the purposes of First Amendment jurisprudence³⁴² and submitted that, using those indicia as a benchmark, Love's belief system did not constitute a religion. However, the court said:

First, we note that, while the Third Circuit emphasized the importance of setting some objective guidelines, they also conceded that they did not intend to articulate a rigid "test" for defining a religion and that "[f]lexibility and careful consideration of each belief system are needed." *Africa*, 662 F2d at 1032 n 13 (quoting *Malnak v Yogi* 592 F2d 197, 207-210 (3rd Cir

³³⁹ See *Turner v Safley* 482 US 78, 89 (1987).

³⁴⁰ 216 F3d 682, 687.

³⁴¹ 662 F2d 1025 (3rd Cir 1981).

³⁴² "First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching. Third, a religion often can be recognized by the presence of certain formal and external signs." *Africa v Commonwealth of Pennsylvania* 662 F2d 1025, 1032.

1979) (concurring opinion)). Yet even applying the *Africa* standards as a “test,” we find that Love’s belief system is a religion.³⁴³

The court noted that Love’s belief system was derived from his own study of a text (the Hebrew Bible) which was central to two of the world’s major religions: Christianity and Judaism:

To suggest that the Old Testament of the Bible, standing alone as a religious text, fails to address “fundamental and ultimate questions having to do with deep and imponderable matters,” or that it does not provide a comprehensive “belief-system as opposed to an isolated teaching” would be to call into question the “religiousness” of two of the most prominent religions in this country.³⁴⁴

Love’s understanding of the tenets of his belief-system was, by his own admission, still evolving:

However, “[c]ourts should not undertake to dissect religious beliefs because the believer admits that he is ‘struggling’ with his position or because his beliefs are not articulated with the clarity and precision that a more sophisticated person might employ.” *Thomas v Review Board of the Indiana Employment Security Division* 450 US 707, 715 (1981). Here, Love concedes his [sic] is not an expert on the scriptures, even though he provided the district court with chapter and verse supporting his Sabbath meal request. While he may not yet be able to place individual precepts in a broader philosophical context, the record indicates that he is struggling in that direction - without the benefit of formal instruction. It is not the place of the courts to deny a man the right to his religion simply because he is still struggling to assimilate the full scope of its doctrine. We would not deny that a Jew’s desire to keep Kosher is rooted in religion even if he were not a Rabbinical scholar capable of explaining the more subtle spiritual aspects of Judaism; similarly, we will not deny that Love’s desire to follow the express dietary laws of the Old Testament is rooted in religion simply because he does not now attempt to draw more broad spiritual lessons from the text.

With respect to the third prong of the *Africa* analysis, the ADC suggests that Love has demonstrated only two formal or external signs which might be analogized to other traditional religions: his practice of not eating meals prepared or delivered on the Sabbath and his practice of not leaving his dwelling on the Sabbath. Love has not, they argue, offered evidence of “formal services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation, observance of holidays [or] other similar manifestations associated with the traditional religions.” Appellants’ Brief at vii. We note, however, that Love is still attempting, through study and through correspondence with both the Jewish Prisoners Services International and the Alief Institute, to determine where his own beliefs fit with respect to Orthodox, Conservative, and Reform Judaism. Certainly, Judaism boasts formal services, ceremonial functions, a clergy, and structure and organization. Love himself does strictly observe a weekly “holiday” by keeping the Sabbath holy, and he has indicated that he would engage in other ceremonial behavior (such as ritual cleansing) if the strictures of prison life did not prevent it.³⁴⁵

³⁴³ 216 F3d 682, 687.

³⁴⁴ 216 F3d 682, 687-8.

³⁴⁵ 216 F3d 682, 688, fn omitted.

In short, the Court of Appeals concluded that the district court had correctly found that while Love did not consider himself “Jewish”, he nevertheless adhered to practices and teachings which were part of the Jewish faith:

His beliefs may not fit squarely with the orthodoxy of Judaism, in any of its forms, but “the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect,” *Thomas* 450 US 715-716, and some allowance must be made for Love’s isolation from a source of formal instruction in Judaism. To suggest that Love’s belief-system falls short of being a religion would be to call into question the religious standing of all those who infuse Judaism, Christianity, or other “traditional” religions with personal interpretation and introspection. We are not inclined to do that. Accordingly, we find that the district court correctly held that Love’s belief-system is a “religion” for purposes of First Amendment protection.³⁴⁶

The court proceeded to hold that not only was Love’s belief-system a “religion” but his preference for food prepared or served on the Sabbath was a religious preference which fell within the ambit of the First Amendment. In addition, the court rejected the ADC’s other contentions.³⁴⁷

The court’s decision in *Love* is not particularly helpful. Love was perhaps fortunate in that the sacred scriptures of special interest to him were those of a major traditional religion. Had his “holy book” been something quite obscure and contestable, things might have turned out quite differently for him. With respect, his faith seems more of a “religious philosophy” than a religion. Indeed, without a faith-based community of likeminded people who come together on a regular basis to worship (a “cultus”), there is arguably only subjective or individualistic spirituality (or, in William James’ words, “personal religion”), which, on public policy grounds, ought not to be seen to be a religion for legal purposes. Love may have considered his religion to be the “Hebrew religion” but even reform Jews, let alone orthodox Jews, would view it quite differently. In many ways, Love is akin to the Unitarian Thoreau invoked by the Supreme Court in *Yoder* as “a paradigm of the secular believer not coming within the purview of religion” (Palmer 1993:220).

In *Morrison v Garraghty*,³⁴⁸ a 2001 decision of the 4th Circuit Court of Appeals, an inmate (Morrison) incarcerated at Greensville Correctional Center (“GCC”) in Virginia claimed that his rights under the Equal Protection Clause of the United States Constitution had been violated by his having been treated differently from other inmates based solely upon a

³⁴⁶ 216 F3d 682, 688-9, fn omitted.

³⁴⁷ See Part III of the judgment.

³⁴⁸ *Morrison v Garraghty; Angelone v United States* 239 F3d 648 (4th Cir 2001).

racial classification. Specifically, Morrison alleged that the defendants had refused to consider his request to obtain Native American religious items because he was not of Native American heritage.

The district court granted summary judgment to the defendants in part, dismissing the First Amendment claim. The district court found that Morrison had sufficiently alleged that "Native American Spirituality" was a religion protected by the First Amendment³⁴⁹ and that he had come forward with sufficient evidence to preclude summary judgment on the issue of whether his beliefs were sincerely held. Nevertheless, the district court dismissed Morrison's free exercise claim because Morrison had failed to identify a particular rite or practice which was foreclosed, or substantially burdened by, the defendants' denial of his request for Native American religious items. The matter then came before the Court of Appeals.³⁵⁰

Morrison was not a Native American Indian by birth, nor had he been adopted by a Native American tribe. He was, however, a member of a prisoner group known as HEART - "Heritage Examined Around Redman Traditions." According to Circuit Judge Traxler:

HEART is not a religion. The majority of its members at GCC are not Native Americans and, consequently, do not practice any particular tribal-based religion. Nor do HEART members demand to participate in Native American religious ceremonies. Rather, Morrison, like other HEART members, claims to hold beliefs similar to those held by Native Americans practicing a tribal-based Native American religion. For example, Morrison, like many Native American inmates, professes belief in "the creator, mother earth, the sacredness of all living things, that everything has a spirit and is connected." [Joint Appendix ("JA")] 92, 100. In other words, Morrison claims not to practice any specific Native American tribal religion, but rather to practice what he terms "Native American Spirituality."³⁵¹

Because Morrison's professed religious beliefs were similar to Native American beliefs, Morrison also wished to practice rituals similar to those practised by Native American inmates. To do so, Morrison wished to possess a number of Native American sacred

³⁴⁹ In *Cole v Flick* 758 F2d 124 (3d Cir 1985) the court upheld a prison's hair regulation that infringed on the asserted free exercise rights of a Cherokee Indian to grow his hair long. The court held that "once the state proffers sincerely held and arguably correct beliefs regarding the necessity of a regulation . . . the burden is on the prisoner to make a showing by substantial evidence that these beliefs are unreasonable or that the regulation is an exaggerated response." 758 F2d 124, 131-2. In the court below it had been held - and this was not doubted on appeal - that Native American culture and spirituality was a protected religion. See *Cole v Flick* 588 FSupp 772, 774 (MDPA 1984).

³⁵⁰ Morrison did not, however, appeal the adverse ruling that he had failed to identify a particular rite or practice which was foreclosed, or substantially burdened by, the defendants' denial of his request for Native American religious items.

³⁵¹ 239 F3d 648, 652.

items which he asserted were as equally necessary for him to practise his religion as they are for Native Americans to practise their own tribal-based religions.

Morrison's equal protection claim rested not on whether his religious exercise rights were violated by defendants' denial of his request but rather upon their decision to condition the mere consideration of his request for Native American religious items upon proof that he was of Native American race, without regard to whether he was sincere in his religious beliefs or whether the requested items posed a security risk for the prison.

The Court of Appeal stated that it could not endorse the proposition that an inmate's sincerity of religious beliefs in Native American spirituality could be defined solely by reference to the inmate's race or heritage:

In determining whether a particular professed faith is a religion, for First Amendment purposes, courts are to consider whether the faith "occupies a place in the lives of its members 'parallel to that filled by the orthodox belief in God' in religions more widely accepted in the United States." *Dettmer v Landon* 799 F2d 929, 931 (4th Cir 1986) (quoting *United States v Seeger* 380 US 163, 166 (1964)). "[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v Review Bd* 450 US 707, 714 (1981) (holding that state could not deny unemployment compensation benefits to a Jehovah's Witness who terminated his employment because he believed his work in the production of a weapons-related product violated the principles of his religion); *Dettmer* 799 F2d at 932 (holding that prison officials could not deny religious articles to Wiccans based on the officials' conception of what constitutes a religion). Nor must religious observances be uniform to merit First Amendment protection. See *Dettmer* 799 F2d at 932. Differing beliefs and practices are not uncommon among followers of a particular creed, see *Thomas* 450 US at 715, and "it is not within the judicial function and judicial competence to inquire whether the petitioner or [another practitioner] more correctly perceive[s] the commands of their common faith," *id* at 716. In sum, "[c]ourts are not arbiters of scriptural interpretation." *Id*; see also *Dettmer* 799 F2d at 932.³⁵²

According to the Court of Appeal Native American religion did not depend upon race.

Further:

Native Americans themselves practice a diverse set of beliefs and practices depending upon their individual beliefs and tribal affiliations, but there has been no claim that the tribal-based religions practiced by "bona fide" Native Americans are not recognized religions. While Morrison admittedly does not practice a specific tribe-based Native American religion and does not seek membership into any particular Native American tribe, he does profess to practice a Native American spirituality that combines religious elements from a variety of tribal practices. His beliefs, and religious practices, have no race-based requirement.³⁵³

³⁵² 239 F3d 648, 658-9.

³⁵³ 239 F3d 648, 659.

In summary, the Court of Appeals concluded that the sincerity of Morrison's religious belief could not be measured solely by his racial make-up or the lack of his tribal membership.³⁵⁴ Further, it was held that the defendants had failed to demonstrate that the requested spiritual items were any less dangerous in the hands of a Native American inmate as opposed to a non-Native American inmate who sincerely wished to practise Native American spirituality and had also failed to substantiate the claim that the policy promoted security because it appeased Native Americans who took offense to white inmates practising their faith. In all the circumstances, it was patently impermissible to control the number of dangerous items by instituting a policy pursuant to which either or both of race and heritage were made the threshold requirement for according an individual inmate the privilege of obtaining them.³⁵⁵

Insofar as the case has any lasting significance on the issue of what is a religion, it is clear from the court's decision that, for the purposes of applying the *Seeger* test (viz whether a person's faith occupies a place in the person's life "parallel to that filled by the orthodox belief in God" in more widely accepted religions), the sincerity of the person's belief is not to be determined by taking into account such extraneous considerations as the colour of the person's skin or the origin of his or her birth.

In *Friedman v Southern California Permanente Medical Group*³⁵⁶ the California Court of Appeal was called upon to consider whether veganism was a religious creed within the meaning of California's *Fair Employment and Housing Act*.

In his original complaint the plaintiff alleged that he was a strict vegan who believed that it was immoral and unethical for humans to kill and exploit animals, even for food, clothing and the testing of product safety for humans, and that such use³⁵⁶ was a violation of natural law and the personal religious tenets on which he based his foundational creeds. The

³⁵⁴ See also *Combs v Corrections Corporation of America* 977 FSupp 799, 802 (WD La 1997) (enjoining prison officials from restricting the practice of the Native American Religion to those prisoners of Native American ancestry as violative of the First Amendment: "[t]he policy is akin to a requirement that practicing Catholics prove an Italian ancestry, or that Muslims trace their roots to Mohammed").

³⁵⁵ In *Kruger v Commonwealth of Australia; Bray v Commonwealth of Australia* (1997) 190 CLR 1 (the Stolen Generation case) the High Court of Australia upheld the constitutional validity of a legislative ordinance which had authorised the removal of Aboriginal children from their families during the period of time when the Northern Territory was administered by the Commonwealth, stating that the ordinance was not invalid by reference to express or implied constitutional freedoms or other rights (including, relevantly, freedom of religion).

³⁵⁶ 102 Cal App 4th 39 (Ct App 2002), [Online] <<http://login.findlaw.com/scripts/callaw>> (viewed July 24 2006).

plaintiff claimed that his beliefs were “spiritual” in nature, setting a course for his entire way of life. He had apparently lived in accordance with his beliefs for over 9 years and he claimed that he held these beliefs with the strength of traditional religious views and.

In the context of an offer of employment the plaintiff refused to be vaccinated with the mumps vaccine because it was grown in chicken embryos. He claimed that vaccination would be immoral and would violate his system of beliefs. The defendants then withdrew their offer of employment. The plaintiff then brought suit. The trial court entered judgment against the plaintiff, and he appealed.

The California Court of Appeal stated that although it did not question the plaintiff's assertion that his beliefs were sincerely held, and even though his beliefs might "occupy a place in [his] life parallel to that filled by God in traditionally religious individuals adhering to the Christian, Jewish or Muslim Faiths", there was nothing before the court that would indicate that his belief system addressed fundamental or ultimate questions. In that regard, the court stated:

There is no claim that veganism speaks to: the meaning of human existence; the purpose of life; theories of humankind's nature or its place in the universe; matters of human life and death; or the exercise of faith.³⁵⁷

Further, there was "no apparent spiritual or otherworldly component to plaintiff's beliefs".³⁵⁸

Rather, plaintiff alleges a moral and ethical creed limited to the single subject of highly valuing animal life and ordering one's life based on that perspective.³⁵⁹

The court proceeded to find that the plaintiff's belief system was a personal philosophy and a way of life reflecting "a moral and secular, rather than religious, philosophy".³⁶⁰ Further, the plaintiff's philosophy was "not sufficiently comprehensive in nature"³⁶¹ to fall within the provisions of the California *Fair Employment and Housing Act*. The Court of Appeal emphasized that Friedman did not assert that his belief system derived from a power or being or faith to which all else was subordinate or upon which all else depended.

Finally, the court of appeal stated that it was also relevant, although not determinative, that

³⁵⁷ 102 Cal App 4th 39 (Ct App 2002), [Online] <<http://login.findlaw.com/scripts/callaw>> (viewed July 24 2006).

³⁵⁸ 102 Cal App 4th 39 (Ct App 2002), [Online] <<http://login.findlaw.com/scripts/callaw>> (viewed July 24 2006).

³⁵⁹ 102 Cal App 4th 39 (Ct App 2002), [Online] <<http://login.findlaw.com/scripts/callaw>> (viewed July 24 2006).

³⁶⁰ 102 Cal App 4th 39 (Ct App 2002), [Online] <<http://login.findlaw.com/scripts/callaw>> (viewed July 24 2006).

³⁶¹ 102 Cal App 4th 39 (Ct App 2002), [Online] <<http://login.findlaw.com/scripts/callaw>> (viewed July 24 2006).

the plaintiff's belief system and lifestyle involved no formal or external signs of a religion. In that regard, there were no teachers or leaders, no services or ceremonies, no structure or organization, no orders of worship or articles of faith, and no holidays. In short, in the absence of a broader, more comprehensive scope, extending to ultimate questions - for a religious belief must be more than "a philosophy or way of life"³⁶² - it could not be said that the plaintiff's veganism was a "religious creed" within the meaning of the California *Fair Employment and Housing Act*.

The American approach

As has been seen, a considerable number of "tests" or "definitions" of religion have been developed in the United States of America during the past 100 or so years. Although it is most unlikely that any future court would revert to the narrow theistic test enunciated in *Davis v Beason*³⁶³ it remains to be seen whether the *Seeger* and *Africa* tests will continue to be applied. A typically pragmatic non-dogmatic and phenomenological approach has been developed with a decision being made, on a case-by-case basis, as to whether a particular belief system or practice constitutes a religion. Particular attention is placed on the forms of religious experience, with a clear recognition that there are many dimensions to religious life.

³⁶² 102 Cal App 4th 39 (Ct App 2002), [Online] <<http://login.findlaw.com/scripts/callaw>> (viewed July 24 2006).

³⁶³ 133 US 333 (1890).

CHAPTER 5

TOWARDS A BETTER DEFINITION OF RELIGION FOR LEGAL PURPOSES

“And ye shall know the truth, and the truth shall make you free.”
- The Gospel According to St John 8:32 [AV].

Preview

1. The tests enunciated in such United States cases as *Reynolds v US*,¹ *Davis v Beason*² and *US v Macintosh*³ are unacceptable as they don't accommodate nontheistic religions.
2. *Torcaso v Watkins*⁴ was a step in the right direction because it recognized nontheistic religions, but no test or definition of religion was actually expounded in the case, so one must look elsewhere for guidance.
3. Despite the best of intentions, the “parallel position” test in *US v Seeger*⁵ is overinclusive, accepting as religious any sincerely held belief based upon a power or a faith to which all else is subordinate or upon which all else is ultimately dependent.
4. The test in *Welsh v US*⁶ is also too wide, despite the best of intentions.
5. The test in *Africa v Pennsylvania*,⁷ which provides for “definition by analogy”, is flexible but too open-ended.

¹ 98 US 145 (1879).

² 133 US 333 (1890).

³ 283 US 605 (1931).

⁴ 367 US 488 (1961).

⁵ 380 US 163 (1965).

⁶ 398 US 333 (1970).

⁷ 662 F2d 1025 (3rd Cir 1981), cert denied, 456 US 908 (1982).

6. There are a considerable number of suggested alternative definitions in the legal literature, but all of them appear to be fraught with difficulties.
7. Religion comprises 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 behaviour 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.

Introduction

The thesis has demonstrated that the formulation enunciated by the High Court in the *Scientology* case 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. The thesis has also shown that 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 High Court.

What, then, are the distinguishing characteristics of *religious-ness*, that is, that which pertains to religious belief systems and practices, those things that permit appreciation or recognition of a thing being “religious” or a “religion”? Before proceeding any further, it may be helpful, at this stage, to reiterate the working principles which any definition of religion must satisfy in order to be acceptable:

1. The definition must satisfy the following “constitutional” principles: the principle of preservation of religious freedom, and the principle of preservation of

religious equality.

2. The definition must be intercultural, non-discriminatory and capable of being used univocally in its application to different religions.
3. The definition must avoid the problems that would almost certainly ensue if an overly wide interpretation of the matter were to be adopted.
4. The definition should not extend to pseudo-religions.
5. The definition ought not to be reductive.
6. The definition must do more than simply provide a causal explanation as to why human beings, or at least some of them, are “religious”.
7. The definition must not be prejudicial.

The tests enunciated in such United States cases as *Reynolds v US*,⁸ *Davis v Beason*⁹ and *US v Macintosh*¹⁰ fail to satisfy the second principle as they don't accommodate nontheistic religions. *Torcaso v Watkins*¹¹ was a step in the right direction because it recognized nontheistic religions, but no test or definition of religion was actually expounded in the case, so one must look elsewhere for guidance. Despite the best of intentions, the “parallel position” test in *US v Seeger*¹² is overinclusive, accepting as religious any sincerely held belief based upon a power or a faith to which all else is subordinate or upon which all else is ultimately dependent. The court's elaboration in *Welsh v US*,¹³ to the effect that purely ethical or moral beliefs, that are deeply and sincerely held *and* impose upon a person a duty of conscience, occupy in the life of that person a place parallel to that filled by God in the lives of traditionally religious persons, and *are* “religious” on that basis, is again too wide, despite the best of intentions. However, the court's insistence that religion, or a religious belief, must involve more than just a merely personal moral code or personal philosophy of life is helpful.

The partial retreat from the *Seeger-Welsh* test in *Wisconsin v Yoder*,¹⁴ wherein the court held that beliefs that were “philosophical” and “personal” rather than religious in the sense of a *way of life* based on “purely secular considerations” *not* rooted in religious belief were *not* entitled to First Amendment protection, is unhelpful, in that no test or definition is

⁸ 98 US 145 (1879).

⁹ 133 US 333 (1890).

¹⁰ 283 US 605 (1931).

¹¹ 367 US 488 (1961).

¹² 380 US 163 (1965).

¹³ 398 US 333 (1970).

¹⁴ 406 US 205 (1972).

articulated, and what is offered is rather circular. When is something based on secular considerations and not rooted in religious belief such that it does not qualify as religious? This is a case of *petitio principii*, or begging the question. The court's reasoning is entirely circular.

The test in *Africa v Pennsylvania*,¹⁵ which provides for "definition by analogy", is flexible but too open-ended.

One finds in the legal literature any number of suggested alternative definitions, but all of them appear to be fraught with difficulties. For example, Kirkland (1976:Online) offers the following definition of religion:

Religion is humanity's sensitivity to the ultimate meaning of existence, which derives from his relationship to a transcendent or super-empirical plane of reality. Comprehension of the meaningfulness of things serves to integrate harmoniously every aspect of one's being - cognitive, evaluative, motivational, and existential -and to provide the individual with orientation, purpose, and direction for his life. It further provides guidelines for thought and action under all circumstances (which guidelines can be incorporated into a shared cultural system, though losing thereby much of their meaning through loss of immediacy). Humanity's religion may be expressed in various ways, as through myths, symbols, rituals, or intellectual constructions. As a group of persons with the same basic views come to share and exchange their individual views and religious expressions, traditions evolve which tend to become more or less systematized. However, in order to have true religion, each individual in every culture needs to have some direct experience of the transcendent source of life's meaningfulness; otherwise, he will not obtain the full benefits of integration and orientation which religion can provide.

Whilst the definition has many attractive features, not the least being a sincere and genuine attempt on the part of its author to formulate an inclusive and non-prejudicial definition, it is highly functional and reductive (eg "serves to integrate harmoniously ...", "to provide the individual with orientation, purpose, and direction ...", "further provides guidelines ...", "obtain the full benefits of integration and orientation which religion can provide", and so forth). The inclusion in the formulation of vague words such as "sensitivity" doesn't assist. It presupposes that there is an ultimate "meaning" to life, which may or may not be the case. While it embraces notions of transcendence, it fails to mention immanence, the latter being more applicable to certain religions such as Buddhism. Perhaps the most disturbing feature of all is that the definition fails to make it clear just what religion is. Is it a belief system, an organization, or both?

¹⁵ 662 F2d 1025 (3rd Cir 1981), cert denied, 456 US 908 (1982).

Choper (1982:597-604) asserts that belief in “extra-temporal consequences” (in terms of rewards and punishments) to human action is the defining characteristic of a religion. However, apart from the fact that the notion of anything being “extra-temporal” is arguably unthinkable, there are belief systems that few would doubt are religious which do not posit such a belief.

Collier (1982:998-9) offers what has been described as an “organizationally based test for religion” (Palmer 1993:221). There are 4 basic components in the test: first, the need for some sort of organization with members; second, the organization must impose moral demands on members of the organization; third, the moral demands must be based on insights into the meaning of existence; fourth, membership of the organization entails engaging in certain conduct and/or practices based on beliefs.

Collier’s definition is pretty good. It avoids unacceptable notions of supernaturalism and is non-discriminatory, embracing, for example, both theistic and nontheistic belief systems. The definition also makes it clear that there must be some organization established to give practical expression to the belief system. (This is very important in the context of United States “free exercise” claims, in order to avoid problems that might otherwise arise, and indeed have far too often arisen, where subjective and highly individualistic spirituality - or, in William James’ words, “personal religion” - has been accepted by US courts as a religion for legal purposes.)

However, there are problems with Collier’s definition. For starters, there are belief systems other than religious ones that purport to offer insights into “the meaning of existence” (words that are very vague in any event). With respect, the definition needs tightening. Arguably, the moral demands “imposed” by a religion derive more from the beliefs held about some Power, Presence, Being or Principle to which all else is subordinate or upon which all else is ultimately dependent than from supposed “insights” into the meaning of existence. Further, it needs to be made clear that the various ideas, beliefs and practices include or are otherwise based on doctrine, dogma, teachings or principles that are to be accepted on faith and on authority, including but not limited to the authority of reason, conscience and experience, irrespective of whether or not the doctrine, dogma, teachings or principles are binding on members of the body who may or may not be allowed freedom of interpretation and expression.

Freeman (1983:1553) is of the view that it is impossible to define religion in any meaningful way. Accordingly, he has “rejected efforts to define religion” (Palmer 1993:222). Nevertheless, he favours the use of a comparative approach pursuant to which courts would need to compare the body in question to an analogical “paradigm” of religion (the latter constituted by a list of significant features or indicia supposedly common to all traditional religions) in order “to determine the relative strength of the claim” (Palmer 1993:222). What Freeman offers us is the following composite multifaceted definition:

- 1) a belief in a Supreme Being;
- 2) a belief in a transcendent reality;
- 3) a moral code;
- 4) a world view that provides an account of man's role in the universe and around which an individual organizes his life;
- 5) sacred rituals and holy days;
- 6) worship and prayer;
- 7) a sacred text or scriptures; and
- 8) membership in a social organization that promotes a religious belief system.

If this be the paradigm, then we're in trouble right from the start. Feofanov (1994:382) rightly refers to Freeman's definition as a “veritable hodge-podge”. For starters, the very first element excludes all nontheistic religions. As regards the second element, just what is meant by a “transcendent reality”? (Sadly, the words, at least as used here, all too easily invite a reviewing court to think in terms of notions supernaturalism.) And do all religions have a moral code? There is an even more serious problem in that, as Palmer (1993:222) points out:

Freeman refuses to articulate which combinations are sufficient to constitute religion, leaving to the factfinder the role of measuring a given claim against the factors in the paradigm.

One need not go any further.

Greenawalt (1984), in a manner somewhat similar to Freeman, favours an analogical approach to the question of what constitutes a religion. Greenawalt interpolates such an approach into *Seeger* and *Welsh*:

[T]hough these cases may be viewed as resting on a “dictionary approach” to religion that makes “ultimate concern” or “conscientious feeling” the indispensable feature, they may also be understood as employing an analogical approach for which ultimate concern or conscientious feeling turns out to be the decisive aspect of analogy.

Using a “definition by analogy” approach, one compares the body in question with the

“indisputably religious”. Once again, this is a case of *petitio principii*, or begging the question.

Ingber (1989:287) conceives of religion in terms of a “higher authority” - whatever that means - also stating:

A religion can be nonanthropomorphic, nontheistic, or even have a membership of one as long as the claimed religious obligations are imposed by or under the influence of some sacred force.

There are a number of problems inherent in Ingber’s formulation, not to mention the idea that subjective or individualistic spirituality (“personal religion”) ought not to be seen to be a religion for legal purposes. The vague words “some sacred force” do not help. Feofanov (1994:382) correctly notes that this definition does not make it clear what “sacred” is.

Gey (1990:167) sees religion as

the subordination of the individual will to the unchallengeable dictates of an extra-human, transcendent force or reality.

But what is meant by “extra-human” and, once again, “transcendent”? Despite the best of intentions, the definition is incapable of leading to a certain result.

Austin (1991:42) opines that faith in a “greater power than man” is the distinguishing characteristic of a religion. While, in theory, such a definition is capable of application to nontheistic religions as well as theistic religions, the definition tends to favour theistic religions and, in any event, will almost assuredly end up embracing organizations such as Alcoholics Anonymous and other 12-step fellowships with their suggested invocation of a “higher power”.

Agneshwar (1992) proposes a definition of religion in which he invokes notions of supernaturalism and as the means by which a religious belief system may be distinguished from other kinds of belief systems (in particular, secular ones). His proposed definition is as follows (1992:297):

Religion is a system of beliefs, based upon supernatural assumptions, that posits the existence of apparent evil, suffering or ignorance in the world and announces a means of salvation or redemption from those conditions.

This definition may well appeal to certain former judges of the High Court of Australia, but its invocation of the notion of “supernatural assumptions” renders it unacceptable for reasons previously given. The use of the word “apparent” raises problems. Is the word being used in the sense that “evil, etc” only appears to be such but is really illusory (as in Christian Science), or is the word being used in the sense of “evil, etc” being manifestly apparent in the sense of being readily discernible to all? Finally, the notions of “salvation or redemption” are too Christian, and need reworking to embrace Eastern belief systems such as Buddhism and Hinduism.

Palmer (1993:223) offers us this highly conservative formulation of the type of beliefs which ought to be the only ones which qualify as “religious” for legal purposes:

Beliefs arising from recognition of a supernatural component to life. This supernatural component may be represented by belief in God, belief in an afterlife, or belief in the ability to reach a higher existence beyond the world as we understand it. These beliefs must provide an explanation for existence; must impose moral obligations; must encourage or demand specific behaviors or practices; and must be shared by a community of believers.

Palmer at least stresses the need for moral obligations and specific behaviors or practices as well as the existence of a “community of believers”. However, once again, there is the problem of supernaturalism. Even good Bible-believing Christians like N T Wright (1992) would have problems with this formulation, linking, as it does, the purported existence of God and/or an afterlife to notions of supernaturalism. All of the belief systems identified in this thesis as ones that are generally regarded as being religious belief systems notwithstanding they do not involve any notion of the supernatural in the sense in which that word is ordinarily understood would fail Palmer’s test. And do all religions provide “an explanation [sic] for existence”? As Krishnamurti would often say, the explanation is not that which is explained. Many, if not most, religions, interpolate a reason or purpose for life, but still accept that, ultimately, life is a mystery. There must also remain doubts as to whether Palmer’s formulation, “God ... an afterlife, or ... the ability to reach a higher existence beyond the world as we understand it”, adequately embraces all religions. Even the last part of the formulation (viz “the ability to reach a higher existence beyond the world as we understand it”) arguably fails to properly describe the supposedly natural state of *Nibbāna* (Nirvana) in Buddhism in which there is said to be the extinction of all suffering as well as the elimination of personal egoism. Few, if any, Buddhists would describe it as being a “higher existence” as such.

The highly rationalistic and skeptical Feofanov (1994:385) offers the following as a definition of religion:

Religion is a manifestly non-rational (ie faith-based) belief concerning the alleged nature of the universe, sincerely held.

As Feofanov himself points out, such a definition (Feofanov uses the word “test”) has a number of advantages:

This test has a number of advantages over more traditional ones. It is unitary, substantive, intelligible, and does not rely on the presence of organizational structures. ... Most importantly, it focuses on non-rationality as a distinguishing characteristic of religion.

True, Feofanov’s test (deliberately) ignores organizational structure and the like, but it also ignores altogether the practices and observance of religion and worship, as well as teaching and propagation of religion, all of which must surely have some importance in the overall scheme of things. Further, is faith-based belief necessarily religious in nature, even if it concerns the “alleged nature of the universe”? And what do those lastmentioned words mean – “alleged nature of the universe”? And what is meant by “manifestly non-rational”. Is faith always “non-rational”? Not everyone would agree that it is. For a start, there are those who assert, not unconvincingly, that faith underlies even rationality itself. We have faith in our senses as well as in our memories and the power of reason. Faith and rationality are not necessarily diametrically opposed nor mutually inconsistent.

Also, the definition, if adopted, would deem all mythologies and cosmologies, if sincerely held (even by only one person), to be religions. Further, by deliberately not focusing on the presence of an organizational structure, subjective religion, not supported by any discernible group or organizational structure is then eligible for the privileges accorded to religions. The author finds that totally unacceptable on public policy grounds, not to mention common sense.

Feofanov also asserts that self-characterization by a body that it uses “rational means of ascertaining and describing reality” (1994:403) precludes the making of a finding that the belief is otherwise. With all due respect, Feofanov has not only allowed his own ultra-rationalistic philosophical stance to impact not only upon the definitional task, he has also strayed from the path of rationality himself. In short, whilst his definition or test should not be discarded altogether, it must be treated with extreme caution in light of its polemicism.

None of the abovementioned suggested definitions or formulations of religion from the journals are acceptable for the reasons given. Some are more acceptable than others. Some are totally unacceptable because they would disenfranchise beliefs systems that for centuries have been almost universally accepted as being religions. Others are unacceptable because, with respect, they simply show an ignorance of the nature and content of religious belief systems.

In this thesis, the author has looked primarily to authorities from the United States of America for assistance, mainly because the issue of religion appears to have been before the courts more often than in most other places, and, largely as a result, the definition of religion has also been the subject of attention by numerous legal academics, some of the more prominent ones having been referred to above.

There is one other country where, in recent times, the issue of religion has been the subject of considerable attention in various forums, and that country is the People's Republic of China. Article 36¹⁶ of the Constitution of the People's Republic of China "guarantees" freedom of religious belief (as has every Chinese Constitution since 1912), but, as is often the case, things are not as simple as all that. First, as Huanzhong (2003:Online) points out, there is "no real heritage or tradition of a constitution in China". Secondly, the Constitution, to date, has received little judicial scrutiny. Huanzhong refers to this as "the lack of judicialization" of the Constitution, a problem that is further exacerbated by the fact that individual Chinese are unable to sue and plead the Constitution for the purpose of protecting religious and other civil rights. Also, the courts are unable to base their decisions upon the Constitution. Thirdly, only 5 belief systems are officially regarded as being "religions" for the purposes of the Constitution, the belief systems being Buddhism, Taoism, Islam, Protestantism and Roman Catholicism. These are the only religions deemed "worthy" of official government recognition.

In a statement made to the United States Congressional-Executive Commission in May 2005, Ownby (2005:Online) noted that there was no Chinese word for "religion" until the

¹⁶ Article 36 of the Constitution of the People's Republic of China (1982:Online) provides as follows:-
Article 36. Religious freedom

Citizens of the People's Republic of China enjoy freedom of religious belief. No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state. Religious bodies and religious affairs are not subject to any foreign domination.

late 1800s “when it was imported from the West (via Japanese translations)” before going on to say:

With one stroke of the pen, the modern Chinese state thus relegated ancestor worship, local cults, pietistic sects - in short, the religious activities of the vast majority of the Chinese people - to the status of “feudal superstitions” to be at best tolerated and at worst violently suppressed. It would never have occurred to a victim of this discrimination to demand that his “freedom of religion” be respected, because “religion” had been defined in such a way as to exclude his spiritual practice. Even now, if you approach worshipers at a popular shrine in China and ask them if they are happy to be able to practice their “religion,” they will stare at you blankly, because the word itself continues to have no meaning other than that imposed by the state.

In China, any belief system *other than the 5 mentioned above* is deemed a “cult”, with the result that its practices and activities are susceptible to being outlawed, as is the case with the crackdown on Falun Dafa (also known as Falun Gong). Ownby (2005:Online) writes:

As part of an effort to build a modern state, Chinese reformers sought to define what a “modern” religion might be, and chose to limit the designation “religion” to world-historical faiths having well-developed institutions, clergy, and textual traditions.

Be that as it may, what does, in fact, emerge very strongly from a study of Oriental religion and Eastern cultures is that many belief systems and practices that Westerners would deem to be religious are not so regarded in Eastern Cultures. This point emerges strongly from this portion of material located on a Falun Dafa website (See Falun Dafa Information Centre 2005:Online):

Falun Gong is not a religion in the sense that the term is understood in Eastern cultures. It is a “cultivation practice” with emphasis on both elevating the mind and enhancing physical health. The concept of “cultivation” is not familiar to many Westerners, though in China, there is a strong sense of the concept of cultivation. The term in Chinese is xiu lian. Xiu means to “repair” or “fix”. Lian means to “smelt” or “refine”. The Chinese character for “lian” looks similar to and has the same pronunciation as the term “to practice [exercises]”. This is only a direct translation of the characters that make up the term.

...

Religions, as understood in Eastern cultures, are also considered forms of cultivation. There is the religion of Buddhism, which has temples, monks, etc, and there are several different sects of Buddhism. The cultivation way of the Buddha school does not end there though, as there are many practices from this school that are not considered part of the Buddhist religion. Often these practices are comprised of simply a teacher and students, but there are no religious formalities, places of worship, etc. These are also considered cultivation ways. The same is true for the Dao school. There is the religion of Daoism, but there are also many Daoist practices that are not considered to be religions in the Eastern way of thinking.

So, in China, it is not considered necessary to be religious in order to achieve the goal of raising one's spiritual level, but one does need a cultivation practice. Here in the West, since we don't really have the concept of cultivation, anything spiritual or that has to do with transcending the human world has traditionally fallen under the concept of religion.

So, religion, in an Eastern sense, ordinarily involves "cultivation practices", taking the form of various spiritual disciplines, including but not limited to special exercises and meditation, which based on certain spiritual principles such as truth (or truthfulness), tolerance (or forbearance) and compassion (or benevolence), and which are designed to refine the body and mind. However, "cultivation practices" can occur quite independently of religion. In addition, religion may embrace ideas, beliefs, practices and activities which go beyond "cultivation practices" or serve separate or additional purposes to ones ordinarily served by such practices.

A number of important points emerge from a study of Eastern religion:

1. The concept of religion in Eastern cultures is much more fluid than in Western cultures.
2. There is no clear demarcation between what is "religious" and what is not. Interestingly, the same phenomenon appears to be emerging more and more in the West with respect to the religion/spirituality dichotomy.
3. There is no rigid separation between religion/spirituality and the rest of life's activities. They are much more intertwined that is ordinarily the case in Western cultures.
4. A strong element of functionalism seems to be present, the emphasis being surprisingly practical and not other-worldly, namely, the cultivation of a healthy mind and body within the overall framework of a fairly freeform spirituality.

I have arrived at the view that any definition of religion needs to be wide enough to embrace spirituality in the form of cultivation practices, at least where it is practised by a group and its members and adherents, and provided certain other key distinguishing characteristics of religion are present. What, then, are the distinguishing characteristics of *religious-ness*? What are the things that permit appreciation or recognition of a thing being "religious" or a "religion"? Those things, taken collectively, are as follows:

- the existence of an ***amalgam (but not necessarily an organized or coherent system)*** of faith-based ideas, beliefs, practices and activities directed towards a ***celebration*** of that which is perceived to be not only ultimate but also divine, holy or sacred, with, ordinarily, attendant notions of transcendence and immanence and a sense of the numinous
- the existence of 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 presence of ***faith (defined to mean “belief and trust”)*** in a ***Power, Presence, Being or Principle***, whether theistic or otherwise, that is perceived by members or adherents of the body to be not only real but also permanent, non-temporal, everlasting or all-pervasive and to which all else is subordinate or upon which all else is ultimately dependent
- the existence of an organized set of doctrine, dogma, teachings or principles - ***to be accepted on faith and on authority*** - relating to theogenesis (ie matters pertaining to the Power, Presence, Being or Principle), cosmogenesis (ie a world view or general picture of the world), anthropogenesis (ie matters pertaining to the origin, place and development of the individual) and psychogenesis (ie matters pertaining to the powers resident in the human soul, psyche or person, and the destiny of the individual)
- the existence of a code of conduct in terms of expected ethical standards and behaviour and moral obligations
- the presence of various experientially based practices, activities and techniques which are perceived by members or adherents of the body to be of ***spiritual or transformative power*** (whether inherently so or in a symbolic or allegorical sense) and of benefit to such persons, others or the world in general.

The italicized and bolded words and phrases are my own interpolations and, to the best of my knowledge and belief, have not been incorporated previously, at least in the manner proposed, into definitions or proposed definitions of religion for legal purposes. The reasons for their inclusion in the definitional formulation set out below are set forth (again in italicized and bolded words) in the various explanatory notes that are set out immediately after the definitional formulation.

Here, then, is my suggested definition of “religion” for legal purposes.

DEFINITION OF RELIGION

“**Religion**” means an amalgam (but not necessarily an organized or coherent system)^{N1} of faith-based ideas, beliefs, practices and activities^{N2} which:

- a. include doctrine, dogma, teachings or principles^{N3} containing a world view or general picture of the world^{N4} and otherwise pertaining to that which is perceived to be of ultimate value or importance^{N5} and worthy of reverence, worship and adoration,^{N6} whether or not involving a belief in the supernatural (that is, a belief that there is more than one order or level of reality),^{N7}
- b. include a set of sanctioned ideals and values in terms of expected ethical standards of behaviour and moral obligations,^{N8} and
- c. are supported by a body of persons (consisting of one or more faith-based communities)^{N9} established to give practical expression,^{N10} at times communally and otherwise on an individual basis,^{N11} to those persons’ respective understanding^{N12} of those ideas, beliefs, practices and activities,

being ideas, beliefs, practices and activities which meet the description contained in the Schedule set out below.

Schedule

1. The ideas, beliefs, practices and activities must be centrally and manifestly based^{N13} upon faith (that is, belief and trust)^{N14} in a Power, Presence, Being or Principle,^{N15} whether theistic or otherwise,^{N16} that is perceived^{N17} by members or adherents^{N18} of the body to be not only real but also permanent, non-temporal, everlasting, self-existent or all-pervasive^{N19} and to which all else is subordinate or upon which all else is ultimately dependent,^{N20} whether or not the ideas, beliefs, practices and activities are capable of proof or disproof, or are, or are otherwise perceived by members or adherents to be, supported by reason.^{N21}
2. The ideas, beliefs, practices and activities must be directed^{N22} towards a celebration of that which is perceived by members or adherents of the body to be not only ultimate but also divine, holy or of sacred value (as opposed to that which is considered to be secular or profane)^{N23} in the sense of being awe-inspiring and worthy of reverence, worship or adoration,^{N24} such ideas, beliefs, practices and activities involving a concomitant sense of the numinous^{N25} or concomitant notions or ideals of transcendence or immanence (or both),^{N26} whether in a theistic sense or otherwise.^{N27}
3. The ideas, beliefs, practices and activities must include doctrine, dogma, teachings or principles^{N28} that:
 - a. are to be accepted on faith and on authority, including but not limited to the authority of reason, conscience and experience, irrespective of whether or not the doctrine, dogma, teachings or principles are binding on members or adherents of the body who may or may not be allowed freedom of interpretation and expression,^{N29}
 - b. pertain to the status, role and importance of the Power, Presence, Being or Principle referred to in Paragraph 1, and
 - c. contain a world view or general picture of the world,^{N30} whether theological or cosmological,^{N31} and whether or not expressed in the form of a creed, an affirmation or a statement of principles,^{N32} which is perceived by members or adherents of the body to be a true description of reality^{N33} and which describes or otherwise seeks to delineate, often by the use of myth, legend, fable, allegory, symbol, image, narrative and story^{N34} (whether or not so perceived by members or adherents of the body)^{N35} contained in writings that are considered to be divinely inspired, sacred or otherwise of supreme or considerable importance,^{N36} the origin, place, growth and development of the individual, the powers resident in the human soul, psyche or person, and the destiny of the individual, the latter often being expressed in salvific terms.^{N37}
4. The ideas, beliefs, practices and activities must include a set of sanctioned ideals and values (usually involving an explicit or implicit code of conduct, whether in the form of general principles, guidelines or prescriptive rules) in terms of expected ethical standards of behaviour and moral obligations.^{N38}

5. The ideas, beliefs, practices and activities must include various experientially based forms, ceremonies, customs, usages and practices which:
 - a. ordinarily involve such things as liturgy, litanies, ritual, prayer, meditation, cultivation practices or other spiritual exercises or techniques as well as various ordinances or observances including but not limited to the dispensation of sacraments and the celebration of rites of passage or renewal),^{N39}
 - b. may be structured or unstructured,^{N40}
 - c. are perceived by members or adherents of the body to be of spiritual or transformative power (whether inherently so or in a symbolic or allegorical sense) and of benefit (whether spiritually, mentally or physically) to such persons, others or the world in general,^{N41} and
 - d. often take place on a regular basis in the context of services or meetings conducted in buildings or places^{N42} owned or otherwise occupied and used by the body for the purposes of public worship^{N43} or otherwise giving practical expression to their faith (including but not limited to making contact with or otherwise causing to be made manifest the Power, Presence, Being or Principle)^{N44} as well as for other associated purposes including but not limited to teaching, instruction and propagation of the faith.^{N45}

6. The ideas, beliefs, practices and activities must manifest in the form of an identifiable system of interpersonal relationships:
 - a. by means of which members and adherents of the body are bound spiritually, socially, culturally or otherwise ordinarily within the framework of an overall organizational structure,^{N46} with a resultant sense of belonging to the body itself or to something otherwise larger than themselves,^{N47} and
 - b. which is recognizable to persons outside the body by reason of certain external indicia such as places of worship, symbols, clergy, distinctive clothing, festivals, and distinctive customs and practices.^{N48}

7. The ideas, beliefs, practices and activities must not include ideas, beliefs, practices and activities that constitute a sham religion^{N49} or otherwise involve what are essentially political, sociological, philosophical or economic considerations or views or a merely personal code of morality or set of ethical standards in no way related to or otherwise based upon faith in a Power, Presence, Being or Principle to which all else is subordinate or upon which all else is ultimately dependent.^{N50}

Associated Interpretative Provisions

For the purposes of the definition of “religion” as well as the Schedule:

- a. the question of whether a particular system of ideas, beliefs, practices and activities is a religion is to be decided using an objective approach without completely disregarding the subjective perceptions of members or adherents of the body in question^{N51} to the extent that the presence of such perceptions is otherwise specifically required by the definition and its presence permits or assists in the appreciation or recognition of the particular system of ideas, beliefs, practices and activities being religious in the sense otherwise described in the definition;^{N52}
- b. the absence of any one or more of the matters that are declared by the definition to be often, ordinarily or usually present where there is a religion are to be weighed in the balance along with all other relevant matters for consideration in deciding whether a particular system of ideas, beliefs, practices and activities is a religion;^{N53}
- c. self-identification by a body of persons that its particular system of ideas, beliefs, practices and activities is or is not a religion is not necessarily irrelevant to the question of whether or not that system of ideas, beliefs, practices and activities is a religion but is nevertheless not determinative of the question,^{N54}
- d. a system of ideas, beliefs, practices and activities is a sham religion, and thus not a religion for the purposes of the definition, if, objectively assessed, the sole or dominant purpose of the system or the body of persons ostensibly established to give practical expression to the system is either to mock an established religion or to achieve some extraneous purpose not traditionally associated with religion;^{N55}
- e. the truth or correctness of the whole or any part of a particular system of ideas, beliefs and practices is irrelevant in determining whether the system is a religion or a sham religion.^{N56}

Notes

[These notes are explanatory notes and do not form part of the definition or its associated provisions set out above.]

- N1 ***At the very least, there needs to be an “amalgam” - my interpolation - of faith-based ideas, beliefs, practices and activities. Durkheim would require that the system be “unified”, but I think that’s expecting too much of any given religion. The words “but not necessarily an organized or coherent system” have been inserted for more-or-less the same reason. Belief systems evolve slowly over time, and are often incoherent. Some are even quite disorganized (eg Taoism).***
- N2 The words “ideas, beliefs, practices and activities” are intended to be wide in their application. An “idea”, when “accepted”, becomes a belief. The difference between a “practice” and an “activity” is somewhat elusive, but the word “practice” implies habitual or customary performance. The word “activity” does not necessarily carry with it that implication. The qualifying words “faith-based”, and what is meant by the word “faith”, are amplified and explained in the Schedule. See N4 and N9.
- N3 A religion requires that there be “doctrine, dogma, teachings or principles”. Not all religions have “doctrine” and “dogma”, as such, but all appear to have “teachings” or “principles” of some kind. One would need to have regard to the degree of “comprehensiveness” of the doctrine, dogma, teachings or principles (cf Judge Adams’ second indicia in *Malnak*).
- N4 All religions appear to contain some sort of theogenesis (or nontheistic equivalent formulation) as well as offer some sort of world view or general picture of the world. As regards the latter, so do many philosophies and other belief systems. The definition goes on to exclude philosophies as well as those other types of belief systems.
- N5 The ideas, beliefs, practices and activities, and the doctrine, dogma, teachings or principles pertaining thereto (see N28), must relate to that which is perceived to be of ultimate value or importance (cf Paul Tillich) and worthy of reverence, worship and adoration: see also N24.
- N6 The words have been carefully chosen to embrace different belief systems, especially those grounded in religious naturalism. The word “worship” on its own is considered to be too limiting.

- N7 Despite what was said by the High Court of Australia in the *Scientology* case belief in the supernatural is not essential for there to be a religion. To remove doubt, the definition explains what is meant by the word “supernatural”, viz, a belief that there are higher and lower levels of reality. Such an explanation is very Aristolelian/Andersonian and it avoids the need to refer to miracles or the suspension of natural laws, and so forth. It is submitted that this concept of “higher and lower levels of reality” is more helpful than what was offered by the High Court of Australia in the *Scientology* case (viz a belief that reality extends beyond that which is capable of perception by the senses). The latter is a definition of parapsychology.
- N8 A religion is more than a belief system and an organization. There must also be a code of conduct, express or implied, as to how persons are to live their lives, for their own sake and for the betterment of others. See also N38.
- N9 A religion is more than a belief system. It requires some sort of “body of persons” consisting of one or more “faith-based communities”. The group need not be highly organized structurally in the sense of a body corporate or some other similar body. However, without some sort of body of persons, there is only subjective or individualistic spirituality (or, in William James’ words, “personal religion”), which, on public policy grounds, ought not to be seen to be a religion for legal purposes. The expression “faith-based community” is increasingly being used to refer to religious denominations and groups of all kinds.
- N10 The words “practical expression” are intended to catch not just communal services but also other activities as well. Even religions in which public worship places a very major part also ordinarily engage in other types of activities (eg religious instruction, social activities, and so forth).
- N11 Members and adherents of the group give practical expression to their belief system sometimes communally and sometimes in, for example, the privacy of their homes. It would be misleading to ignore the latter.
- N12 Members and adherents of the group may differ among themselves as to the meaning of the various ideas, beliefs, practices and activities that go to make up their religion.
- N13-21 This formulation is intended to refer to a religion’s “theogenesis” (whether expressed in theistic terms or otherwise).

- N13 The various ideas, beliefs, practices and activities that go to make up their religion must have a focus. They must be centrally based on faith in something perceived as “ultimate”. Most importantly, they must be “manifestly” based upon faith. (“Manifest” means discernible to the eye, or objectively evident and obvious: cf *Yadle Investments Pty Ltd v Roads & Traffic Authority (NSW)*.¹⁷)
- N14 ***Religion involves faith (defined to mean “belief and trust”). Faith involves notions of belief (intellectual acceptance of certain ideas) and trust (referring to the level of trust one has in one’s beliefs), with attendant notions of surrender, letting go, self-abandonment, acceptance, non-resistance, standing firm and holding fast.***
- N15 ***The faith required must be placed in a “Power, Presence, Being or Principle”: cf “supernatural Being, Thing or Principle” in the Scientology case. I have substituted the words “Power” and “Presence” for the word “Thing”, as I think they are more helpful. These words are intended to ensure that nontheistic faiths are included as well as metaphysical religions (eg Christian Science and New Thought) and naturalistic religions where, if the notion of God is present at all, it is conceived in non-anthropomorphic and impersonal terms.***
- N16 This is to make it perfectly clear that religion may be nontheistic.
- N17 The emphasis here is on perception, not objective reality. It is not necessary that the “thing” believed in actually exist.
- N18 The use of the word “adherents” throughout the formulation recognizes that not all “followers” of a particular religion are actual members of the particular religious body.
- N19 The words “permanent, non-temporal, everlasting, self-existent or all-pervasive” are intended to be wide so as to embrace different thoughtforms and descriptions as to what is perceived to be “ultimate”. Together with the words that follow (from *Seeger*, see N20), there are the notions of uniqueness, primacy, pervasiveness referred to by Crosby (2002), although described slightly differently.
- N20 This formulation is imported from *Seeger*. It is considered helpful because it makes it clear that everything in the belief system is subordinate to or otherwise

¹⁷ (1989) 72 LGRA 409 at 413 per Stein J.

- ultimately dependent upon the power, presence, being or principle believed in and considered to be of central relevance and overriding importance.
- N21 It is considered irrelevant to the issue of whether a particular belief system is a religion whether or not the ideas and beliefs are rational or capable of proof or disproof. As Douglas J pointed out in *Ballard* religious doctrines and beliefs are not to be put to the proof. See also N56.
- N22-27 This formulation makes it clear that religion has to do with, among other things, things that are perceived to be divine, holy or sacred.
- N22 ***The ideas, beliefs, practices and activities need to be directed towards a celebration - my interpolation - of that which is perceived to be "ultimate". Everything is secondary to that. The notion of celebration - my interpolation - which involves such things as praise, extolling the virtues, solemnity, commemoration by means of rites, ceremonies and observances, is crucial and its absence will ordinarily be determinative of the issue of whether or not a particular belief-system is a religion.***
- N23 The words "divine", "holy" and "sacred" are used so as to embrace not only different language and thoughtforms but also different belief systems, both theistic and nontheistic. As Huxley (1964:222) has pointed out the word "divine" did not originally imply the existence of gods. Whatever words are used, the "element of the sacred" (Eliade) is crucial to the concept of religion and religious experience.
- N24 See N6.
- N25 As Rudolf Otto has pointed out, a "sense of the numinous" seems to be at the heart of religion and spirituality. Whilst the concept of the "numinous" is somewhat nebulous and esoteric, and is expressed in many different ways in different belief systems, it still seems to have strong indicative value.
- N26 Notions or ideals of transcendence or immanence (or both) also seem to be at the heart of all religion, even though they may take various forms as commentators such as religious naturalist Crosby (2003:Online) have pointed out.
- N27 As Crosby has pointed out, even notions of transcendence are capable of being nontheistic in nature.

- N28-37 This formulation is intended to refer to a religion's "theogenesis" as well as "cosmogogenesis" (irrespective of whether the religion is theological or cosmological in nature).
- N29 ***The words "to be accepted on faith and on authority ..." are considered crucial to the definition. There are many systems of belief, and even systems of knowledge (eg the natural sciences), in which faith plays a role. The addition of the words "on authority" are considered especially important and ordinarily determinative of the matter in question. The word "authority" ought not to be narrowly construed and confined to, say, the authority of the Pope, the Bible, and so forth. For example, Unitarian Universalists accept and ordinarily rely upon the authority of reason, conscience and experience. The words "whether or not ... binding on members or adherents of the body who may or may not be allowed freedom of interpretation and expression" are intended to embrace religions which allow their members or adherents freedom of interpretation and expression (eg Unitarianism and Liberal Catholicism).***
- N30 See N4.
- N31 The use of the words "theological" and "cosmological" are intended to cover theological religions (eg Judaism, Christianity and Islam) as well as cosmological religions (eg Buddhism and Taoism).
- N32 The words "whether or not expressed in the form of a creed, an affirmation or a statement of principles" are intended to embrace creedal and non-creedal religions.
- N33 Once again, it is not necessary for the world view or general picture of the world to be a true description of reality.
- N34-37 This formulation is intended to refer to a religion's "anthropogenesis" and "psychogenesis".
- N34 As commentators such as Ninian Smart and Joseph Campbell have pointed out, all religions appear to contain myth, legend, fable, allegory, symbol, image, narrative and stories of various kinds that are ordinarily considered to be of central importance.
- N35 The words "whether or not so perceived by members or adherents of the body" have been inserted because it is immaterial (for the purposes of the definition)

- whether, for example, members or adherents of the group regard the stories as true or mythological in nature.
- N36 The writings may or may not be considered to be “divinely inspired” or “sacred”, but they still need to be of “considerable importance”.
- N37 The writings must deal with “the origin, place and development of the individual, the powers resident in the human soul, psyche or person, and the destiny of the individual, the latter often being expressed in salvific terms”. Most, if not all, religions contain notions of salvation, atonement, redemption, surrender, letting go, spiritual evolution, or the like.
- N38 See N8.
- N39-45 This formulation, in conjunction with that referred to in N34-37, is intended to refer to a religion’s “psychogenesis”.
- N39 This is intended to be fairly wide. For example, not all religions are sacramental.
- N40 The forms, ceremonies, customs, usages and practices may or may not be structured. In some religions (eg Roman Catholicism, Orthodox Judaism) a highly structured and liturgical form of worship and religious observance is ordinarily the norm as opposed to other religions (eg the Baptists).
- N41 ***Religion is all about change and transformation, personal and otherwise. I have used the words “spiritual or transformative power” in order to embrace the non-physical and the physical, as well as a combination of the two. (NOTE. As explained elsewhere in this thesis, the word “spiritual” is not synonymous with the word “supernatural”.) In some religions the activities are considered to have enormous inherent transformative (eg the Roman Catholic Mass, with its doctrine of transubstantiation). Other religions (eg the Baptists) would see the same ceremony altogether differently, with the bread and wine being symbols or emblems of Christ’s body and blood.***
- N42 In most religions the practices, activities and techniques described or otherwise referred to in the definition taking place on a fairly regular basis in the context of services or meetings conducted in buildings or places (ordinarily “places of public worship” such as churches, synagogues and mosques). However, this is not always the case, hence the formulation does not actually require it.

- N43 Public worship is expressly referred to, but its presence is not made an essential part of the definition (see N44).
- N44 The words “or otherwise giving practical expression to their faith ...” are intended to catch activities that cannot otherwise be seen to be “public worship”. Even religions in which public worship plays a very major part also ordinarily engage in other types of activities (eg religious instruction, social activities, and so forth).
- N45 For fairly obvious reasons, the list is expressed to be inclusive only.
- N46 For every religion there must be a “group” of some kind consisting of persons who are bound spiritually, socially, culturally or otherwise (ordinarily within the framework of an overall organizational structure. The ideas, beliefs, practices and activities must be “manifest” (ie objectively evident) in the group.
- N47 Religion ordinarily provides a sense of belonging, not only to a group, but to something more intangible, as William James pointed out in his *Varieties*.
- N48 Religious organizations are ordinarily recognizable to persons outside them by reason of the presence of certain external indicia (cf Judge Adams’ third indicia in *Malnak*).
- N49 See N55.
- N50 This formulation comes from *Seeger*. However, the words “in no way related to or otherwise based upon faith in a power, presence, being or principle” have been substituted for the words “in no way related to a Supreme Being” so as to embrace belief systems which do not involve notions of a Supreme Being.
- N51 This is consistent with the overall methodology of this thesis, in that whilst an objectivist approach ordinarily is to be taken the subjective factor in religion is not altogether irrelevant bearing in mind its highly personal and even idiosyncratic subject-matter.
- N52 Subjectivism is used in certain parts of the definition where the perception of some matter by members or adherents of a group is more important than objective reality in terms of its ability to assist in the appreciation or recognition of the particular system of ideas, beliefs, practices and activities being religious.
- N53 The absence of any one or more of the matters that are declared by the definition to be often, ordinarily or usually present where there is a religion are to be weighed in the balance along with all other relevant matters for consideration in deciding whether a particular system of ideas, beliefs,

practices and activities is a religion, the idea being that the greater the number of matters that are declared by the definition to be often, ordinarily or usually present where there is a religion, the greater the likelihood we do not have a religion. This is similar to the approach taken by Wilson and Deane JJ in the *Scientology* case.

- N54 This is consistent with the adoption of what is primarily an objectivist approach. The courts must decide for themselves whether a particular belief system is a religion, taking into account a number of factors, one of which is how the group sees itself.
- N55 Some of this wording comes from *Theriatult v Carlson* but I have added the words “or to achieve some extraneous purpose not traditionally associated with religion” (eg to secure a rating or tax exemption) even though that tends to smack of a functionalist approach which, for the most part, I have tried to avoid.
- N56 Once again, it is considered irrelevant to the issue of whether a particular belief system is a religion whether or not the ideas and beliefs are true and correct. See N21.

The above definition, together with its accompanying material, has been drafted in a fairly legalistic fashion with a view to its being used in legislative instruments or otherwise being invoked in judgments.

The above definition satisfies the “constitutional” principles of preservation of religious freedom and preservation of religious equality.

The definition is intercultural, non-discriminatory and capable of being used univocally in its application to different religions.

The definition, by including, among other things, the need for some sort of theogenesis (even if expressed in nontheistic terms) and cosmogenesis, as well as the *Seeger* formulation, avoids the problems that would almost certainly ensue if an overly wide interpretation of the matter were to be adopted.

The definition expressly excludes sham religions and provides a workable test for determining whether or not a belief system amounts to a sham religion.

The definition is almost entirely substantive in nature, containing little or no functionalism. It is thus not “reductive”. The definition does not seek to provide a “causal explanation” of why human beings, or at least some of them, are “religious”.

Finally, the definition is neutral and non-prejudicial in its content and operation.

In order to test this definition, I have chosen 3 very different belief systems: Taoism (Daoism), Marxism and Freemasonry.

As regards the former - Taoism - one immediately runs into difficulties, as it is generally acknowledged that there is both “religious Taoism” (*Tao-chiao (Daojiao)*) and “philosophical Taoism” (*Tao-chia (Daojia)*). To further complicate matters, Taoism, Buddhism and Confucianism are very much intertwined, and Taoism itself has “borrowed” from every religion it has come into contact with over the centuries. (It has been often said, “Taoism never met a religion it didn’t like.”) Nevertheless, let’s not preempt the final result.

Taoism, which is said to have been founded by the Chinese philosopher Lao-tzu circa 580 BCE, is an amalgam of various ideas, beliefs, practices and activities centred around the themes and principles contained in the *Tao Tê Ching (Dao De Jing)* - the “Book of the Way” - and the *Zhuangzi (Chuang-tzu)*. The ideas, beliefs, practices and activities are quite divergent in nature, embracing such things as meditation, metaphysical speculation (in Taoism the emphasis is very much on “being”, not “doing”), yoga-like breathing exercises, martial arts, occultism in various eclectic forms (eg Chinese alchemy, magic, divination, astrology, talismanism, incantations and spiritism) and many other esoteric things as well. A belief in the supernatural is quite commonly found, there being considered many different types of “supernatural” entities (eg gods, ghosts, devils, ancestral spirits). However, there is a fairly “solid” core of ideas and opinions that can fairly be said to have originated from the philosophizing of Lao-tzu (“Wise Teacher” or “Worshipful Master”), Chuang-tzu and Lieh-tzu.

One finds a “body of persons” - in some places, quite organized (with Taoist monks, priests and sorcerers), in others hardly so at all - established to give practical expression to

the various ideas, beliefs, practices and activities which are centrally and manifestly based upon faith in the following Principle: the need to align oneself spiritually with certain positive cosmic forces said to be inherent in the nature of things, and the efficacy in so doing. Taoists differ among themselves as to the nature of these cosmic forces but there would be little or no disagreement as to their existence and central importance. The faith in “the way of all life” (*Tao (Dao)*) is a “living” one, Taoism itself not being so much of a belief-centred religion as is the case with a religion such as Christianity. Some Taoists also believe in Powers or Beings of a theistic kind – there are even believers who worship God in the image of Lao-tzu - but that is not universal nor does the absence of such belief prove fatal insofar as the application of the definition is concerned, for what one does find in Taoism is “a cosmic faith, a sacred veneration for *Tao*, the primal source” (Maritain 1955:13). Potter (1955:63) writes:

Now *Tao* is hard to translate into English and has been interpreted to mean Way, Word, Reason, Creative principle, and even God. Christian missionaries to China translated the first verse of St John’s Gospel, “In the beginning was the *Tao*, and the *Tao* was with God, and the *Tao* was God.” But the *Tao* is not a personal God: it is rather the cosmic energy, the vital impulse, or the natural producing force in the universe.

Tao has also been translated as Enlightenment, the Absolute, God, Nature, Truth, Ultimate Reality, and the Way. The abovementioned Principle is considered by Taoists to be all-pervasive, if not also everlasting and self-existent. It is the “eternal Way” and the “eternal Name” to which all else – and there is plenty of that in the case of Taoism – is subordinate and upon which all else is ultimately dependent. All of the rituals, exercises and practices are designed and intended to assist the practitioner in aligning himself or herself with the positive cosmic forces said to be inherent in the nature of things and to celebrate the *Tao* in many varied ways, the ultimate goal being union with the *Tao*. (A Taoist priest is called a *tao shi* (“Way master”).)

This cosmic harmony, and eternity of the *Tao*, is of sacred value, inspiring awe and reverence for life and, in some places, rituals of sacrifice and worship. Notions of immanence are widespread. Where there is polytheism, one also finds notions of transcendence. The *Tao*, itself, is a transcendent “entity”.

Although Taoism contains no doctrine or dogma as such, one can still find teachings and principles pertaining to the *Tao*, along with myth, fable, symbols and images of various kinds. The abovementioned writings, which are considered to be of considerable

importance although they are not regarded as being infallible or inerrant, describe the spiritual journeying of the self (with the “goal” of being set free from self) as well as many other perennial spiritual themes such as Being and Not-being, the One and the Many - the *Tao* sometimes being referred to as the principle underlying the One and the Many - and, in particular, the “obtaining the One” (to use Lao-tzu’s expression). In Chapter 39 of the *Tao Tê Ching* Lao-tzu (as cited in Chung-yuan 1977:99) says:

Attaining the One, heaven becomes pure.
 Attaining the One, earth becomes peaceful.
 Attaining the One, god becomes spiritual.
 Attaining the One, the ocean becomes full.
 Attaining the One, ten thousand things came into being.
 Attaining the One, rulers became the models of the world.
 All of them became so through the One.

In relation to what happens after death, the Taoist reverence for life extends to the state of death as well. Beaudreault (2001:Online) writes:

In respect to reverencing life as part of nature, so, too, we must, according to Taoist teachings, respect - not fear - our death. Our dying is but another symbol of the Tao, the way things are. Taoism is rather ambiguous concerning survival of the individual personality after death, but death is seen as our becoming one with the realm of the all-in-all, and in this sense it is a form of re-incarnation. Both life and death are perceived as a "transformation" - and we are but a part of all creation and its ever-changing nature.

Taoism has much to say about “the powers resident in the human soul, psyche or person”. The *Tao Tê Ching*, which, according to legend, was written by Lao-tzu, is in 2 parts, one about the *Tao*, the other about *Tê* [*Teh*]. *Tê* means Virtue, but “virtue in the sense of vitality, virility, or power” (Potter 1955:63). (*Tê* has also been translated as Best Conduct, Character, True Wisdom, Integrity, Reason and several other things.) We are talking here about creative, transformative power that a person can use to have mastery over problems and difficulties and to make “the best use of life by humanity” (Beaudreault 2001:Online). Potter (1955:63) writes:

And since the word King [Ching] means book, the *Tao-Teh King* is simply a book about the power you get by letting nature teach you how to live. Mr Ralph Waldo Trine’s book-title *In Tune with the Infinite* would be a good interpretation of the central theme of the *Tao-Teh King*.

Taoism also contains a set of ethical principles, another essential requirement of our definition. There are many texts in the Taoist canon that present the ethical principles of Taoism, with considerable emphasis being placed upon the commitment of the individual,

and his or her accountability, to the community. As is the case with Buddhism, ethical principles are of paramount importance in the ethico-philosophical system of the *Tao*. Potter (1955:65) notes that Lao-tzu “spoke much as Jesus did”. There are symbols (such as the familiar *Yin Yang* symbol) as well as rituals and exercises of various kinds which are perceived to be efficacious in maintaining and restoring physical and spiritual health and wholeness and (in the belief of some) achieving immortality. In China there are Taoist temples and monasteries, many of which have reopened in more recent years. In the West one can find many Taoist groups and centres, although many of those would not claim to be concerned with Taoism. Indeed, some would even assert that Taoism is neither religion nor philosophy, but is simply a “way of life” inspired by the rhythms of the universe and the cyclical occurrences of nature. Yes, it is that as well, very much so. Perhaps the most accurate description of Taoism is that it is a syncretic religion based on Taoist philosophy, Chinese folk religion and Buddhism that describes the way of union with the *Tao*. Potter (1955:69) writes:

A religion, or philosophy, call it what you will, which emphasizes naturalness and simplicity, which offers the consolations of mysticism to the unfortunate and bereaved, and which exalts the importance of physical and spiritual health and sanity, has much to teach the confused and distressed peoples of the earth today.

Taoism is clearly not a sham religion nor does it involve what are essentially political, sociological, philosophical or economic considerations or views or a merely personal code of morality or set of ethical standards in no way related to or otherwise based upon faith in a power, presence, being or principle to which all else is subordinate or upon which all else is ultimately dependent. In short, applying our definition, Taoism *is* a religion.

Now, what about Marxism? The writings of Karl Marx, as well as those of Friedrich Engels, form the basis of a considerable volume of social and political theory and practice. The influence of Hegel’s idealism is quite evident, except that Marx converted Hegel’s idealistic dialectic into one that was entirely materialistic. Marx ([1873] 1972-3:1:19-20) wrote:

My dialectic method is not only different from the Hegelian, but is its direct opposite. The mystification which dialectic suffers in Hegel’s hands, by no means prevents him from being the first to present its general form of working in a comprehensive and conscious manner. With him it is standing on its head. It must be turned right side up again, if you would discover the rational kernel within the mystical shell.

Engels (as cited in Sewell 2002:Online) described “dialectical materialism” in his *Dialectics of Nature*:

Matter moves in an eternal cycle, completing its trajectory in a period so vast that in comparison with it our earthly year is as nothing; in a cycle in which the period of highest development, namely the period of organic life with its crowning achievement - self-consciousness, is a space just as comparatively minute in the history of life and self-consciousness; in a cycle in which every particular form of the existence of matter - be it the sun or a nebular, a particular animal or animal-species, a chemical combination or decomposition - is equally in transition; in a cycle in which nothing is eternal, except eternally changing, eternally moving matter and the laws of its movement and change. But however often and pitilessly this cycle may be accomplished in time and space, however many countless suns and earths may arise and fall, however long it may be necessary to wait until in some solar system, on some planet appear conditions suitable for organic life, however many countless beings may fall and rise before, out of their midst, develop animals with a thinking brain that find an environment that permits them to live, be it even only for a short period, we are, nevertheless, assured that matter in all its changes remains eternally one and the same, that not one of its attributes may perish, and that that same iron necessity which compels the destruction of the highest early bloom of matter - the thinking spirit - also necessitates its rebirth at some other place, at some other time.

Clearly, this is a Principle, derived from observing the laws of motion, that is perceived by Marxists to be “everlasting” and ‘all-pervasive”.

We find in Marxism a fairly organized system of ideas, beliefs, practices and activities. There are no notions of supernaturalism, but that, in itself, is not determinative as to whether or not Marxism is a religion. What will, I submit, be determinative are the following: the absence of faith-based communities, the absence of faith in the abovementioned principle, the absence of any celebration of the divine, holy or sacred, the absence of any sense of the numinous as well as notions of transcendence and immanence, and the absence of places of worship, clergy, and so on. Also absent are “experientially based practices, activities and techniques ... of spiritual or transformative power”. In short, using Marx’s own words, the emphasis is on the “rational”, not the “mystical”. The inevitable conclusion is that Marxism is *not* a religion.

Finally, what about Freemasonry, which many, particularly its Christian detractors,¹⁸ assert is a religion, even though it does not generally claim to be one¹⁹ and has been held *not* to

¹⁸ See eg Ankerberg & Weldon (1989) and Rongstad ([1977] 1995).

¹⁹ Some very prominent Masonic writers, including Coil (1961:512) and Mackey (1966:II:847), have, however, expressed the view that Freemasonry may rightfully be seen to be a religion or a religious institution.

be one in certain court proceedings.²⁰ At first glance, it would appear that Freemasonry would qualify as a religion under the proposed new definition. Freemasonry does appear to contain ideas, beliefs, practices and activities, that are arguably faith-based, which include, if not doctrine and dogma, then certainly teachings or principles. Also, there is a definite set of sanctioned ideals and values in terms of expected ethical standards of behaviour and moral obligations that are taught in the various degrees. We also have the presence around the world of many individual lodges being bodies of persons established to give practical expression, at times communally and otherwise on an individual basis, to those persons' respective understanding of those ideas, beliefs, practices and activities. Nevertheless, there would appear to be some important things lacking.

First, the teachings and principles of Freemasonry do not appear to contain a world view or general picture of the world. Freemasonry would appear to be what it purports to be - "a peculiar system of morality, veiled in allegory, and illustrated by symbols". The teachings and principles of the Craft relate to expected ethical standards of behaviour and moral obligations. The ceremonies of the organization revolve around various mini-dramas (similar to old-fashioned morality plays) that are designed to highlight certain Masonic ethical principles and codes of conduct. In particular, the teachings and principles of Freemasonry are related to the development of moral character and the relationship of one person with another. Freemasonry may teach "the brotherhood of man under the fatherhood of God", but that falls short of a world view or general picture of the world.

Secondly, the teachings and principles of Freemasonry may pertain to that which is perceived by the organization to be of ultimate value or importance, namely, how to live one's life and relate to others but that great ideal, in itself, can hardly be said to be worthy of reverence, worship and adoration. Even the symbols of Freemasonry, such as the square and compass, are simply working tools in the building trade. They are not sacred objects but are simply related to the development of character and the relationship of one human being with another. Their use in Masonic ceremonies is simply as "vehicles of moral instruction" and in no way directed towards any sort of celebration of that which is perceived to be not only ultimate but also divine, holy or of sacred value.

²⁰ See eg *Scottish Rite Building Company v Lancaster County* 106 Neb 95, 184 NW 574 (1921), *Re Porter* [1925] Ch 746, and *United Grand Lodge of Ancient Free & Accepted Masons of England v Holborn Borough Council* [1957] 1 WLR 1080.

Thirdly, Freemasonry consists, not so much of faith-based communities, but of groupings of persons each member of which is left to believe and trust in a God *of his own understanding*. Freemasonry allows each member to conceive of the “Great Architect of the Universe” in whatever terms are meaningful to him. It urges each member to diligently follow his *own* particular religion. Masonic lodges consist of men of all different religions (including but not limited to both Protestant and Roman Catholic Christians, Jews, Muslims, Hindus and Buddhists) who meet in fellowship and brotherhood. Freemasonry has no sacred literature of its own, the “Volume of the Sacred Law” being the sacred book of each particular member. Peale (nd:Online) writes:

... Freemasonry does not promote any one religious creed. All Masons believe in the Deity without reservation. However, Masonry makes no demands as to how a member thinks of the Great Architect of the Universe. Freemasonry is, for all its members, a supplement to good living which has enhanced the lives of millions who have entered its doors. Though it is not a religion, as such, it supplements faith in God the Creator. It is supporting of morality and virtue.

Freemasonry has no dogma or theology. It offers no sacraments. It teaches that it is important for every man to have a religion of his own choice and to be faithful to it in thought and action. As a result, men of different religions meet in fellowship and brotherhood under the fatherhood of God. I think that a good Mason is made even more faithful to the tenets of his faith by his membership in the Lodge.

Freemasonry is much more than a social organization. Through Masonic teachings, good men practice love and charity. ...

In short, the objects of Freemasonry, which pertain to “brotherly love, relief and truth”, are essentially ethical in nature and “naturalistic” in flavour. Freemasonry would not qualify as a religion under the proposed new definition of religion.

Whilst the proposed new definition of “religion” incorporates several important features of many existing definitions, both judicial and non-judicial, it does so in a distinctively new way with a view to avoiding, so far as is practicable, deficiencies and inadequacies in the existing definitions. The great Australian rationalist and skeptic, politician and former Chief Justice of the High Court, John Latham, was undoubtedly right when he said that it 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”.²¹ Undoubtedly, if he were to pass judgment on what is proposed in this thesis - and he certainly did not believe in an afterlife - he would not find it to his liking. I can also

²¹ *Adelaide Company of Jehovah's Witnesses Incorporated v The Commonwealth* (1943) 67 CLR 116 at 123.

hear the equally skeptical John Anderson, who also did not believe in an afterlife, saying that nothing can be meaningfully defined by reference to the relations it has with other things.²² Nevertheless, I have found that engaging in quixotic tilting at windmills - if that be what it's been - has a certain character about it ... albeit *not* a religious one.

²² See, eg, "Realism and Some of its Critics", in Anderson (1962:42).

BIBLIOGRAPHY

I. BOOKS AND MONOGRAPHS

Abbott, W (gen ed) 1966. *The Documents of Vatican II*. London: Geoffrey Chapman.

Abraham, H J 1977. 3rd ed. *Freedom and the Court*. New York: OUP.

Abraham, H J 1980. *The Judicial Process*. New York: OUP.

Abraham, W J 1982. *Divine Revelation and the Limits of Historical Criticism*. New York: Oxford.

Achtemeier, P J 1985. *Harper's Bible Dictionary*. San Francisco: Harper & Row.

Adams, A M & Emmerich, C J 1990. *A Nation Dedicated to Religious Liberty: The Constitutional Heritage of the Religion Clauses*, with a foreword by Warren E Burger. Philadelphia: University of Pennsylvania Press.

Adams, J & Jefferson, T (ed L J Cappon) 1959. *The Adams-Jefferson Letters*, vols 1-2. Chapel Hill: University of North Carolina Press.

Addinson, W G 1944. *Religious Equality in Modern England*. London: SPCK.

Adler, F 1913. *Life and Destiny*. London: Watts & Co.

Adler, M 1986. *Drawing Down the Moon: Witches, Druids, Goddess-worshippers and Other Pagans in America Today*. Boston: Beacon Press.

Adler, M J 1990. *Truth in Religion: The Plurality of Religions and the Unity of Truth*. New York: Collier Books.

- Alcoholics Anonymous* 1976. 3rd ed. New York: Alcoholics Anonymous World Services.
- Alcoholics Anonymous* 2001. 4th ed. New York: Alcoholics Anonymous World Services.
- Alley, R S 1988. *The Supreme Court on Church and State*. New York: Oxford University Press, USA.
- Alley, R S (ed) 1999. *The Constitution & Religion: Leading Supreme Court Cases on Church and State*. Buffalo NY: Prometheus Books.
- Allport, G W 1950. *The Individual and His Religion: A Psychological Interpretation*. New York: Macmillan.
- Altizer, T & Hamilton, W 1968. *Radical Theology and the Death of God*. London: Pelican.
- Ames, E S 1909. *Psychology of Religious Experience*. Boston.
- Ames, E S 1928. *Religion*. New York.
- Anderson, B W 1966. *Understanding the Old Testament*. 2nd ed. Englewood Cliffs, NJ: Prentice-Hall.
- Anderson, J 1962. *Studies in Empirical Philosophy*. Sydney: Angus & Robertson.
- Anderson, J (ed D Z Phillips) 1980. *Education and Inquiry: John Anderson*. Oxford.
- Anderson, J (ed J Anderson, G Cullum and K Lycos) 1982. *Art & Reality: John Anderson on Literature and Aesthetics*. Sydney: Hale & Iremonger.
- Anderson, J (ed M Weblin) 2003. *A Perilous & Fighting Life: From Communist to Conservative - The Political Writings of Professor John Anderson*. North Melbourne: Pluto Press.

- Anderson, J N D (ed) 1960. *The World's Religions*. London: Inter-Varsity Fellowship.
- Anderson, J N D 1968. *Into the World*. London: Falcon Books.
- Anderson, J N D 1972. *Morality, Law and Grace*. London: Tyndale Press.
- Anderson, N (ed) 1976. *The World's Religions*. Grand Rapids: William B Eerdmans.
- Anderson, N 1980. *God's Law and God's Love: An Essay in Comparative Religion*. London: Collins.
- Anderson, N A 1973. *A Lawyer Among the Theologians*. Grand Rapids, Michigan: William B. Eerdmans Publishing Company.
- Angeles, P A 1980. *The Problem of God: A Short Introduction*. Buffalo, NY: Prometheus Books.
- Angus, S 1933a. *Christianity and Dogma*. Sydney: Angus & Robertson.
- Angus, S 1933b. *Religion in National Life: Address to the University Association of Canberra, 6 October 1933*. Sydney: Angus & Robertson.
- Angus, S 1934a. *Jesus in the Lives of Men*. Sydney: Angus & Robertson.
- Angus, S 1934b. *Truth and Tradition*. Sydney: Angus & Robertson.
- Angus, S 1939. *Essential Christianity*. Sydney: Angus & Robertson.
- Ankerberg, J & Weldon, J 1989. *The Facts on the Masonic Lodge*. Eugene OR: Harvest House Publishers.
- Argyle, M 2000. *Psychology and Religion*. London: Routledge.

- Argyle, M & Beit-Hallahmi, B 1975. *The Social Psychology of Religion*. London: Routledge.
- Armstrong, K 2000. *The Battle for God: Fundamentalism in Judaism, Christianity and Islam*. London: Harpercollins.
- Ashby, Le Roy 1987. *William Jennings Bryan: Champion Of Democracy*. New York: Macmillan.
- Ashmore, L 1977. *The Modesto Messiah: The Sensational Story of Kirby J Hensley, the Famous Mail-Order Minister*. Bakersfield CA: Universal Press.
- Baird, R D (ed) 1975. *Methodological Issues in Religious Studies*. Chico CA: New Horizons Press.
- Baird, R D [1971] 1991. *Category Formation and the History of Religions*, 2nd ed. Berlin and New York: Mouton de Gruyter.
- Baker, A J 1979. *Anderson's Social Philosophy: The Social Thought & Political Life of Professor John Anderson*. Sydney: Angus & Robertson.
- Baldwin, L V (ed) 2002. *The Legacy of Martin Luther King Jr: The Boundaries of Law, Politics, and Religion*. Notre Dame: University of Notre Dame Press.
- Ball, H 1980 *Courts and Politics: The Federal Judicial System*. New Jersey: Prentice Hall.
- Ball, M 1985. *Lying Down Together: Law, Metaphor, and Theology*. Madison: University of Wisconsin.
- Bammel, E & Moule, C F D 1984. *Jesus and the Politics of His Day*. Cambridge: Cambridge U. Press.

- Banton, M (ed) 1966. *Anthropological Approaches to the Study of Religion*. London: Tavistock.
- Barrett, D V 1996. *Sects, 'Cults' and Alternative Religions: A World Survey and Sourcebook*. London: Blandford.
- Barton, M (ed) 1966. *Anthropological Approaches to the Study of Religion*. London: Tavistock.
- Beach, G K (ed) 1998. *The Essential James Luther Adams: Selected Essays and Addresses*. Boston: Skinner House Books.
- Beckford, J A & Gilliat, S 1998. *Religion in Prison: Equal Rites in a Multi-Faith Society*. Cambridge: Cambridge University Press.
- Bell, R 1987. *Biblical Models of Handling Conflicts*. Burlington: Welch.
- Bellah, R N & Hammond, P E 1980. *Varieties of Civil Religion*. New York: Harper & Row.
- Berger, P L 1967. *The Sacred Canopy*. New York: Doubleday.
- Berger, P L 1970. *A Rumor of Angels*. New York: Doubleday.
- Berman, D A 1988. *A History of Atheism in Britain: From Hobbes to Russell*. London: Routledge.
- Berman, H J 1974. *The Interaction of Law and Religion*. New York: Abingdon Press.
- Berman, H J 1983. *Law and Revolution: The Formation of the Western Legal Tradition*. Cambridge: Harvard University Press.
- Berman, H J 1993. *Faith and Order: The Reconciliation of Law and Religion*. Emory University Studies in Law and Religion. Atlanta: Scholars Press.

- Berthold, Jr, F, Carlsten, A W, Penzel, K & Ross, J F (eds) 1962. *Basic Sources of the Judaeo-Christian Tradition*. Englewood Cliffs NJ: Prentice-Hall.
- Beth, L P 1962. *Politics the Constitution and the Supreme Court*. New York: Harper and Row.
- Bhaggavad-Gita, The*, trans by R Prasad, viewed July 5 2005, <<http://eawc.evansville.edu/anthology/gita.htm>>.
- Bianchi, U, Bleeker, C J & Bausani, A (eds) 1972. *Problems and Methods of the History of Religions*. Leiden: E. J. Brill.
- Birch, C 1990. *On Purpose*. Kensington NSW: NSW University Press.
- Blavatsky H P 1950. *H P Blavatsky: Collected Writings*. Wheaton IL: Theosophical Publishing House.
- Bleeker, C J 1963. *The Sacred Bridge: Researches into the Nature and Structure of Religion*. Leiden: E. J. Brill.
- Bloom, H 1992. *The American Religion: The Emergence of the Post-Christian Nation*. New York: Touchstone.
- Bonhoeffer, D 1953. *Letters from Prison*. London: Scm Press.
- Boorstein, S 1998. *That's Funny, You Don't Look Buddhist: On Being a Faithful Jew and Passionate Buddhist*. San Francisco: HarperSanFrancisco.
- Borowitz, E 1991. *Renewing the Covenant: A Theology for Post-Modern Judaism*. Philadelphia: Jewish Publication Society of America.
- Boston, R 1994. *Why the Religious Right is Wrong about Separation of Church and State*. Buffalo NY: Prometheus Books.

- Bouquet, A C 1942. *Comparative Religion*. Penguin Books.
- Bowler, P 1986. *The True Believers: Oddities and Curiosities of Religious Faith*. North Ryde NSW: Methuen Australia.
- Braden, C S 1949. *These Also Believe: A Study of Modern American Cults & Minority Religious Movements*. New York: Macmillan.
- Braden, C S 1963. *Spirits in Rebellion: The Rise and Development of New Thought*. Dallas TX: Southern Methodist University Press.
- Bradney, A 1993. *Religions, Rights And Laws*. Leicester: Leicester University Press.
- Brandon, S F G (ed) 1970. *A Dictionary of Comparative Religion*. London: Weidenfeld & Nicolson.
- Brasch, R 1955. *The Star of David*. Sydney: Angus and Robertson.
- Brasch, R 1995. *A Book of Forgiveness*. Sydney: Angus & Robertson.
- Braun, W & Mccutcheon, R T (eds) 2000. *A Guide to the Study of Religion*. London: Cassell.
- Breward, I 1988. *The Most Godless Place Under Heaven?* Melbourne: Beacon Hill Books.
- Brightman, E S [1940] (1969). *A Philosophy of Religion*. Greenwood Press.
- Broadhurst, A R 1963. *He Speaks the Word of God: A Study of the Sermons of Norman Vincent Peale*. Englewood Cliffs NJ: Prentice-Hall.
- Broderick, R C 1944. *Concise Catholic Dictionary*. Milwaukee WI: The Bruce Publishing Company.

- Buber, M 1958. *I and Thou*. Translated by R G Smith. 2nd ed. New York: Scribner's.
- Buchanan, C 1994. *Cut the Connection: Disestablishment and the Church of England*. London: Darton, Longman and Todd.
- Bulfinch, T [1855] 1962. *The Age of Fable; or Beauties of Mythology*. New York: New American Library.
- Bultmann, R 1953. *Kerygma and Myth*. London: SPCK.
- Burnier, R 1985. *No Other Path to Go*. Adyar: Theosophical Publishing House.
- Bursell, R D H 1996. *Liturgy, Order and the Law*. Oxford: Clarendon Press.
- Burton, B K 2003. *Anatomy of Heresy: An Account of Heresy in Christian Churches, Including Close Scrutiny of the Cases of Prof Samuel Angus and Dr Peter Cameron in the Presbyterian Church of New South Wales*. Books & Writers Network.
- Buzzard, L R (ed) 1982. *Freedom and Faith: The Impact of the Law on Religious Liberty*. Westchester, Illinois: Crossway Books.
- Cady, H E [1896] 1925. *Lessons in Truth*. Kansas City MO: Unity School of Christianity.
- Cairns, E 1997. *Charities: Law and Practice*. London: Sweet and Maxwell.
- Cameron, P 1994. *Heretic*. Sydney: Doubleday.
- Campbell, J [1949] 1990. *The Hero with a Thousand Faces*. Princeton NJ: Princeton University Press.
- Campbell, J 1973. *Myths to Live By*. New York: Viking.

- Campbell, J 1986. *The Inner Reaches of Outer Space: Metaphor as Myth and as Religion*. New York: HarperCollins.
- Campbell, J 1987. *The Masks of God: Primitive Mythology*. New York: Penguin.
- Campbell, J 1988. *The Power of Myth*. New York: Doubleday.
- Carmichael, C M (ed) 1993. *Essays on law and religion: The Berkeley and Oxford Symposia in Honour of David Daube*. Berkeley: Robbins Collection.
- Carroll, J 2004. *The Wreck of Western Culture: Humanism Revisited*. Carlton North VIC: Scribe Publications.
- Carter, S L 1993. *The Culture of Disbelief*. New York: Basic Books.
- Carter, S L 2000. *God's Name in Vain: The Wrongs and Rights of Religion in Politics*. New York: Basic Books.
- Cave, J D 1992 *Mircea Eliade's Vision for a New Humanism*. Oxford: OUP.
- Chetwynd, T 1986. *A Dictionary of Sacred Myth*. London: Unwin.
- Chi, H H, 1989. *What is Buddhism? Theory and Practice*, trans by P H Wei. Taipei: The Corporate Body of the Buddha Educational Foundation.
- Choper, J H 1995. *Securing Religious Liberty: Principles for Judicial Interpretation of the Religion Clauses*. Chicago and London: University of Chicago Press.
- Christie-Murray, D 1976. *A History of Heresy*. Oxford: Oxford University Press.
- Christopher, J 1992. *SOS Sobriety: The Proven Alternative to 12-Step Programs*. Buffalo NY: Prometheus Books.

- Chung, D (ed K Oh) 2001. *Syncretism: The Religious Context of Christian Beginnings in Korea*. Albany NY: State University of New York Press.
- Chung-yuan, C [1975] 1977. *Tao: A New Way of Thinking*. New York: Perennial Library/Harper & Row.
- Church, F 2002. *The American Creed: A Spiritual and Patriotic Primer*. New York: St Martin's Press.
- Church, F (ed) 2004. *The Separation of Church and State: Writings on a Fundamental Freedom by America's Founders*. Boston: Beacon Press.
- Chylko, G H 1999. *Twelve Steps to a Deeper Faith Life*. Liguori MO: Liguori Publications.
- Clapham, A 1993. *Human Rights in the Private Sphere*. Oxford: Clarendon Press.
- Clarke, P (ed) 1990. *The World's Religions: Islam*. London: Routledge.
- Cleveland, M & G---, A 1992. *The Alternative 12 Steps: A Secular Guide to Recovery*. Deerfield Beach FL: Health Communications.
- Cohen, A A 1962. *The Natural and the Supernatural Jew: An Historical and Theological Introduction*. New York: Pantheon Books.
- Cohen, A A 1970. *The Myth of the Judeo-Christian Tradition*. New York: Harper & Row.
- Cohen, J J 1958. *The Case for Religious Naturalism: A Philosophy for the Modern Jew*. New York: Reconstructionist Press.
- Coil, H W 1961. *Coil's Masonic Encyclopedia*. New York: Macoy Publishing and Masonic Supply.
- Cooper, D A 1994. *Entering the Sacred Mountain: Exploring the Mystical Practices of Judaism, Buddhism, and Sufism*. New York: Bell Tower.

- Cooper, D A 1997. *God is a Verb: Kabbalah and the Practice of Mystical Judaism*. New York: Riverhead Books.
- Coriden, J A 1990. *An Introduction to Canon Law*. London: Geoffrey Chapman.
- Corsiatto, J P (with C Corsiatto) 2004. *Emmet Fox: His Life Story*. Farmingdale NY: thegoldenkeys.
- Cortner, R C 1981. *The Supreme Court and the Second Bill of Rights*. Madison: University of Wisconsin Press.
- Coser, L A 1977. *Masters of Sociological Thought: Ideas in Historical and Social Context*. 2nd ed. Fort Worth: Harcourt Brace Jovanovich.
- Cousineau, P (ed) 1990. *The Hero's Journey: Joseph Campbell on His Life and Work*. San Francisco: Harper and Row.
- Cox, H 1974. *The Seduction of the Spirit: The Use and Misuse of People's Religion..*
- Crosby, D A 2002. *A Religion of Nature*. Albany NY: State University of New York Press.
- Cupitt, D 1997. *After God: The Future of Religion*. New York: Basic Books.
- Cupitt, D 2001. *Reforming Christianity*. Santa Rosa CA: Polebridge Press.
- Curtis, M K 1986. *No State Shall Abridge: The Fourteenth Amendment and the Bill of Rights*. Durham: Duke University Press.
- Dahlitz, R [nd]. *Secular Who's Who*. Melbourne: Desktop Design and Copy Centre, University of Melbourne.
- Darrow, C 1932. *The Story of My Life*. New York: Grosset and Dunlap.

- Davie, G 1994. *Religion in Britain Since 1945: Believing Without Belonging*. Oxford: Blackwell.
- Davis, K 1949. *Human Society*. New York: Macmillan.
- Dawson, L L 1998. *Cults: The Sociology of New Religious Movements*. Oxford: Oxford University Press.
- De Camp, L S 1968. *The Great Monkey Trial*. Garden City NY: Doubleday.
- De Purucker, G 1996. *Occult Glossary*, 2nd ed. Wheaton IL: Theosophical Publishing House.
- Demerath, N J & Hammond, P E 1969. *Religion in Social Context*. New York: Random House.
- Denning, Lord [nd]. *The Influence of Religion on Law*. Newcastle Upon Tyne: Andrew Reid and Co.
- Denning, Lord 1980. *The Misuse of Power*. London: British Broadcasting Corporation.
- Devlin, Lord 1995. *The Enforcement of Morals*. Oxford: Oxford University Press.
- Dewey, J 1934. *A Common Faith*. New Haven, CT: Yale University Press.
- Dewey, J (ed J Ratner) 1939. *Intelligence in the Modern World*. New York: The Modern Library.
- Douglas, W O 1954. *An Almanac of Liberty*. Garden City, NJ: Doubleday and Company.
- Dresser, H W 1919. *History of the New Thought Movement*. New York: Thomas Y Crowell Co.
- Dresser, H W (ed) 1921. *The Quimby Manuscripts*. New York: Crowell.

- Dulles, A 1983. *Models of Revelation*. New York: Doubleday.
- Dunner, J 1955. *Baruch Spinoza and Western Democracy: An Interpretation of His Philosophical, Religious and Political Thought*. New York, Philosophical Library.
- Durkheim, E [1912] 1915/1954. *The Elementary Forms of Religious Life*, trans J W Swain. London: Allen & Unwin (1915); New York: The Free Press (1954).
- Durkheim, E 1938. *The Rules of Sociological Method*, 8th ed. Chicago: University of Chicago Press.
- Durkheim, E 1947. *The Division of Labor in Society*, trans George Simpson. New York: The Free Press,.
- Durkheim, E 1953. *Sociology and Philosophy*, trans D F Pocock. New York: The Free Press.
- Eastland, T (ed) 1993. *Religious Liberty in the Supreme Court: The Cases That Define the Debate Over Church and State*. Washington, DC: Ethics and Public Policy Center; Grand Rapids MI and Cambridge UK: William B. Eerdmans Publishing Company.
- Eddy, M B [1875] 1994. *Science and Health with Key to the Scriptures*. Boston MA: First Church of Christ, Scientist.
- Edward, K 1926. *Religious Experience: Its Nature and Truth*. Edinburgh: T & T Clark.
- Edwards, D L (ed) (with new chapter by J A T Robinson) 1963. *The Honest to God Debate*. London: SCM Press.
- Edwards, R B 1979. *Reason and Religion, An Introduction to the Philosophy of Religion*. University Press of America.

- Edwards, F (ed) 1986. *Evolution vs Creationism: The Schools as Battleground*. Amherst NY: American Humanist Association.
- Eidsmoe, J 1984. *God and Caesar: Christian Faith and Political Action*. Westchester, Ill: Crossway Books.
- Eister, A W (ed) 1974. *Changing Perspectives in the Scientific Study of Religion*. New York: Wiley.
- Eliade, M [1949] 1958. *Patters in Comparative Religion*, trans Rosemary Sheed. New York: Sheed & Ward.
- Eliade, M 1959. *The Sacred and the Profane: The Nature of Religion*, trans W R Trask. London: Harcourt Brace Jovanovich.
- Eliade, M 1960. *Myths, Dreams and Mysteries: The Encounter Between Contemporary Faiths and Archaic Realities*, trans P Mairet. London: Harvill Press.
- Eliade, M 1961. *Images and Symbols: Studies in Religious Symbolism*, trans P Mairet. London: Harvill Press.
- Eliade, M [1962] 1965. *The Two and the One*, trans J M Cohen. London: Harvill Press.
- Eliade, M [1964] 2004. *Shamanism: Archaic Techniques of Ecstasy*, trans W R Trask (foreword by W Doniger). Princeton University Press.
- Eliade, M 1969. *The Quest: History and Meaning in Religion*. London, University of Chicago Press.
- Eliade, M & Kitagawa, J M (eds) 1959. *The History of Religions: Essays in Methodology*. London: University of Chicago Press.
- Ellis-Jones, I 1991. *A Brief History of New Thought in Australia*. Turrumurra NSW: self-published.

- Ellul, J 1960. *The Theological Foundation of Law*. Translated by Marguerite Weiser. New York: The Seabury Press.
- Ellwood, Jr, R S 1973. *Religious and Spiritual Groups in Modern America*. Englewood Cliffs: Prentice-Hall.
- Emilsen, S E 1991. *A Whiff of Heresy: Samuel Angus and the Presbyterian Church in New South Wales*. Kensington NSW: New South Wales University Press.
- Ericson, E L 1988. *The Humanist Way: An Introduction to Ethical Humanist Religion*. New York: Continuum.
- Falk, Z W 1981. *Law & Religion: The Jewish Experience*. Jerusalem: Mesharim.
- Ferguson, C W 1928. *Confusion of Tongues*. New York: Doran & Co.
- Ferm, V 1951. *Concise Dictionary of Religion*. New York: The Philosophical Library.
- Finke, R & Stark, R 1993. *The Churching of America, 1776-1990: Winners and Losers in Our Religious Economy*. Rutgers University Press.
- Firth, R 1996. *Religion: A Humanist Interpretation*. London: Routledge.
- Fisdell, S 1996. *The Practice of Kabbalah: Meditation in Judaism*. North Vale, NJ: Jason Aaronson.
- Flew, A (ed cons) 1979. *A Dictionary of Philosophy*. London: Pan Books.
- Flowers, R B 1944. *That Godless Court? Supreme Court Decisions on Church-State Relationships*. Louisville, KY: Westminster John Knox Press.
- Fosdick, H E 1925. *The Modern Use of the Bible*. New York: Macmillan.

- Fosdick, H E 1933. *The Hope of the World: Sermons on Christianity Today*. New York: Harper & Brothers.
- Fosdick, H E 1957. *The Living of These Days: An Autobiography*. London: SCM Press.
- Foster, J G 1971. *Enquiry into the practice and effects of Scientology*. London: HMSO.
- Fox, E 1934. *The Sermon on the Mount*. New York: Harper & Row.
- Fox, E 1939. *Reincarnation Described and Explained*. Marina del Rey CA: DeVorss & Co.
- Fox, E 1940. *Power Through Constructive Thinking*. New York: Harper & Row.
- Fox, E 1942. *The Seven Main Aspects of God*. Marina del Rey CA: DeVorss & Co.
- Franklin, B (ed F L Mott & C E Jorgenson) 1936. *Representative Selections*. New York: American Book Company.
- Frazer, S J 1919. *Folklore in the Old Testament*. London & New York: Macmillan.
- Frohnmayr, J 1994. *Out of Tune: Listening to the First Amendment*. Nashville: The Freedom Forum First Amendment Center, Vanderbilt University.
- Fromm, E 1956. *The Art of Loving*. New York: Harper and Bros.
- Fromm, E 1959. *Psychoanalysis and Religion*. New Haven: Yale University Press.
- Fromm, E [1966] 1967. *You Shall Be As Gods: A Radical Interpretation of The Old Testament and its Tradition*. New York: Fawcett Premier; London: Jonathan Cape.
- Gabler, M & N (with J C Hefley) 1985. *What Are They Teaching Our Children?* Wheaton IL: Victor Books.

- Gaustad, E S 1966. *A Religious History of America*. New York: Harper & Row.
- Gaze, H 1952. *Emmet Fox: The Man and His Work*. New York: Harper & Brothers.
- Geering, L 2002. *Christianity Without God*. Wellington: Bridget Williams Books.
- Geertz, C 1973. *The Interpretation of Cultures*. New York: Basic Books.
- Geisler, N L 1983. *Is Man the Measure?* Grand Rapids: Baker.
- Gelberman, J H (with L Sussman) 2000. *Physician of the Soul: A Modern Kabbalist's Approach to Health and Healing*. Freedom CA: The Crossing Press.
- Gelberman, J H (with L Sussman) 2001. *Zen Judaism: Teaching Tales by a Kabbalistic Rabbi*. Freedom CA: The Crossing Press.
- George, C V R 1993. *God's Salesman: Norman Vincent Peale and the Power of Positive Thinking*. New York: OUP.
- Gibbs, M 1981. *Christians with Secular Power*. Philadelphia: Fortress Press.
- Giddens, A 1978. *Durkheim*. [Fontana Modern Masters series.] Glasgow: Fontana/Collins.
- Gilbert, A D 1980. *The Making of Post Christian Britain*. London: Longman.
- Gilman, N 2001. *The Way into Encountering God in Judaism*. Woodstock VT: Jewish Lights Publishing.
- Gillman, I (ed) 1988. *Many Faiths One Nation: A Guide to the Major Faiths and Denominations in Australia*. Sydney: Collins.
- Glock, C Y & Stark, R 1965. *Religion and Society in Tension*. Chicago: Rand McNally.

- Goodenough, U 2000. *The Sacred Depths of Nature*. Oxford: OUP.
- Gould, J & Kolb, W L 1964. *A Dictionary of the Social Sciences*. London: Tavistock Publications.
- Greenberg, S 1960. *A Modern Treasury of Jewish Thoughts*. New York: Thomas Yoseloff.
- Gross, D 1999. *Godless Gospel: A Modern Guide to Meaning and Morality*. Annandale NSW: Pluto Press.
- Habel, N, O'Donoghue, M & Maddox, M 1993. *Myth, Ritual and the Sacred: Introducing the Phenomena of Religion*. Underdale: University of South Australia.
- Hall, K L (ed) 1992. *The Oxford Companion to the Supreme Court of the United States*. Oxford: OUP.
- Hall, K L (ed) 1999. *The Oxford Guide to United States Supreme Court Decisions*. Oxford: OUP.
- Hall, M P 1945. *Journey in Truth*, 2nd ed. Los Angeles: Philosophical Research Society.
- Hammond, P E 1992. *Religion and Personal Autonomy: The Third Disestablishment in America*. University of South Carolina Press.
- Handy, R T 1977. *A History of the Churches in US and Canada*. New York: OUP.
- Hang L S 1992. *The Path*. San Jose CA: Vô Vi Friendship Association.
- Hannon, P 1992. *Church, State, Morality and the Law*. Dublin: Gill & MacMillan.
- Hardy, A 1979. *The Spiritual Nature of Man: A Study of Contemporary Religious Experience*. Oxford: Religious Experience Research Centre.

- Harding, A L (ed) 1956. *Religion, Morality & Law*. Dallas: Southern Methodist University Press.
- Harm, Frederick R 1981. *How to Respond to the Science Religions*. St Louis MO: Concordia Publishing House.
- Harpur, T 2004. *The Pagan Christ: Is Blind Faith Killing Christianity?* Sydney: Allen & Unwin.
- Harrell, A W 1970. *Splinters from My Gavel: Confessions of a Judge*. Grand Rapids, Michigan: Zondervan.
- Harrelson, W 1980. *The Ten Commandments and Human Rights*. Philadelphia: Fortress Press.
- Harrison, E F (ed) [1960] 1972. *Baker's Dictionary of Theology*. Grand Rapids: Baker Book House.
- Harrison, J F C 1979. *The Second Coming: Popular Millenarianism, 1780-1850*. New Brunswick NJ.
- Hart, H L A 1963. *Law, Liberty and Morality*. Oxford: OUP.
- Hartigan, F [2000] 2001. *Bill W: A Biography of Alcoholics Anonymous Cofounder Bill Wilson*. New York: St Martin's Griffin.
- Hartshorne, C 1937. *Beyond Humanism: Essays in the New Philosophy of Nature*. Chicago: Willet, Clark & Company.
- Hartshorne, C 1941. *Man's Vision of God and the Logic of Theism*. Chicago: Willet, Clark & Company.
- Hartshorne, C 1948. *The Divine Relativity: A Social Conception of God*. New Haven: Yale University Press.

- Hartshorne, C 1953. *Reality as a Social Process: Studies in Metaphysics and Religion*. Glencoe: The Free Press and Boston: Beacon Press.
- Hartshorne, C 1970. *Creative Synthesis and Scientific Method*. LaSalle: Open Court.
- Hartshorne, C 1983. *Insights and Oversights of Great Thinkers: An Evaluation of Western Philosophy*. Albany: University of New York Press.
- Harvey, H 1997. *Religious Experience in Contemporary Society*. Oxford: Religious Experience Research Centre.
- Harvey, V A 1966. *The Historian and the Believer*. New York: Macmillan.
- Hastings, A 1991. *Church and State: The English Experience*. University of Exeter Press.
- Hayward, P 1995. *The Nature and Origins of Religion*. Sydney: Anembo Books.
- Hensley, K J 1986. *The Buffer Zone*. Modesto CA: Universal Press.
- Henson, H H 1929. *Disestablishment*. London: Macmillan.
- Heschel, A J 1954. *Man's Quest for God*. New York: Charles Scribner's Sons.
- Heschel, A J (ed Fritz A Rothschild) 1959. *Between God and Man: An Interpretation of Judaism, from the Writings of Abraham J Heschel*. New York: Harper.
- Heschel, A J 1962. *God in Search of Man*. Philadelphia: Jewish Publication Society.
- Heschel, A J 1966. *Man is Not Alone*. New York: Harper.
- Hexham, I & Poewe, K 1997. *New Religions as Global Cultures: Making the Human Sacred*. Boulder: Westview Press.

- Hick, J 1985. *Problems of Religious Pluralism*. London: Macmillan.
- Hick, J 1989. *An Interpretation of Religion: Human Responses to the Transcendent*. Basingstoke: Macmillan.
- Hick, J 1995. *The Rainbow of Faiths*. London: SCM Press.
- Hill, M 1995. *Ecclesiastical Law*. London: Butterworths.
- Hitchcock, J 2004a. *The Supreme Court and Religion in American Life, vol 1: The Odyssey of the Religion Clauses*. New Forum Books, Princeton University Press.
- Hitchcock, J 2004b. *The Supreme Court and Religion in American Life, vol 2: From "Higher Law" to "Sectarian Scruples"*. New Forum Books, Princeton University Press.
- Hodder-Williams, R 1980. *The Politics of the US Supreme Court*. London: Allen & Unwin.
- Hoeller, S A 1989. *Jung and the Lost Gospels*. Wheaton, Illinois: The Theosophical Publishing House.
- Hogan, M 1987. *The Sectarian Strand: Religion in Australian History*. Sydney: Penguin.
- Holmes, E & Lathem, M A 1942. *Mind Remakes Your World*. New York: Dodd, Mead and Co.
- Holmes, E 1991. *A Dictionary of New Thought Terms*. Marina del Rey: DeVorss & Co.
- Holt, S 1970. *Dictionary of American Government*, rev ed. New York: Macfadden-Bartell.
- Hordern, W 1955. *A Layman's Guide to Protestant Theology*. New York, Macmillan.

- Hubbard, L R [1950] 1979. *Dianetics: The Modern Science of Mental Health – A Handbook of Dianetic Procedure*. Los Angeles: Church of Scientology of California Publications Organization.
- Humphreys, C 1951. *Buddhism*. London: Penguin.
- Hunter, J D & Guinness, O (eds) 1990. *Articles of Faith, Articles of Peace: The Religious Liberty Clauses and the American Public Philosophy*. Washington, DC: The Brookings Institution.
- Hutchinson, J A 1981. *Paths of Faith*. New York: McGraw-Hill.
- Huxley, J 1957. *Religion Without Revelation*. London: Max Parrish.
- Huxley, J 1964. *Essays of a Humanist*. London: Chatto & Windus.
- Hyde, D 1997. *Rescuing Jesus: A Heretic's Handbook*. Kew VIC: Mandarin Books.
- Ingersoll, R G 1900. *The Works of Robert Ingersoll*, vols 1-12. New York: Dresden Publishing Company, C P Farrell.
- Irons, P & Guitton, S 1993. *May It Please the Court: The Most Significant Oral Arguments Made Before the Supreme Court Since 1955*. New York: The New Press.
- Isaacson, B (ed D Gross) 1979. *Dictionary of the Jewish Religion*. New York: Bantam Books.
- Ivers, G 1993. *Redefining the First Freedom: The Supreme Court and the Consolidation of State Power*. New Brunswick, NJ and London UK: Transaction Publishers.
- Jacoby, S 2004. *Freethinkers: A History of American Secularism*. New York: Metropolitan Books.
- James, W [1897] 1956. *The Will to Believe*. New York: Dover Publication.

- James, W [1902] 1958. *The Varieties of Religious Experience: A Study in Human Nature - Being the Gifford Lectures on Natural Religion Delivered at Edinburgh in 1901-1902*. New York: New American Library.
- Jarrel, W A 1894. *Baptist Church Perpetuity*. Ashland KY: Calvary Baptist Church Bookstore, nd [originally published by author, Dallas TX, 1894].
- Jefferson, T (ed A A Lipscomb) 1904. *The Writing of Thomas Jefferson* [memorial ed 1903-4]. Washington DC.
- Jefferson, T (ed A Koch & W Peden) 1944. *The Life and Selected Writings of Thomas Jefferson*. New York: Modern Library.
- Jefferson, T (with intro by F Church) 1989. *The Jefferson Bible: The Life and Morals of Jesus of Nazareth*. Boston: Beacon Press.
- Jenkins, J 1880. *The Law Relating to Religious Liberty and Public Worship*. London: Hodder and Stoughton.
- Jessop, T E 1948. *Law & Love: A Study of the Christian Ethic*. London: The Epworth Press.
- Joyce, J [1916] 1960. *A Portrait of the Artist as a Young Man*. Penguin: Harmondsworth.
- Jung, C G 1933. *Modern Man in Search of a Soul*, trans W S Dell & C F Boynes. New York: Harcourt, Brace & Co.
- Jung, C G 1938. *Psychology and Religion*. New Haven: Yale University Press.
- Kamenetz, R 1994. *The Jew in the Lotus*. San Francisco: HarperSanFrancisco.
- Kaplan, A 1982. *Meditation and Kabbalah*. York Beach, ME: Samuel Weiser.

- Kaplan, A [1985] 2002. *The Real Messiah? A Jewish Response to Missionaries*. New York: NCSY.
- Kaplan, M 1934. *Judaism as a Civilization*. New York: Macmillan.
- Kaplan, M 1937. *The Meaning of God in Modern Jewish Religion*. New York: Jewish Reconstructionist Press.
- Kaplan, M 1948. *The Future of the American Jew*. New York: Macmillan.
- Kaplan, M 1956. *Questions Jews Ask*. New York: Jewish Reconstructionist Press.
- Kaplan, M 1958. *Judaism Without Supernaturalism*. New York: Jewish Reconstructionist Press.
- Kaplan, M 1962. *The Meaning of God in Modern Jewish Religion*. New York: Jewish Reconstructionist Press.
- Kaye, B & Wenham, G (eds) 1978. *Law, Morality and the Bible: A Symposium*. Downer's Grove, Illinois: InterVarsity Press.
- Kennedy, B 1995. *A Passion to Oppose: John Anderson, Philosopher*. Melbourne: Melbourne University Press.
- Kepel, G 1994. *The Revenge of God: The Resurgence of Islam, Christianity and Judaism in the Modern World*, trans by A Braley. Polity Press.
- Kevan, E F 1955. *The Evangelical Doctrine of Law*. London: The Tyndale Press.
- King, W L 1968. *Introduction to Religion: A Phenomenological Approach*. 2nd ed. New York: Harper & Row.
- Kramnick, I & Moore, R L 1996. *The Godless Constitution: The Case Against Religious Correctness*. New York: W W Norton.

- Krishnamurti, J 1954. *The First and Last Freedom*. New York: Harper & Row.
- Krishnamurti, J 1970a. *Krishnamurti: Talks and Dialogues, Sydney 1970*. Sydney: Krishnamurti Books.
- Krishnamurti, J 1970b. *The Only Revolution*. London: Victor Gollancz.
- Kristensen, W B 1960. *The Meaning of Religion*, trans John B Carman. The Hague.
- Kuhn, A B 2005. *Easter: The Birthday of the Gods*. Courtice ON: Canadian Theosophical Society, nd, viewed June 17 2005, <<http://members.tripod.com/pc93/estrbotg.htm>>.
- Kurland, P B 1962. *Religion and the Law: Of Church and State and the Supreme Court*. Chicago: Aldine Publishing Company.
- Kurland, P B & Lerner, R (eds) 1987. *The Founders Constitution*. Chicago: University of Chicago Press.
- Kurtz, P (ed) 1973. *Humanist Manifestos I and II*. Amherst NY: Prometheus Books, viewed November 10 2004, <<http://www.americanhumanist.org/about/manifesto1.html>> <<http://www.americanhumanist.org/about/manifesto2.html>>.
- Kurtz, P 1992. *The New Skepticism*. Buffalo NY: Prometheus Books.
- Kurtz, P 1994. *Living Without Religion: Eupraxophy*. Amherst NY: Prometheus Books.
- Kushner, H S 1981. *When Bad Things Happen to Good People*. New York: Schocken Books.
- Kushner, H S 1986. *When All You've Ever Wanted Isn't Enough*. New York: Summit Books.

- Kushner, H S 1989. *Who Needs God*. New York: Summit Books.
- Kushner, H S 2001. *Living a Life That Matters*. New York: Alfred A Knopf.
- Lambert, F 2003. *The Founding Fathers and the Place of Religion in America*. Princeton NJ: Princeton University Press.
- Lamont, C [1965] 1979. *The Philosophy of Humanism*. New York: Frederick Ungar.
- Lane, T 1987. *More Than Meets the Ear*. Sydney: ABC Books.
- Larsen, M A 1987. *New Thought Religion*. New York: Philosophical Library.
- Larson, E J 1985. *Trial and Error: The American Controversy Over Creation and Evolution*. New York: OUP.
- Larue, G A 1996. *Freethought Across the Centuries: Toward a New Age of Enlightenment*. Amherst NY: Humanist Press.
- Leadbeater, C W [1930] 2001. *How Theosophy Came to Me: Autobiographical Reminiscences*. Adyar, Madras, India: Theosophical Publishing House.
- Leadbeater, C W & Jinnarajadasa, C [1951] 2000. *The Law of Sacrifice*. 3rd ed. Adyar, Chennai, India: Theosophical Publishing House.
- Lee, F G 1995. *All Imaginable Liberty: The Religious Liberty Clauses of the First Amendment*. Lanham, MD: University Press of America.
- Lerner, M 1995. *Jewish Renewal: A Path to Healing and Transformation*. New York: HarperPerennial.
- Leuba, J H [1912] 1969. *A Psychological Study of Religion: Its Origin, Function, and Future*. New York: AMS Press.

- Lewis, H D & Slater, R L [1966] 1969 . *The Study of Religions*. Penguin Books.
- Lhundrup, (Ven) T 2004. *Practical Meditation with Buddhist Principles*. Dingley VIC: Hinkler Books.
- Liebman, J L 1946. *Peace of Mind*. New York: Simon and Schuster.
- Little, D 1984. *Religion, Order and Law*. Chicago.
- Living Philosophies* 1943. Cleveland: World Publishing Company.
- Livingston J C 1993. *Anatomy of the Sacred: An Introduction to Religion*, 2nd ed. Englewood Cliffs NJ: Prentice-Hall.
- Lockhart, W B 1992. *Constitutional Rights and Liberties: Cases, Comments, Questions*. 7th ed. St. Paul: West Publishing.
- Luckmann, T 1967. *The Invisible Religion*. New York: Macmillan.
- Lutyens, M 1959. *To Be Young: Some Chapters of Autobiography*. London: Rupert Hart-Davis.
- Macdonald, G E 1929. *Fifty Years of Freethought*, vols 1-2. New York: Truth Seeker Company.
- Macfarlane, L 1985. *The Theory and Practice of Human Rights*. London: Sweet and Maxwell.
- Mackey, A G 1966. *Mackey's Revised Encyclopedia of Freemasonry*, revised & enlarged by R I Clegg, 3 vols. Richmond VA: Macoy Publishing and Masonic Supply.
- McGowen, T 1990. *The Great Monkey Trial: Science Versus Fundamentalism in America*. New York: Franklin Watts.

- McKay, D 1983. *American Politics and Society*. Oxford: Martin Robertson.
- MacWhirter, D A 1994. *The Separation of Church and State*. Phoenix: Oryx Press.
- Maddox, M 2005. *God Under Howard: The Rise of the Religious Right in Australian Politics*. Sydney: Allen & Unwin.
- Madison, J (ed S K Padover) 1953. *The Complete Madison: His Basic Writings*. New York: Harper and Brothers.
- Manor Foundation 1951. *Memorandum and Articles of Association of The Manor Foundation Ltd*. Sydney: Manor Foundation.
- Maritain, J 1955. *Creative Intuition in Art and Poetry*. New York: The World Publishing Company.
- Marsden, G W 1981. *Fundamentalism and American Culture: The Shaping of Twentieth-Century Evangelicism 1870-1925*. New York: OUP.
- Marshall, G N 1970. *Challenge of a Liberal Faith*. New York: Pyramid Books.
- Martin, W R & Klann, N H [1954] 1955. *The Christian Science Myth*. Paterson NJ: Biblical Truth Publishing, 1954. Grand Rapids MI: Zondervan, 1955, rev ed.
- Marty, M E 1986-96. *Modern American Religion*, vols 1-3. Chicago: University of Chicago Press.
- Marx, K [1873] 1972-3. *Capital*, vols 1-3. New York: International Publishers.
- Melton, J G 1986. *Encyclopedic Handbook of Cults in America*. New York: Garland Publishing.
- Melton, J G 1996. *Encyclopedia of American Religions*, 5th ed. New York: Gale.

- Mencken, H L [1930] 1946. *Treatise on the Gods*. New York: Alfred A Knopf.
- Miller, R M 1985. *Harry Emerson Fosdick: Preacher, Pastor, Prophet*. New York: OUP.
- Milley, C 2002. *The Suicidal Church: Can the Anglican Church Be Saved?* Annandale NSW: Pluto Press.
- Mitchell, B 1967. *Law, Morality and Religion in a Secular Society*. London, New York, Toronto: Oxford University Press.
- Mitchell, G D (ed) 1979. *A New Dictionary of Sociology*. London: Routledge & Kegan Paul.
- Mol, H 1971. *Religion in Australia*. Melbourne: Thomas Nelson.
- Monsma, S V 1996. *When Sacred and Secular Mix: Religious Non-Profit Organizations and Public Money*. Maryland: Rowman & Littlefield Publishing.
- Montague, W P 1930. *Belief Unbound*. New Haven CT: Yale University Press.
- Montgomery, J W 1975. *The Law above the Law*. Minneapolis: Dimension Books.
- Montgomery, J W 1978. *Law and Gospel: A Study in Jurisprudence*. Oak Park, Illinois: Christian Legal Society.
- Montgomery, J W 1986. *Human Rights and Human Dignity*. Grand Rapids: Zondervan.
- Mooney, C F 1986. *Law and the Social Character of Religion*. Notre Dame: University of Notre Dame Press.
- Moore, B & Habel, N 1982. *On Religion Related to Education*. Adelaide: SACAE.
- Mora, J F 1960. *Philosophy Today*. New York: John Wiley.

- Narcotics Anonymous*. 5th ed. Van Nuys CA: Narcotics Anonymous World Service Office, 1988.
- Nardo, D [1966] 1994. *The Scopes Trial*. San Diego: Lucent Books.
- Nash, D 1999. *Blasphemy in Modern Britain: 1789 to the Present*. Aldershot: Ashgate.
- Nason, M & Nason, D 1983. *Robert Schuller: The Inside Story*. Waco TX: Word Books.
- Nelkin, D 1982. *The Creation Controversy: Science or Scripture in the Schools*. New York: Norton.
- Neuhaus, R J 1977. *Christian Faith and Public Policy: Thinking and Acting in the Courage of Uncertainty*. Minneapolis: Augsburg Publishing House.
- Neusner, J 1986. *The Oral Torah*. New York: Harper and Row.
- New South Wales Anti-Discrimination Board 1984. *Discrimination and Religious Conviction*. Sydney: NSW Anti-Discrimination Board.
- New South Wales Law Reform Commission 1994. *Blasphemy*. Report No 74. Sydney: NSW Law Reform Commission.
- Niebuhr, H R 1960. *Radical Monotheism and Western Culture*. New York: Harper and Row, viewed June 14 2005, <<http://www.religion-Online.org/showchapter.asp?title=409&C=157>>.
- Nielsen, K 2001. *Naturalism and Religion*. Amherst NY: Prometheus Books.
- Nippon: The Land and Its People* 1982. Tokyo: Nippon Steel Corp.
- Noll, M A 1992. *A History of Christianity in the United States and Canada*. London: SPCK.

- Norbeck, E 1974. *Religion in Human Life: Anthropological Views*. New York: Holt, Rinehart & Winston.
- Norris, P & Inglehart, R 2004. *Sacred and Secular: Religion and Politics Worldwide*. Cambridge: Cambridge University Press.
- Novak, M, Berger, P L & Neuhaus, R J (eds) 1996. *To Empower People: From State to Civil Society*. 2nd ed. Washington, DC: American Enterprise Institute Press.
- O'Flaherty, W D 1988. *Other Peoples' Myths: The Cave of Echoes*. Chicago: University of Chicago Press.
- O'Hair, M M 1969. *What on Earth is an Atheist!* Austin TX: American Atheist Press.
- O'Hair, M M 1991. *Why I Am an Atheist*. Austin TX: American Atheist Press.
- Oliver, P et al (eds) 2000. *Faith in Law: Essays in Legal Theory*. Oxford: Hart.
- Otto, R [1917] 1977. *The Idea of the Holy*, trans by J W Harvey. London: Oxford University Press.
- Packer, J I 1958. *"Fundamentalism" and the Word of God*. Grand Rapids MI: Eerdmans.
- Paine, T (ed P S Foner) 1945. *The Complete Writings of Thomas Paine*. New York: Citadel Press.
- Pals, D L 1996. *Seven Theories of Religion*. New York: OUP.
- Pargament, K I 1997. *The Psychology of Religion: Theory, Research, Practice*. New York: Guilford.
- Park, C C 1994. *Sacred Worlds: An Introduction to Geography and Religion*. London: Routledge.

- Parry, B & Rivett, R 1973. *An Introduction to the Liberal Catholic Church*. Sydney: St Alban Press.
- Parsons, T 1937. *The Structure of Social Action*, vol 2. New York: Free Press.
- Parsons, T [1960] 1965. *Structure and Process in Modern Societies*. New York: Free Press.
- Peale, N V 1952. *The Power of Positive Thinking*. New York: Prentice-Hall.
- Peale N V 1965. *Sin Sex and Self-Control*. New York: Doubleday.
- Peale, N V 1991. *This Incredible Century*. Wheaton, Ill: Tyndale House.
- Penelhum, T 1995. *Reason and Religious Faith*. Oxford: Westview Press.
- Pennock, J & Cha, J W 1988. *Religion, Morality and the Law*. New York.
- Pennock, J R & Chapman, J W (eds) 1988. *Religion, Morality and the Law*. Nomos XXX, New York U Press.
- Petersen, W J 1975. *Those Curious New Cults*. New Canaan CT: Keats Publishing.
- Peterson, M, Hasker, W, Reichenbach, B & Basinger, D 1991. *Reason and Religious Belief: An Introduction to the Philosophy of Religion*. New York: OUP.

- Pfeffer, L 1984. *Religion, State and the Burger Court*. Buffalo NY: Prometheus Books.
- Pike, J A [1964] 1965. *A Time for Christian Candour*. London: Hodder and Stoughton.
- Pollard, R S 1957. *Abolish the Blasphemy Laws*. Bungay: Richard Clay and Co.
- Potter, C F [1954] 1955. *The Faiths Men Live By*. New York: Prentice-Hall [1954]; Kingswood, Surrey: The World's Work [1955].
- Prabhupāda, B S [1968] 1998. *The Science of Self-Realization*. Los Angeles CA: Bhaktivedanta Book Trust.
- Presbyterian Church of New Zealand 1968. *A Trial for Heresy: Charges Against Principal L G Geering Brought Before the General Assembly of the Presbyterian Church of New Zealand, November, 1967*. Christchurch: Presbyterian Bookroom.
- Pye, M 1972. *Comparative Religion*. Newton Abbot: David and Charles.
- Radin, P [1937] 1957. *Primitive Religion: Its Nature and Origins*. New York: Dover.
- Ragge, K 1992. *More Revealed*. Henderson NV: Alert! Publishing.
- Rappaport, R A 1979. *Ecology, Meaning and Religion*. Berkeley CA: North Atlantic Books.
- Reeve, C [2002] 2003. *Nothing is Impossible: Reflections on a New Life*. London: Arrow Books.
- Rennie, B 1996. *Reconstructing Eliade: Making Sense of Religion*. Albany, NY: State University of New York Press.

- Report of the Inquiry into the Definition of Charities and Related Organisations* (2001). Canberra: Australian Government Printing Service; [Online version] viewed January 29 2007, <<http://www.cdi.gov.au/html/report.htm>>.
- Rhine, J B & Brier, R (eds) 1968. *Parapsychology Today*. Secaucus NJ: Castle Books.
- Robertson, R (ed) [1969] 1972. *Sociology of Religion*. Baltimore: Penguin.
- Robilliard, St J N A 1984. *Religion and the Law*. Manchester: Manchester University Press.
- Robins, T et al (eds) 1985. *Cults, Culture and the Law: Perspectives on New Religious Movements*. Chico CA.
- Robinson, J A T 1963. *Honest to God*. London: SCM Press.
- Roe, J 1986. *Beyond Belief: Theosophy in Australia 1879-1939*. Sydney: New South Wales University Press.
- Rongstad, L J [1977] 1995. *How to Respond to the Lodge*. St Louis MO: Concordia Publishing House.
- Rosenberg, S E 1966. *To Understand Jews*. London: Hodder and Stoughton.
- Ross, E A 1901. *Social Control*. New York: Macmillan.
- Ross, F H & Hills, T 1965. *The Great Religions by Which Men Live*. New York: Fawcett.
- Rossiter, C 1966. *1787: The Grand Convention*. New York: Macmillan.
- Sacks, J 1991. *The Persistence of Faith: Religion, Morality and Society in a Secular Age*. London: Weidenfeld and Nicolson.

- Sadurski, W 1992. *Law and Religion: The International Library of Essays in Law and Legal Theory: Area 7*. Sydney: Dartmouth Press.
- Saler, B 2000. *Conceptualizing Religion: Immanent Anthropologists, Transcendent Natives, and Unbounded Categories*. New York: Berghahn Books.
- Saliba, J A 1976. *'Homo Religiosus' in Mircea Eliade: An Anthropological Evaluation*. Leiden: E. J. Brill.
- Sandbach, J 1998. *Religious Privilege*. London: British Humanist Association.
- Sanders, J O [1962] 1973. *Cults and Isms*. London: Lakeland.
- Santina, P D 1984. *Fundamentals of Buddhism*. Taipei: The Corporate Body of the Buddha Educational Foundation.
- Saunders, D 1997. *Anti-Lawyers: Religion and the Critics of Law and State*. London: Routledge.
- Schleiermacher, F 1893. *On Religion: Speeches to its Cultured Despisers*, trans by J Oman. London: K Paul, Trench, Trubner & Co; [Online e-text] viewed June 7 2006, <<http://www.ccel.org/ccel/schleiermach/religion.xml>>.
- Schüller, G W 1997. *Krishnamurti and the World teacher Project: Some Theosophical Perceptions*. Occasional Papers series, vol V. Fullerton CA: Theosophical History. [Online version] viewed August 3 2006, <<http://www.alpheus.org/html/artciles/thopv/index.html>>.
- Schuller, R H 1964. *Your Future is Your Friend*. New Canaan NJ: Keats Publishing.
- Schuller, R H 1967. *Move Ahead With Possibility Thinking*. Old Tappan NJ: Spire Books.
- Schuller, R H 1969. *Self-Love: The Dynamic Force of Success*. New York: Hawthorn Books.

- Schuller, R H 1982. *Self-Esteem: The New Reformation*. Waco TX: Word Books.
- Schulweis, H M 1984. *Evil and the Morality of God*. Cincinnati: Hebrew Union College.
- Scult, M 1994. *Judaism Faces the Twentieth Century: A Biography of Mordecai Kaplan*. Detroit MI: Wayne State University Press.
- Selbourne, A 1887. *A Defence of the Church of England Against Disestablishment*. London: Macmillan.
- Sharpe, E 1983. *Understanding Religion*. New York.
- Shepherd, W C 1985. *To Secure the Blessings of Liberty: American Constitutional Law and the New Religious Movements*. New York: Crossroads Publishing.
- Skarmeas, N J 2002. *Our Presidents: Their Lives and Stories*. Nashville TN: Ideals Publications.
- Smart, N 1960. *A Dialogue of Religions*. London: SCM Press.
- Smart, N 1962. *Historical Selections in the Philosophy of Religion*. London: SCM Press.
- Smart, N 1969. *The Religious Experience of Mankind*. New York: Charles Scribner's Sons.
- Smart, N 1973. *The Phenomenon of Religion*. New York: Herder & Herder.
- Smart, N 1992. *The World's Religions: Old Traditions and Modern Transformations*. Cambridge: Cambridge University Press.
- Smart, N 1996. *Dimensions of the Sacred: An Anatomy of the World's Beliefs*. London: HarperCollins/Fontana Press.

- Smith, G H [1979] 1989. *Atheism: The Case Against God*. Amherst NY: Prometheus Books.
- Smith, H 1992. *The World's Religions*. San Francisco: HarperSanFrancisco.
- Smith, J Z (ed) 1995. *The HarperCollins Dictionary of Religion*. San Francisco: HarperSanFrancisco.
- Smith, R G 1956. *The New Man*. London: SCM Press.
- Smith, W C 1965. *The Faith of Other Men*. New York: New American Library.
- Sommerville, C J 1992. *The Secularization of Early Modern England: From Religious Culture to Religious Faith*. Oxford: OUP.
- Song, R 1997. *Christianity and Liberal Society*. Oxford: Clarendon.
- Sonsino, R & Syme, D B 2002. *Finding God: Selected Responses* [rev ed]. New York: UAHC Press.
- Southworth, B 1995. *At Home in Creativity: The Naturalistic Theology of Henry Nelson Wieman*. Boston: Skinner House Books.
- Spong, J S 1988. *Living in Sin? A Bishop Rethinks Human Sexuality*. New York: Harper & Row.
- Spong, J S 1991. *Rescuing the Bible from Fundamentalism: A Bishop Rethinks the Meaning of Scripture*. New York: HarperSanFrancisco.
- Spong, J S 1992. *Born of a Woman: A Bishop Rethinks the Birth of Jesus*. New York: HarperSanFrancisco.
- Spong, J S 1994. *Resurrection: Myth or Reality? A Bishop's Search of the Origins of Christianity*. New York: HarperSanFrancisco.

- Spong, J S 1996. *Liberating the Gospels: Reading the Bible with Jewish Eyes*. New York: HarperSanFrancisco.
- Spong, J S 1998. *Why Christianity Must Change or Die: A Bishop Speaks to Believers in Exile*. New York: HarperCollins.
- Spong, J S 2000. *Here I Stand: My Struggle for a Christianity of Integrity, Love, and Equality*. New York: HarperSanFrancisco.
- Spong, J S 2005. *The Sins of Scripture: Exposing the Bible's Texts of Hate to Reveal the God of Love*. New York: HarperCollins.
- Steiner, F [1936] 1995. *The Religious Beliefs of Our Presidents: From Washington to FDR*. Amherst NY: Prometheus Books.
- Strathern, P 1999. *The Essential Confucius*. London: Virgin Books.
- Streng, F J 1969. *Understanding Religious Man*. Belmont CA: Dickenson.
- Suares, Carlo 1982. *Krishnamurti and the Unity of Man*. Bombay: Chetana.
- Sullivan, W F 1994. *Paying the Words Extra: Religious Discourse in the Supreme Court of the United States*. Cambridge, MA: Harvard University Press / Harvard Center for the Study of World Religions.
- Suzuki, D (with A McConnell) 1997. *The Sacred Balance: Rediscovering Our Place in Nature*. Sydney: Allen & Unwin.
- Swatos, Jr, W H (ed) 1998. *Encyclopedia of Religion and Society*. Walnut Creek CA: AltaMira Press, viewed January 19 2005, <<http://www.hirr.hartsem.edu/ency/index.html>>.

- Taylor, M C (ed) 1998. *Critical Terms for Religious Studies*. Chicago: University of Chicago Press.
- Templeton, J M [1994] 1995. *Discovering the Laws of Life*. New York: Continuum.
- Thera, N (ed) 1993. *The Dhammapada*. Taipei: The Corporate Body of the Buddha Educational Foundation.
- Thomas, T (ed) 1988. *The British: Their Religious Beliefs and Practices 1800-1986*. London: Routledge.
- Tillett, G 1982. *The Elder Brother: A Biography of Charles Webster Leadbeater*. London: Routledge & Kegan Paul; San Diego: Point Loma Publications.
- Tillich, P 1949. *The Shaking of the Foundations*. London: SCM Press.
- Tillich, P [1952] 1962. *The Courage To Be*. London: Fontana Library.
- Tillich, P 1953. *Systematic Theology*. London: Nisbet & Co.
- Tillich, P 1958. *The Dynamics of Faith*. New York: Harper and Row (Torchbook).
- Tingley, K 1978. *The Wisdom of the Heart*. San Diego: Point Loma Publications.
- Traer, R 1993. *An Interfaith Dictionary*. Oxford: IARF.
- Trimp, J [1992] 1996. *The Small Book: A Revolutionary Alternative for Overcoming Alcohol and Drug Dependence*. New York: Dell.
- Twelve Steps and Twelve Traditions*. New York: Alcoholics Anonymous World Services, 1953.
- Tylor, E B 1871 *Primitive Culture*. London: Murray.

Unity: 100 Years of Faith & Vision 1988. Unity Village MO: Unity Books.

Universal Life Church [nd]. *Doctor of Divinity: Universal Life Church*. Modesto CA: Universal Life Church.

Universal Life Church [nd]. *We Are One: Information*. Modesto CA: Universal Life Church.

Vahle, N 2002. *The Unity Movement: Its Evolution and Spiritual Teachings*. Philadelphia: Templeton Foundation Press.

Van Baaren, T P & Drijvers, H J W (eds) 1973. *Religion, Culture, and Methodology*. The Hague/Paris: Mouton.

Van Der Leeuw, G [1938] 1967. *Religion in Essence and Manifestation*. Gloucester MA: Peter Smith.

Vernon, R [2000] 2002. *Star in the East: Krishnamurti - The Invention of a Messiah*. Boulder CO: Sentient Publications.

Vidal, G (with foreword by Bob Carr) [2003] 2004. *Inventing a Nation: Washington, Adams, Jefferson*. New Haven CT: Yale University Press; Melbourne VIC: MUP.

Villa-Vicencio, C 1986. *Between Christ and Caesar: Classic and Contemporary Texts on Church and State*. Grand Rapids: Eerdmans.

Vines, E H 1970. *Gems of the East - Or God in Every Nation: A Booklet on Comparative Religion with a Brief Introduction to Some Non-Christian Religions*, 3rd ed. Sydney: West Publishing Corp.

Waardenburg, J D J (ed) 1973. *Classical Approaches to the Study of Religion*. The Hague/Paris: Mouton.

Wach, J 1944. *Sociology of Religion*. Chicago: University of Chicago Press.

- Wach, J 1951. *Types of Religious Experience, Christian and Non-Christian*. Chicago: University of Chicago Press.
- Wach, J 1958. *The Comparative Study of Religions*. New York: Columbia University Press.
- Wallace, A 1966. *Religion: An Anthropological View*. New York: Random House.
- Warren, M A 2001. *King Came Preaching: The Pulpit Power of Dr Martin Luther King Jr*. Downers Grove IL: InterVarsity Press.
- Watson, A 1996. *Law, Morality and Religion: Global Perspectives*. Berkeley: Rubbins Collection.
- Watts, A W 1951. *The Wisdom of Insecurity*. New York: Vintage Books.
- Weatherhead, L D 1951. *Psychology, Religion and Healing*. London: Hodder and Stoughton.
- Weatherhead, L D 1965. *The Christian Agnostic*. London: Hodder and Stoughton.
- Weber, M [1922] 1978. *Economy and Society*. Berkeley: University of California Press.
- Weber, M 1963. *The Sociology of Religion*, trans by Ephraim Fischhoff. Boston: Beacon Press.
- Webster, R 1990. *A Brief History of Blasphemy: Liberalism, Censorship and "The Satanic Verses"*. Southwold: The Orwell Press.
- Whaling, F 1986. *Christian Theology and World Religions: A Global Approach*. [Contemporary Christian Studies series.] HarperCollins.

- White, R C & Zimmerman, A 1990. *An Unsettled Arena: Religion and the Bill of Rights*. Grand Rapids: Eerdmans.
- Whitehead, A N 1926. *Religion in the Making: A Series of Four Lectures Delivered During February 1926 at the King's Chapel*, Boston, USA, viewed December 13 2004, <http://www.mountainman.com.au/whiteh_1.htm>.
- Whitten, M W 1999. *The Myth of Christian America: What You Need to Know About the Separation of Church and State*. Macon GA: Smyth & Helwys Publishing.
- Wieman, H N, MacIntosh, D C & Otto, M C 1932. *Is There A God?* Chicago: Willet, Clark.
- W[ilson], W [Bill] 1967. *As Bill Sees It: The AA Way of Life ... Selected Writings of AA's Co-founder*. New York: Alcoholics Anonymous World Services.
- Wine, S 1985. *Judaism Beyond God*. Farmington Hills MI: Society for Humanistic Judaism.
- Witte, J 2000. *Religion and the American Constitutional Experiment: Essential Rights and Liberties*. Boulder: Westview Press.
- Witte, Jr, J J & Alexander, F S (eds) 1988. *The Weightier Matters of the Law: Essays on Law and Religion*. Atlanta: Scholar's Press.
- Wittgenstein, L [1953] 1958. *Philosophical Investigations*, 3rd ed, trans by G E M Anscombe. New York: Prentice-Hall, 1958.
- Wolhorn, H 1977. *Emmet Fox's Golden Keys to Successful Living*. New York, Harper & Row.
- Wolpe D J 1995. *Why Be Jewish?* New York: Henry Holt and Company.

- Woolley, D C (ed) 1964. *Baptist Advance: The Achievements of the Baptists of North America for a Century and a Half*. Nashville TN: Broadman.
- Wood, Jr, J E & Davis, D (eds) 1993. *The Role of Government in Monitoring and Regulating Religion in Public Life*. Waco, TX: Baylor University.
- Woodward, B & Armstrong, S 1979. *The Brethren: Inside the Supreme Court*. New York: Simon & Schuster.
- Wookey, G 1996. *When a Church Becomes a Cult: The Marks of New Religious Movements*. London: Hodder and Stoughton.
- Wright, N T 1992. *Who Was Jesus?* London: SPCK.
- Yinger, J M 1946. *Religion in the Struggle for Power*. Durham, NC: Duke University Press.
- Yinger, J M 1957. *Religion, Society and the Individual*. New York: Macmillan.
- Yinger, J M 1970. *The Scientific Study of Religion*. New York: Macmillan.
- Yutang, L 1935. *My Country and My People*. New York: Reynal and Hitchcock.
- Z----, P 1990. *A Skeptic's Guide to The 12 Steps*. Hazelden Books.
- Zalk, Z W 1981. *Law and Religion*. Jerusalem: Mesharim Publishers.
- Zalta, E N (ed) 2006. *Stanford Encyclopedia of Philosophy*. Stanford CA: Metaphysics Research Lab/Center for the Study of Language and Information/Cordura Hall, Stanford University, viewed January 19 2006, <<http://plato.stanford.edu/contents.html>>.
- Zweigert, K & Kotz, H 1987. *Introduction to Comparative Law*. Oxford: Clarendon Press.

II. BOOK CHAPTERS AND ARTICLES

- Alston W P 1967. "Religion", in *The Encyclopedia of Philosophy*, 8 vols, New York: Macmillan, 7:141-2.
- Anthony, D, Robbins, T & Schwartz, P 1983. "Contemporary Religious Movements and the Secularization Premise", in J Coleman & G Baum (eds), *New Religious Movements*, New York: Seabury Press.
- Arneson, R J & Shapiro, I 1996. "Democratic Autonomy and Religious Freedom: A Critique of *Wisconsin v. Yoder*", in I Shapiro and R Hardin (eds), *Political Order: NOMOS XXXVIII*, ch 14.
- Baker, N 1960. "Confucianism", in J N D Anderson, *The World's Religions*, London: Inter-Varsity Fellowship.
- Bentley-Taylor, D 1960. "Buddhism", in J N D Anderson, *The World's Religions*, London: Inter-Varsity Fellowship.
- Blois, M De 1998. "The Foundation of Human Rights. A Christian Perspective", in P R Beaumont (ed), *Christian Perspectives on Human Rights and Legal Philosophy*, Carlisle: Paternoster Press, ch1.
- Burt, S 1996. "In Defense of *Yoder*: Parental Authority and the Public Schools", in I Shapiro and R Hardin (eds), *Political Order: NOMOS XXXVIII*, ch 15.
- Charlesworth, H 1999. "The Challenges of Human Rights Law for Religious Traditions", in M W Janis and C Evans (eds), *Religion and International Law*, The Hague: Martinus Nijhoff.
- Ellis-Jones, I 1997. "Rateability of Land", in P Stein et al (eds), *Local Government Planning and Environment (NSW)*, vol C [Commentary], Sydney: Butterworths, [looseleaf] service 13.

- Fisher, W W 1992. "The Development of Modern American Legal Theory and the Judicial Interpretation of the Bill Of Rights", in M L Lacey & K Harkonssen, *A Culture of Rights*, Cambridge: Cambridge University Press.
- Freeland, G 1997. "Church, State, Education and the Creation Science Crisis", in V Bien (ed), *"Creation Science": Science and Education*, Sydney: NSW Humanist Society.
- Gardner, J 2000. "Law as a Leap of Faith", in P Oliver et al (eds), *Faith in Law: Essays in Legal Theory*, Oxford: Hart.
- Geertz, C 1979. "Religion as a Cultural System", in W A Lessa & E Z Vogt (eds), *Reader in Comparative Religion: An Anthropological Approach*, New York, 79-80.
- Latham, J 1952. "Interpretation of the Constitution", in R Else-Mitchell (ed), *Essays on the Australian Constitution*, Sydney: Law Books of Australasia.
- Macklem, T 2000. "Reason and Religion", in P Oliver et al (eds), *Faith in Law: Essays in Legal Theory*, Oxford: Hart.
- Marshall, C 1999. "'A Little Lower than the Angels': Human Rights in the Biblical Tradition", in B Aitkin & K Evans (eds), *Human Rights and the Common Good: Christian Perspectives*, Wellington: VUW Press.
- Morrison, K 1998. "The Cosmos as Intersubjective: Native American Other-Than-Human Persons", in G Harvey (ed), *Indigenous Religions: a Companion*, London: Cassell, 23-36.

- Roe, J 1980. "Three Visions of Sydney Heads from Balmoral Beach", in J Roe (ed), *Twentieth Century Sydney: Studies in Urban & Social History*, Sydney: Hale & Iremonger, 89-104.
- Scheinin, M 1992. "Article 18", in A Eide (ed), *The Universal Declaration of Human Rights: A Commentary*, Oslo: Scandinavian Press, 262-266.
- Smith, J E 1961. "Ultimate Concern and the Really Ultimate," in S Hooke (ed) *Religious Truth and Experience: A Symposium*, New York: New York University Press, 65-69.
- Stout, A K 1969. "Morality Without Religion", in I Edwards (ed), *A Humanist View*, Sydney: Angus & Robertson.
- Streng, F, Lloyd, C & Allen, J 1973. *Ways of Being Religious*, New York: Englewood Cliffs.
- Swatos, Jr, W H & Gustafson, P M 1992. "Meaning, Continuity, and Change", in W H Swatos, Jr (ed), *Twentieth-Century World Religious Movements in Neo-Weberian Perspective*, Lewiston, NY: Mellen, 1-20.
- Thomas, S 1999. "The Global Resurgence of Religion, International Law and International Society", in M W Janis & C Evans (eds), *Religion and International Law*, The Hague: Martinus Nijhoff.

III. JOURNAL ARTICLES, CONFERENCE PAPERS, SERMONS, PAMPHLETS AND OTHER MISCELLANEOUS WRITINGS

- Adams, A M & Emmerich, C J 1989. "A Heritage of Religious Liberty" 137 *U Pa L Rev* 155.
- Adams, J P 1999. "Worship and the Commerce Clause: A Constitutional Combination?" 34 *Gonzaga L Rev* 471.

- Adler, M 2005. "At the Center of Things", viewed April 4 2005, <http://www.beliefnet.com/story/24/story_2407_1.html>.
- Agneshwar, A 1992. "Note, Rediscovering God in the Constitution" 67 *NYUL Rev* 295.
- Ahlstrom, S E 1978. "E Pluribus Unum: Religious Pluralism and the American Ideal" 61 *Soundings* 328.
- Aiken, C F 1912. "Confucianism", in *Catholic Encyclopedia*, 1912 ed, [Online] viewed May 16, 2005, <<http://www.newadvent.org/cathen/04223b.htm>>.
- Ainsworth, J E 1992. "Interpreting Sacred Texts: Preliminary Reflections on Constitutional Discourse in China" 43 *Hastings LJ* 273.
- Alexander, F S 1985. "Demythologizing Law" 3 *JL & Relig* 167.
- Alexander, L 1998. "Good God, Garvey! The Inevitability and Impossibility of a Religious Justification of Free Exercise Exemptions" 47 *Drake L Rev* 35.
- Alley, R S 1991. "The Constitution and Religious Freedom: The Legacy of James Madison" 22 *Cum L Rev* 504.
- Alston, W P 1967. "Religion", in *The Encyclopedia of Philosophy*, 8 vols, New York: Macmillan, 7:141-2.
- Anders, M M 1985. "Note on Nally v Grace Community Church" *Ariz St LJ* 213.
- Anderson, C A 1997. "Quimby as Founder of New Thought" *The Journal of the Society for the Study of Metaphysical Religion* 3(1), Spring 1997:5-22, [Online] viewed January 23 2006, <<http://www.gis.net/~caa/qfounder.html>>.
- Andrews, J & Sherlock, A 1995. "Freedom of Expression: How Far Should It Go?" 20 *Eur L Rev* 329.
- Angeles, P A 1981. "Definition", in *Dictionary of Philosophy*, New York: Barnes & Noble, 56-59.

- Apanovitch, D P 1998. "Religion and Rehabilitation: The Requisition of God by the State" 47 *Duke LJ* 785.
- Arangno, L M 1980. "Transcendence of the Imminent" 31 *Mercer L Rev* 553.
- Ariens, M 1992. "Evidence of Religion and the Religion of Evidence" 40 *Buff L Rev* 65.
- Assayag, J 1988. "The Basket, Hair, the Goddess and the World: An Essay on South Indian Symbolism" 142 *Diogenes* 113.
- Austin, A W 1991. "Faith and the Constitutional Definition of Religion" 22 *Cumb L Rev* 1, 33-43.
- Babcock, H E 2001. "By Liberal Things Shall We Stand" [sermon: First Religious Society (Unitarian Universalist), Newburyport MA, February 11 2001], viewed October 5 2004, <<http://www.frsuu.org/serm34.htm>>.
- Balcombe, Lord 1990. "The Attitude of the Law to Religion in a Secular Society" 104 *Law & Just* 5.
- Ball, M S 1970. "The Politics of God in the Maturation of the Law" 4 *Ga L Rev* 555.
- Ball, M S 1989. "Law and Prophets, Bridges and Judges" 7 *JL & Relig* 1.
- Ball, W B 1980. "Law and the Educational Ministry of Christianity" *Theology, News and Notes* December 1980: 9-10.
- Baptist Joint Committee on Public Affairs 2005. "A Critique of David Barton's 'America's Godly Heritage'" *Americans United for Separation of Church and State Nashville Chapter*, viewed April 28 2005, <http://www.nashville-au.org/editorials_xnation.html>.
- "Baptists and Religious Liberty in United States", viewed April 19 2005, <<http://www.baptistpillar.com/bd0560.htm>>.
- Barker, C R 1999. "Religion and Charity Law" *Jurid Rev* 303.
- Beaudreault, D 2001. "Why I am a Taoist", viewed March 30 2006, <<http://www.exploretaoism.com/Whytaoist.htm>>.

- Becker, D E 1999. "Free Exercise of Religion under the New York Constitution" 84 *Cornell L Rev* 1088.
- Beckwith, F J 1995. "Separation of Guru and State? Influence of the New Age Movement on Public Education" 2(4) *Premise* 8, [Online] viewed November 23 2004, <http://www.waldorfcritics.org/active/articles/Separation_of_Guru.html>.
- Beit-Hallahmi, B 2003a. "The *Varieties* as an Inspiration: Confessions of a Slow Learner", *Cross Currents* Fall 2003, viewed January 19 2005, <http://www.findarticles.com/p/articles/mi_m2096/is_3_53/ai_112212953>.
- Beit-Hallahmi, B 2003b. "Scientology: Religion or Racket?" 8 *Marburg Journal of Religion*, [Online] viewed January 19 2005, <<http://www.uni-marburg.de/religionswissenschaft/journal/mjr/beit.html>>.
- Bellah, R N 1964. "Religious Evolution" 29 *American Sociological Review* 358.
- Benkov, J L & Rothstein, M 1982. "The Lessons of Creation - Science: Public School Curriculum and the Religion Clauses" 50 *Fordham L Rev* 1113.
- Berg, M A 1995. "The Religious Right, Constitutional Values, and the Lemon Test" 37 *Ann Surv Amer L*.
- Berg, T C 1997. "Religion Clause Anti-Theories" 72(3) *Notre Dame L Rev* 693.
- Berger, P L 1974. "Some Second Thoughts on Substantive Versus Functional Definitions of Religion" 13 *Journal for the Scientific Study of Religion* 125.
- Bergeron, M E 1991. "Note, 'New Age' or New Testament?: Toward a More Faithful Interpretation of "Religion" 65 *St John's L Rev* 365.
- Bergin, A 1983. "Religiosity and Mental Health: A Critical Reevaluation and Meta-Analysis" 14 *Prof Psychology Res & Prac* 170.
- Berman, H J 1976. "The Secularization of American Legal Education in the Nineteenth and Twentieth Centuries" 27 *J Legal Educ* 380.

- Berman, H J 1979. "The Interaction of Law and Religion" 8 *Capital U L Rev* 345.
- Berman, H J 1980a. "The Interaction of Law and Religion" 31 *Mercer L Rev* 405, responses 413-422.
- Berman, H J 1980b. "The Moral Crisis of the Western Legal Tradition and the Weightier Matters of the Law" 19 *Criterion* 15.
- Berman, H J 1986. "Religion and Law: The First Amendment in Historical Perspective" 35 *Emory LJ* 777.
- Beschle, D L 1989. "God Bless the Child?: The Use of Religion as a Factor in Child Custody and Adoption Proceedings" 58 *Fordham L Rev* 383.
- Bethge, E 1983. "Religionless Christianity - A Mistake?" 12 *Studies in Religion* 19.
- Beutler, M J 1993. "Public Funding of Sectarian Education: Establishment and Free Exercise Clause Implications" 2 *Geo Mason Indep L Rev* 7.
- Beyer, P 1987. "Review: La Scientologies une nouvelle religion de la puissance" 47(4) *Sociological Analysis* 360.
- Birnbaum, N 1964. "Religion", in J Gold & W L Kolb (eds), *A Dictionary of the Social Sciences*, London, Tavistock Publications.
- Black, A D 2005. "Are We Religious?", viewed June 23 2005, <<http://www.ethicalculture.org/uer/arewe.html>>.
- Blackham, H, Fragell, L, Lamont, C, Stopes-Row, H & Tielman, R [endorsed] 1988. "Humanism is Eight Letters, No More", 16 July 2004, viewed November 9 2004, <<http://www.iheu.org/modules/wfsection/article.php?articleid=8>>.
- Blackstone, W T 1977. "The Relationship of Law and Morality" 11 *Ga L Rev* 1359.
- Blasi, A J 1980. "Definition of Religion and Phenomenological Approach Towards a Problematic" 3 *Cahiers du centre des recherches en sociologie religieuse* 55.

- Blasi, A J 1998. "Definition of Religion", in W H Swatos, Jr (ed), *Encyclopedia of Religion and Society*, Walnut Creek CA, AltaMira Press, viewed January 19 2005, <<http://hrr.hartsem.edu/ency/defreligion.htm>>.
- Blasi, V 1985. "The Pathological Perspective and the First Amendment" 85 *Colum L Rev* 449.
- Blecher, A 2004. "Religion Without Supernaturalism" [sermon: River Road Unitarian Church, Bethesda MD, July 25 2004], viewed April 26 2005, <<http://www.rruc.org/sermons/sermon040725.htm>>.
- Blumenson, E 1999. "Rights and Religion" 31 *Connecticut* 711.
- Bocking, B 1995. "Fundamental Rites? Religion, State, Education and the Invention of Sacred Heritage in Post-Christian Britain and Pre-War Japan" *Religion* 25, 227.
- Bohlander, M 1992. "Public Peace, Rational Discourse and the Law of Blasphemy" 21 *Anglo-Am LR* 162.
- Bok, C 1953. "Religion in Law" 25 *Pennsylvania Bar Assoc Q* 44.
- Boke, B 2002. "Effective Religion" [sermon: First Universalist Society of Hartland VT, October 13 2002], viewed May 24 2005, <<http://www.barleywinegraphics.com/hartlanduu/sermons/effectivereligion.htm>>.
- Boke, B 2003. "This Cherished Chosen Faith" [sermon: First Universalist Society Hartland VT, January 12 2003], viewed May 24 2005, <<http://www.barleywinegraphics.com/hartlanduu/sermons/cherishedfaith.htm>>
- Bork, R 1971. "Neutral Principles and Some First Amendment Problems" 47 *Ind LJ* 26.
- Bowles, T 1966. "Scientology Ethics and Psychiatric Injustice" 27 *Texas Tech Law Review* 1011.
- Bowman, M 1998. "Belief, Legend and Perceptions of the Sacred in Contemporary Bath" 109 *Folklore* 25.

- Bowser, A 1977. "Delimiting Religion in the Constitution: A Classification Problem" II *Val UL Rev* 163.
- Boyle, K & Sheen, J 1997. "Freedom of Religion and Belief: A Global Survey" 5(2) *OSCE Bulletin* 1.
- Bradney, A 1987. "Conscientious and Religious Objection to Trade Union Membership" 7(3) *Oxford Journal of Legal Studies* 319.
- Bradney, A 1993. "Taking Sides: Religion, Law and Politics" 143 *New LJ* 434.
- Bradney, A 1996. "Christian Worship?" 8(2) *E & L* 127.
- Brown, N 2002. "Ultimate Joy" *Signs of the Times* 117:7.
- Brown R L 1999. "The Disestablishment of the Church in Wales" 5 *Ecclesiastical Law Journal* 252
- Brownstein, A E 1990. "Harmonising the Heavenly and Earthly Spheres: The Fragmentation and Synthesis of Religion, Equality and Speech in the Constitution" 51 *Ohio St LJ* 89.
- Buckingham, A J 1982. "Jesus in the Courtroom; The Christian Legal Society - Lawyers Using the Bible to do the Law's Work" *Student Lawyer* II:8(10) Nov.
- Bulwer-Lytton, E 1834. "The Fallen Star", in *The Pilgrims of the Rhine* (London, Saunders and Otley), publisher's preface [Online e-text], viewed May 31 2005, <<http://www.gutenberg.org/dirs/etext05/flnst10.txt>>.
- Burton, L & Ruppert, D 1999. "Bear's Lodge or Devils Tower: Intercultural Relations, Legal Pluralism, and the Management of Sacred Sites on Public Lands" 8 *Cornell JL & Pub Pol'y* 2.
- Bush, L 2003a. "Mystical Union and Social Change: A Skeptic Reconsiders", *The Reconstructionist*, Fall 2003.

- Bush, L 2003b. "Mystical Unity and Social Change" [Ethical Culture Society of Bergen County NJ], viewed June 14 2005, <http://www.ethicalfocus.org/index.php?mpage=34/Mystical_Unity_Social_Change.htm>.
- Callan, E 1988. "Faith, Worship and Reason in Religious Upbringing" *Journal of Philosophy of Education* 22: 183.
- Callman, T 1994. "To What Extent Can and Should the Law Restrict Freedom of Expression to Protect Religious Sensitivities?" [conf paper] W G Hart Legal Workshop.
- Capps, W H 1985. "A Note on the Rise of the New Religious Right" *Dialog* (Fall) 24: 248-260.
- Carmella, A C 1991. "Houses of Worship and Religious Liberty: Constitutional Limits to Landmark Preservation and Architectural Review" 36 *Vill L Rev* 401.
- Carmella, A C 1997. "Religion as Public Resource" 27 *Seton Hall L Rev* 1225.
- Carter, S L 1987. "Evolutionism, Creationism, and Treating Religion as a Hobby" *Duke LJ* 977.
- Carter, S L 1993. "Comment: The Resurrection of Religious Freedom" 107(1) *Harvard LR* 118.
- Carter, S L 1997. "Parents, Religion, and Schools: Reflections on Pierce, 70 Years Later" 27 *Seton Hall L Rev* 1194.
- Carus, P 1902. "Theology as a Science", *The Monist* 12.4 (July): 544–67.
- Carwile, D G 1991. "Constitutional Law - Freedom of Religious Speech - When Freedom of Speech in the Classroom Conflicts with the Establishment Clause: Bishop v Aronov 926 F2d 1066 (11th Cir 1991)" 14 *Univ Ark Little Rock LJ* 83.
- Casino, B J 1987. "I Know It When I See It": Mail-Order Ministry Tax Fraud and the Problem of a Constitutionally Acceptable Definition of Religion" 25 *Am Crim L Rev* 112.

- Casino, B J 1999. "Defining Religion in American Law", viewed January 18 2005, <<http://www.religiousfreedom.com/articles/casino.htm>>.
- Champion, F 1999. "The Diversity of Religious Pluralism" 1(2) *MOST Journal on Multicultural Studies*.
- Cherry, M & Matsumura, M 1997. "10 Myths About Secular Humanism", *Free Inquiry* 18:1 Winter 1997/98, [Online] viewed November 11 2004, <http://www.secularhumanism.org/library/fi/cherry_18_1.01.html>.
- Choper, J H 1980. "The Religion Clauses of the First Amendment: Reconciling the Conflict" 41 *U Pitt L Rev* 673.
- Choper, J H 1982. "Note, Defining 'Religion' in the First Amendment" *U Ill L Rev* 579.
- Choper, J H 1984a. "Consequences of Supreme Court Decisions Upholding Individual Constitutional Rights" 83 *Mich L Rev* 1.
- Choper, J H 1987. "The Establishment Clause and Aid to Parochial Schools - An Update" 75 *Cal L Rev* 5.
- Choper, J H 2000. "A Century of Religious Freedom" 88 *Cal L Rev* 1709.
- Chopko, M E 1992. "Religious Access to Public Programs and Governmental Funding" 60 *Geo Wash L Rev* 645.
- Church, F 2003. "Born Again Unitarian Universalist" [address: Unitarian Universalist Association General Assembly, Boston MA, June 29 2003], viewed October 5 2004, <<http://www.allsoulsnyc.org/publications/sermons/fcsermons/bornagainuism.html>>.
- "Church of Christ, Scientist", viewed January 23 2006, <http://en.wikipedia.org/wiki/Church_of_Christ,_Scientist>.
- Clayton, R 1995. "Religious Charities: Responding to Challenges" 12 *CR* 19.
- Clements, B 1989. "Defining 'Religion' in the First Amendment: A Functional Approach" 74 *Cornell L Rev* 532.

- Cobb, J B. "Charles Hartshorne: The Einstein of Religious Thought 1897-2000", viewed November 9 2004, <<http://www.harvardsquarelibrary.org/unitarians/hartshorne.html>>.
- Cogan, C 2000. "Supernaturalism's Basic Flaws" , viewed December 21 2004, <<http://www.asa3.org/archive/evolution/200010/0455.html>>.
- Collier, S D 1982. "Beyond Seeger/Wesh: Redefining Religion Under the Constitution" 31 *Emory L J* 973.
- Conkle, D O 1988. "Toward a General Theory of the Establishment Clause" 82 *Nw U L Rev* 113.
- "Constitution of the People's Republic of China [adopted on December 4 1982]", viewed March 27 2006, <<http://english.people.com.cn/constitution/constitution.html>>.
- Cook, A E 1994. "God-Talk in a Secular World" 6 *Yale JL & Human* 435.
- Cooke, Lord 1997. "Mechanisms for Entrenchment and Protection of a Bill of Rights: The New Zealand Experience" 5 *European Human Rights Law Review* 490.
- Cooper-Mathieson, V 1916. "The Origin of the New Thought Movement", *The Revealer* 3:2, November 1919, 46-7.
- Cornelius, W J 1984. "Church and State - The Mandate of the Establishment Clause: Wall of Separation or Benign Neutrality?" 16 *St Mary's LJ* 1.
- Cover, R M 1982. "The Origins of Judicial Activism in the Protection of Minorities" 91 *Yale LJ* 1287.
- Crosby, D A 2003. "Immanence and Transcendence in a Religion of Nature" [address: Unitarian Universalist Church of Tallahassee, July 20 2003], viewed April 6 2005, <<http://www.nettally.com/uuct/gs/Green%20Homilies.htm>>.
- Culbertson, H 1990. "Religion in the Political Process: A Critique of Lemon's Purpose Test" *U III L Rev* 915.
- Cumper, P 1998. "School Worship: Praying for Guidance" 1 *EHRLR* 45.

- Curtis, C K 1986. "Mississippi's Anti-Evolution Law of 1926" 48:1 *Journal of Mississippi History* 15.
- Davaney, S G 2006. "Beyond Supernaturalism: Mordecai Kaplan and the Turn to Religious Naturalism" 12 *Jewish Social Studies: History, Culture, Society* 73.
- Davidow, R P 1979. "Secular Humanism' as an 'Established Religion': A Response to Whitehead and Conlan" 11 *Tex Tech L Rev* 51.
- Davies A P 1946. "Unitarianism - What Is It?" [sermon: All Souls' Church, Washington DC, February 24 1946], viewed April 8 2005, <<http://www.dmuuc.org/Davies/460224.html>>.
- Davies, R 1976. "Church and State" *Cambrian Law Review* 11.
- Davis, D H 2004. "A Commentary on the Supreme Court's 'Equal Treatment' Doctrine as the New Constitutional Paradigm for Protecting Religious Liberty" 46 *Journal of Church and State* 717.
- Dawson, L L 1998. "The Cultural Significance of New Religious Movements and Globalisation: A Theoretical Prolegomenon" 37(4) *Journal for the Scientific Study of Religion* 580.
- "Death of God, The", viewed November 11 2004, <<http://www.faithnet.org.uk/Theology/deathofgod.htm>>.
- Decker, R G 1979. "Religion and Law in the United States: A Prognosis" 8 *Capital U L Rev* 356.
- Delgado, R 1984. "When Religious Exercise is Not Free: Deprogramming and The Constitutional Status of Coercively Induced Belief" 37 *Vand L Rev* 1071.
- Demerath Iii, N J 2000. "The Varieties of Sacred Experience: Finding the Sacred in a Secular Grove" 39 *Journal for the Scientific Study of Religion* 1.
- Denning, Lord 1981. "The Influence of Religion on Law" *Christian Legal Society Quarterly* II: 2, 12.

- Dent, G W 1988. "Religious Children, Secular Schools" 61 *S Cal L Rev* 863.
- Dent, G W 1999. "Secularism and the Supreme Court" 1 *BYU L Rev* 1.
- Dewolf, D K 1990. "State Action Under the Religion Clauses: Neutral in Result or Neutral in Treatment?" 24 *U Rich L Rev* 253.
- Dickson, B 1995. "The United Nations and Freedom of Religion" 44 *ICLQ* 327.
- Dietrich, J H 1929. "What Does It Mean to Be Spiritual" , viewed October 7 2004, <<http://www.jjnet.com/archives/documents/dietrichspiritual.html>>.
- Dobbelaere, K & Lauwers, J 1973. "Definition of Religion: A Sociological Critique" 20 *Social Compass* 535.
- Doerr, E 2003. "Humanism and Unitarian Universalism: Where Are We Going?", in "Humanism and Unitarian Universalism" [sermon: River Road Unitarian Church, Bethesda MD, August 17 2003], viewed April 26 2005, <<http://www.rruc.org/sermons/sermon030817.htm>>.
- Dolgin, J L 1988. "Religious Symbols and the Establishment of a National Religion" 39 *Mercer L Rev* 495.
- Donovan, J M 1995. "God is as God Does: Law, Anthropology, and the Definition of 'Religion'" 6 *Seton Hall Const LJ* 23.
- Dorsen, N 1985. "Religion and the State: The Religion Clauses and Nonbelievers" 27 *Wm & Mary L Rev* 863.
- Dorsen, N 1986. "The Religion Clauses and Nonbelievers" 27 *Wm & Mary L Rev* 863.
- Durkheim, É 1899. "De la définition des phénomènes religieux" 2 *Année sociologique* 1.
- Dusias, A 1997. "Ghost Dance and the Holy Ghost: The Echoes of the 19th Century Christianization Policy in the 20th Century Native American Free Exercise Cases" 49 *Stan L Rev* 773.

- Dyson, J et al 1997. "The Meaning of Spirituality: A Literature Review" *Journal of Advanced Nursing* 26, 1183.
- Edge, P W 1995. "Charitable Status for the Advancement of Religion: An Abolitionist's View" 3 *Charity Law and Practice Review* 29.
- Edge, P W 1998. "Reorienting the Establishment Debate: From the Illusory Norm to Equality of Respect" *Anglo-Am LR* 265.
- Edington, S D 2004. "Whose Moral Values? A Post Election Reflection" [sermon: Unitarian-Universalist Church of Nashua, Nashua NH, November 14 2004], viewed April 26 2005, <<http://www.uunashua.org/sermons/whosevalues.shtml>>.
- Edwards, P 1965. "Professor Tillich's Confusions" 74 *Mind* 192.
- Efaw, A C S 1996. "Free Exercise and the Uniformed Employee: A Comparative Look at Religious Freedom in the Armed Forces of the United States and Great Britain" 17 *Comp Lab L & Pol'y J* 648.
- "Ein-Sof" The Lurianic Kabbalah, viewed November 10 2004, <<http://www.newkabbalah.com/einsof.html>>.
- Eller, J 2000. "Universalism, Part II: Meaning, Religion and Universalism" [sermon: All Souls Unitarian Universalist Church, Kansas City MO, August 13 2000], viewed April 8 2005, <<http://www.allsoulskc.org/sermons/000813.html>>.
- Ellis-Jones, I 1999. "Court Decisions Declare AA to be 'Unequivocally Religious'", *Humanist Viewpoints* 40:4, June/July 1999, 3-6.
- Ellis-Jones, I 2000. "Making Humanism Relevant to the Individual", 39:6 *Humanist Viewpoints* 39:6, November/December 2000, 7-14; *Humanist in Canada*, 138, Autumn 2001; [Online abridged version] viewed April 5 2005, <http://64.233.187.104/search?q=cache:vsj4W2DsXNkJ:www.hsnsw.asn.au/a2k/IE_Jones.pdf+%22ellis-jones%22%22emotional+appeal%22&hl=en>. [Paper originally presented at *Australis 2000* Congress of the International Humanist & Ethical Union / Council of Australian Humanist Societies, Sydney NSW Australia, 14 November 2000.]

- Ellis-Jones, I 2001. "The Myth of Supernaturalism" 39:1 *Humanist Viewpoints* 39:1, January/February 2001, 2-4.
- Ellis-Jones, I 2003a. "Doin' What Comes Natur'lly: Towards a Humanist Theory of Ethics", *Australian Humanist* 69, Autumn 2003, 1-3.
- Ellis-Jones, I 2003b. "The Religious Humanism of Mordecai Kaplan", *Humanist Viewpoints* 42:6, November/December 2003, 3-6.
- Ellis-Jones, I 2004a. "United States Supreme Court Dismisses 'Pledge' Case: Elk Grove Unified School District v Newdow - Case No 02-1624", *Humanist Viewpoints* 43:4, July/August/September 2004, 3-4.
- Ellis-Jones, I 2004b. "Humanism - Religion or Life Stance? A Critical and provocative Analysis of the Official Declarations", 75 *Australian Humanist* 75, Spring 2004, 10-13. [Paper originally presented at 39th Annual Convention of the Council of Australian Humanist Societies, Sydney NSW Australia, May 2 2004.]
- Ellis-Jones, I 2004c. "Unitarianism and Alcoholics Anonymous", *The Sun* [Sydney Unitarian News], November 2004, 1-5, [Online version] viewed May 22 2006, <<http://www.sydneyunitarianchurch.org/UandAAaddress.htm>>.
- Ellis-Jones, I 2005a. "The Legacy of Dr Samuel Angus", *The New Unitarian Pioneer*, February 2005, 4-7, [Online version] viewed May 22 2006, <<http://www.sydneyunitarianchurch.org/Angus.htm>>.
- Ellis-Jones, I 2005b. "Progressive Christianity: A Unitarian View", *The New Unitarian Pioneer*, May 2005, 2-6, [Online version] viewed October 30 2005, <<http://www.sydneyunitarianchurch.org/Unitarianism01.htm>>.
- Ellis-Jones, I 2005c. "Predicate Theology in Modern Judaism", *Esprit* 1:4, June 2005, 2-3, viewed May 22 2006, <http://www.sydneyunitarianchurch.org/Predicate_theology.htm>.

- Ellis-Jones, I 2005d. "Was Jesus Perfect?", Address Delivered at Sydney Unitarian Church, Sydney NSW, July 10 2005, viewed May 22 2006, <<http://www.sydneyunitarianchurch.org/WasJesusPerfect.htm>>.
- Ellis-Jones, I 2005e. "Problems with Supernaturalism", *Esprit* 1:6, August 2005, 7-8.
- Ellis-Jones, I 2005f. "The Religious Beliefs of the Founding Fathers of the United States of America", *Esprit* 1:6, August 2005, 9-12; *Humanist Viewpoints* 44:4, October/November/December 2005, 9-10, [Online version] viewed May 22 2006, <<http://www.sydneyunitarianchurch.org/FoundingFathersUS.htm>>.
- Ellis-Jones, I 2005g. "The Theology of Rabbi Mordecai Kaplan", *Esprit* 1:7, September 2005, 4-7; *The Sun* [Sydney Unitarian News], November 2005, 3-8, [Online version] viewed May 22 2006, <<http://www.sydneyunitarianchurch.org/TheologyMordecaiKaplan.html>>.
- Ellis-Jones, I 2005h. "The Kabbalah", Address Delievered at Sydney Unitarian Church, Sydney NSW, October 23 2005, viewed May 22 2006, <<http://www.sydneyunitarianchurch.org/KabbalahPrecis.htm>>.
- Ellis-Jones, I 2005i. "The Religious Naturalism of Confucianism", Address Delivered at Sydney Unitarian Church, Sydney NSW, November 6 2005, viewed May 22 2006, <<http://www.sydneyunitarianchurch.org/Confucianism.htm>>.
- Ellis-Jones, I 2006a. "The Religious Naturalism of Buddhism", *Humanist Viewpoints* 45:1, January/February/March 2006, 6-8.
- Ellis-Jones, I 2006b. "The Wizard of Oz", Address Delivered at the Sydney Unitarian Church, Sydney NSW, May 7 2006, viewed July 22 2006, <<http://www.sydneyunitarianchurch.org/WizardofOz.htm>>.
- Ellis-Jones, I 2006c. "Krishnamurti and the Star in the East", Address Delivered at the Sydney Unitarian Church, Sydney NSW, September 3 2006, viewed March 21 2007, <<http://www.sydneyunitarianchurch.org/KrishnamurtiStarinEast.htm>>.

- Ellis-Jones, I 2006d. "Norman Vincent Peale: The Father of Positive Thinking", Address Delivered at the Sydney Unitarian Church, Sydney NSW, December 10 2006, viewed March 21 2007, <http://www.sydneyunitarianchurch.org/NVP_Positive_Thinker_revsd.htm>.
- Ellsworth, J E 1990. "'Religion' in Secondary Schools: An Apparent Conflict of Rights - Free Exercise, the Establishment Clause, and Equal Access" 26 *Gonz L Rev* 505.
- Epstein, S B 1996. "Rethinking the Constitutionality of Ceremonial Deism" 96 *Colum L Rev* 2083.
- Esbeck, C H 1984. "Establishment Clause Limits on Government Interference with Religious Organizations" 41 *Wash & Lee L Rev* 347.
- "Establishment Clause - Definition of Religious Beliefs" (1996) 110 *Harv L Rev* 541.
- "Establishment Clause Issues Examined" 37:4 *Christianity Today* April 5 1993, 71.
- Evans, M D 1997. "Book Review: Freedom of Religion Or Belief - Ensuring Effective International Legal Protection" 46 *Int'l & Comp L Rev* 489.
- Faun Dafa Information Center 2005. "Frequently Asked Questions About Falun Gong", viewed October 18 2005, <<http://www.faluninfo.net/faq.asp>>.
- Faulkner, L R & Durbin, J R 2000. "In Memoriam Charles Hartshorne" [memorial resolution: University of Texas at Austin Faculty Council], viewed November 9 2004, <<http://www.utexas.edu/faculty/council/2000-2001/memorials/Hartshorne/hartshorne.html>>.
- Feofanov, D N 1994. "Defining Religion: An Immodest Proposal" 23 *Hofstra LR* 309.
- Ferré, F 1970. "The Definition of Religion" 38 *Journal of the American Academy of Religion* 3.
- Finnis, J 1998. "On the Practical Meaning of Secularism" 75(3) *Notre Dame L Rev* 491.

- Finseth, I F 1995. "American Transcendentalism", viewed December 15 2004, <<http://eserver.org/thoreau/amertran.html>>.
- Firmage, D B 1993. "Free Exercise of Religion in Nineteenth Century America: The Mormon Cases" 7 *JL & Relig* 281.
- Fletcher, N S 1987. "Edwards v Aguillard: Constitutional Law - the Evolution of Secular Purpose in Establishment Clause Jurisprudence" 62 *Tulane L Rev* 261.
- Flynn, T 2002. "A Secular Humanist Setting the Record Straight Definition" 22:4 *Free Inquiry* Fall 2002.
- Fowler, J A 1998. "Christianity is NOT Religion", viewed December 15 2004, <<http://www.insearchofacity.homestead.com/files/Religion.html>>.
- Frame, R O 1992. "Belief in a Nonmaterial Reality - A Proposed First Amendment Definition of Religion" *U Ill L Rev* 819.
- Frame, T 2005. "God's Premature Obituaries", *Quadrant*, Vol 49 No 7-8, July-August 2005.
- Frankel, G S 1991. "Note, Untangling First Amendment Values: The Prisoners' Dilemma" 59 *Geo Wash L Rev* 1614.
- Fredman, S 1998. "Bringing Rights Home" 114 *Law Q Rev* 538.
- Freed, E C 1986. "Note: Secular Humanism, the Establishment Clause, and Public Education" 61 *NYUL Rev* 1149.
- Freeman, III, G C 1983. "The Misguided Search for the Constitutional Definition of 'Religion'" 71 *Geo LJ* 1519.
- Fricklas, M D 1984. "Executive Order 12,356: The First Amendment Rights of Government Grantees" 64 *BUL Rev* 447.

- Frigerio, A F. "Scientology and Contemporary Definitions of Religion in the Social Sciences", viewed November 2 2004, <<http://www.qualifiedscientology.org/page09.htm>>.
- Frost, E 2003. "How Bright Are You?" [sermon: Unitarian Universalist Congregation of Atlanta GA], viewed November 15 2004, <<http://www.uuca.org/sermons.asp?SermonID=76>>.
- Gaffney, E M 1980. "Biblical Religion and Constitutional Adjudication in a Secularized Society" 31 *Mercer L Rev* 422.
- Gaffney, E M 1986. "Biblical Law and the First Year Curriculum of American Legal Education" 4 *JL & Relig* 63.
- Galloway, Jr, R W 1989. "Basic Establishment Clause Analysis" 29 *Santa Clara L Rev* 845.
- Gamwell, F I 1984. "Religion and Reason in American Politics" 2 *JL & Relig* 325.
- Ganzevoort, R R 2004. "Receptivity and the Nature of Religion" 17 *Journal of Empirical Theology* 115, [Online] viewed April 19 2005, <<http://www.ruardganzevoort.nl/a04recep.htm>>.
- Garvey, J H 1986. "Free Exercise and the Values of Religious Liberty" 18 *Conn L Rev* 799.
- Garvey, J H 1996. "Is There a Principle of Religious Liberty?" 94 *Mich L Rev* 1379.
- Gathings, J T 1989. "When Rights Clash: The Conflict between a Parent's Right to Free Exercise of Religion Versus his Child's Right to Life" 19 *Cum L Rev* 585.
- Gedicks, F M 1997. "The Improbability of Religious Clause Theory" 27 *Seton Hall L Rev* 1233.
- Gekas, J A 1987. "California's Prayer Healing Dilemma" 14 *Hastings Const LQ* 395.

- Gelbein, J R 1995. "A Theology Shift in Our Denomination? What's Happening to UU Humanism?" [sermon: Unitarian Universalist Church, Arlington VA, October 15 1995], viewed October 5 2004, <<http://www.uucava.org/sermons/shifthum.htm>>.
- George, R P 1998a. "Judicial Review and the Religion Clauses: A response to Professor Greenawalt" 32 *Loy LAL Rev* 59.
- George, R P 1998b. "Protecting Religious Liberty in the Next Rtitacts: Should We Amend the Religion Clauses of the Constitution?" 32 *Loy LAL Rev* 27.
- Gerrand, J 1997. "Thomas Jefferson: The Man of the Millennium - A Humanist" *Australian Humanist*, No 47, Spring 1997.
- Gey, S G 1990. "Why Is Religion Special?: Reconsidering the Accommodation of Religion Under the Religion Clauses of the First Amendment" 52 *U Pitt L Rev* 75.
- Gey, S D 1994. "Religious Coercion and the Establishment Clause" *U Ill L Rev* 463.
- Gilbert, R 2000. "While Standing On One Foot: A Unitarian Universalist Catechism" [First Unitarian Church of Rochester], viewed April 11 2005, <<http://www.rochesterunitarian.org/2000-01/20001015.html>>.
- Giles, C D 1993. "Note, Turner v Safley and Its Progeny: A Gradual Retreat to the 'Hands-Off' Doctrine?" 35 *Ariz L Rev* 219.
- Givens, T L (ed A Wakeley) 2004. "New Religious Movements and Orthodoxy: The Challenge for the Religious Mainstream", Academic Paper/Extract of Remarks from 2004 Lecture Series/University of Richmond VA [August 2004], published by The Church of Jesus Christ of Latter-day Saints, Carlingford NSW, 2004.
- Goddard, J 2004. "Unitarianism - A Religion for Today" [sermon: Adelaide Unitarian Church, June 6 2004], viewed November 2 2004, <<http://homepages.picknowl.com.au/unitariansa/sermons/uismreligionfortoday.htm>>.
- Goldsmith, E B 1999. "God's House, or the Law's" 108 *Yale LJ* 1433.

- Goldsmith, E S 1993. "Salvational Zionism and religious Naturalism in the Thought of Mordecai M Kaplan" 22:4 *Process Studies* 204, [Online] viewed October 5 2004, <<http://www.religion-Online.org/showarticle.asp?title=2843>>.
- Goodenough, U (interviewed by J Neimark) 2004. "There are Two Flavors of God People", viewed October 5 2004, <http://www.beliefnet.com/story/147/story_14706.html>.
- Goody, J 1961. "Religion and Ritual: The Definitional Problem" 12 *British Journal of Sociology* 142.
- Gordinier, T 2005. "Are Atheists Still Barred from Public Office", *Humanist Network News*, June 22 2005, [Online] viewed June 23 2005, <<http://humaniststudies.org/enews/index.html?id=197@lid=1756#n5>>.
- Gotanda, N 1991. "A Critique of "Our Constitution Is Color-Blind" 44 *Stan L Rev* 1.
- "Government-supported Ten Commandments? One Pastor Says, 'No!'" 55:6 *Church & State* June 2002, 15.
- Graff, G 1982. "'Keep off the Grass,' 'Drop Dead,' And Other Indeterminacies: A Response to Sanford Levinson" 60 *Tex L Rev* 405.
- Graham, E 1982. "Religion and Education - the Constitutional Problem" 33 *N Ir L Q* 20.
- Greenawalt, K 1971. "All or Nothing at All: The Defeat of Selective Conscientious Objection" 1971 *Sup Ct Rev* 31.
- Greenawalt, K 1984. "Religion as a Concept in Constitutional Law" 72 *Cal L Rev* 753.
- Greenawalt, K 1995. "Quo Vadis: The Status and Prospects of 'Tests' Under the Religion Clauses" 1995 *Sup Ct Rev* 323.
- Greenawalt, K 1997. "The Meaning of Religious Freedom" 77 *Journal of Religion* 173.
- Greenawalt, K 1998a. "Should the Religion Clauses of the Constitution be Amended?" 32 *Loy LAL Rev* 9.

- Greenawalt, K 1998b. "Originalism and the Religion Clauses: A Response to Professor George" 32 *Loy LAL Rev* 51.
- Greenawalt, K 2004. "Religion and the Rehnquist Court" 99 *Nw UL Rev* 145.
- Grieve, M 1995. "Blasphemy Laws: Last Rights or Last Rites" *Counsel* Jan, 12.
- Griffin, J L 1994. "New Route to Recovery Catching On" *Chicago Tribune* [Northwest ed] May 29 1994, 1.
- Grooms, H H 1964. "Christianity and the Law" *Alabama Lawyer* 25:311-323.
- "Guidance Note: Religious Observance at Work" (1991) *Industrial Relations Legal Information Bulletin* 439, 2.
- Guilfoyle, M J 1958. "Religion and Morality in Law" 18 *Jurist* 253.
- Gunasekara, V A. 2005. "Humanism and Buddhism: A Comparison of the Doctrines of Humanism and Buddhism Considering their Similarities and Differences", viewed May 18 2005, <<http://www.uq.net.au/slsoc/manussa/humbud.htm>>.
- Guterman, S L 1963. "The Interaction of Religion, Law, and Politics in Western Society: Its Historical Character and Influence" 17 *U Miami L Rev* 439.
- Halachmi, R S. "Radical Theology: Confronting The Crises Of Modernity - The Findings of Modern Science and the Tragedy of the Holocaust Led Some Jewish Thinkers to Redefine God", viewed November 9 2004, <http://www.myjewishlearning.com/ideas_belief/god/God_TO_Modern_2/God_Radical_Sabath_Final.htm>.
- Hall, T L 1982. "Note, The Sacred and the Profane: A First Amendment Definition of Religion" 61 *Tex L Rev* 139.
- Halliday, F 1995. "The Literal vs the Liberal" 6 *Women Against Fundamentalism Journal* 16.

- Halpern, L B 1988. "Edwards v Aguillard: The Supreme Court Evaluates the Sincerity of the Louisiana Legislature" 34 *Loyola L Rev* 406.
- Hardon, J A 1952. "John Dewey: Prophet of American Naturalism" *The Catholic Educational Review*, September 1952, [Online] viewed April 6 2005, <<http://www.ewtn.com/library/HOMESCHL/JNDEWEY1.HTM>>.
- Harrison, R 1991. "Blasphemy Laws Only Protect Christianity" 55 *J Crim L* 123.
- Hass, K C 1977. "Judicial Politics and Correctional Reform: An Analysis of the Decline of the 'Hands-Off' Doctrine" *Det CL Rev* 795.
- Hastey, S 1987. "High Court Strikes Down Creation Science Law" 73:173 *Florida Baptist Witness* 31.
- Hayes, D 1988. "Note, Secular Humanism in Public School Textbooks: Thou Shalt Have No Other God (Except Thyself)" 63 *Notre Dame L Rev* 358.
- Heady, B D 1988. "Constitutional Law: What Offends a Theist Does Not Offend The Establishment Clause - Smith v Board Of School Commissioners, 827 F2d 648 (11th Cir 1987)" 13 *So Ill L J* 153.
- Hebert, W 1968. "Louisiana Baptists and the Scopes Trial" 7:4 *La Studies* 329.
- Hendry, G S 1958. "Review of Tillich's Systematic Theology, Vol II" 15 *Theology Today* 78, [Online] viewed July 25 2006, <<http://theologytoday.ptsem.edu/apr1958/v15-1-article6.htm>>.
- Henley, L M 2003. "How the Universe Came to Be" [sermon: Westside Unitarian Universalist Church, Fort Worth TX, November 16 2003], viewed November 10 2004, <<http://www.westsideuu.org/031116.htm>>.
- Henley, L M 2004. "Is Religious Naturalism a Religion?" [sermon: Westside Unitarian Universalist Church, Fort Worth TX, January 11 2004], viewed October 5 2004, <<http://www.westsideuu.org/040111.htm>>.

- Henry, C F H 1984. "Religious Freedom: Cornerstone of Human Rights" 5 *Christian Legal Society Quarterly* 7.
- Hitchcock, J 2004. "The Secularization of the Supreme Court" *Catholic World Report*, April 2004: 46-51, [Online] viewed November 26 2004, <<http://www.catholiceducation.org/articles/politics/pg0113.html>>.
- Hoertdoerfer, P 2004. "Religious Humanism: The Past We Inherit; The Future We Create", viewed October 5 2004, <<http://www.humanismtoday.org/vol12/hoertdoerfer.html>>.
- Horn III, C 1981. "Taking God to Court" *Christianity Today*, January 2 1981:24-27.
- Honeymar, Jr, M G 1997. "Note, Alcoholics Anonymous as a Condition of Drunk Driving Probation: When Does it Amount to Establishment of Religion?" 97 *Colum L Rev* 437.
- Horowitz, P 1996. "The Sources and Limits of Freedom of Religion in A Liberal Democracy: Section 2(a) and Beyond" 54(1) *University of Toronto Faculty of Law Review* 1.
- Horton, R 1960. "A Definition of Religion, and Its Uses" 90 *Journal of the Royal Anthropological Institute* 201.
- Horwitz, P 1997. "Scientology in Court: A Comparative Analysis and Some Thoughts on Selected Issues in Law and Religion" 47 *De Paul L Rev* 85.
- Hoskins, R J 1984. "The Original Separation of Church and State in America" 2 *JL & Relig* 221.
- "How We Are a Religion", in A Concept Map for Ethical Culture: Towards Philosophical Consensus: A Statement of the National Leaders Council of the American Ethical Union, viewed June 21 2005, <http://www.aeu.org/concept_map.html>.
- Howe, L T 1975. "Toward A Secular Spirituality" 44 *Religion in Life* 232.
- Howell, S M 1990. "Transformations in Religion and Society 1922 - 32" 49:1 *Tennessee Historical Quarterly* 18.

- Huanzhong, C 2003. "A Brief Overview of Law and Religion in the People's Republic of China" (2003) *BYU L Rev* 465-473, [Online] viewed October 18 2005, <<http://lawreview.byu.edu/archives/2003/2/CHE.pdf>>.
- Humanist Manifesto I* 1933. *The New Humanist* VI:3 May/June 1933; in Kurtz, P (ed), *Humanist Manifestos I and II*, Amherst NY, Prometheus Books, 1973, [Online] viewed November 10 2004, <<http://www.americanhumanist.org/about/manifesto1.html>>.
- Humanist Manifesto II* 1973. *The Humanist* XXXIII:5 September/October 1973; in Kurtz, P (ed), *Humanist Manifestos I and II*, Amherst NY, Prometheus Books, 1973, [Online] viewed November 10 2004, <<http://www.americanhumanist.org/about/manifesto2.html>>.
- Imbert, J 1997. "Toleration and Law: Historical Aspects" 10(1) *Ratio Juris* 13.
- Ingber, S 1989. "Religion or Ideology: A Needed Clarification of the Religion Clauses" 41 *Stan L Rev* 233.
- Incorvaia, J 1978. "Teaching Transcendental Meditation in Public Schools: Defining Religion for Establishment Purposes" 6 *San Diego Law Review* 337.
- International Humanist and Ethical Union. "Minimum Statement on Humanism" , viewed November 9 2004, <<http://www.ihcu.org/modules/wfsection/article.php?page=1&articleid=6>>.
- International New Thought Alliance 2000. "Declaration of Principles", viewed January 23 2005, <<http://newthoughtalliance.org/pages/5declareprinciples.htm>>.
- Irish, J A 1976. "America and the Kingdom of God" 56 *J of Religion* 238.
- Jamar, S D 1996. "Accommodating Religion at Work: A Principled Approach to Title VII and Religious Freedom" 40 *NYL Sch L Rev* 719.
- Jasion, J T 1999. "The Freedom of Religion and the Universal Declaration of Human Rights: Conflicting Rights" [unpublished conf paper], Taking Religious Convictions Seriously Conference, University College London, January 5-6 1999.

- "John A T Robinson Surprising Views on the Shroud of Turin", viewed November 10 2004, <<http://www.shroudstory.com/faq-robinson.htm>>.
- Johnson, P E 1984. "Concepts and Compromise in First Amendment Religious Doctrine" *72 Cal L Rev* 817.
- Johnson, P E 1995. "Is God Unconstitutional?" *66 Univ Colo L Rev* 461.
- Johnson, R A 1994. "Natural Religion, Common Notions, and the Study of Religions: Lord Herbert of Cherbury (1583-1648)" *24 Religion* 213.
- Johnson, S 2003. "Review, The Legacy of Martin Luther King Jr: The Boundaries of Law, Politics, and Religion" *6 Journal of Southern Religion*, [Online] viewed August 11 2004, <<http://jsr.fsu.edu/2003/Reviews/johnson.htm>>.
- Katz, N 2003. "Predicate Theology" [sermon: Congregation Beth El, Tyler TX, September 27 2003], viewed November 9 2004, <<http://www.jewishtyler.com/pdf/rhserm03.pdf>>.
- Katz, W G 1959. "Christ and Law" *12 Okla L Rev* 57.
- Kazir, E 1996. "Is the Constitutional "Godless" or Just Nondenominational" *106 Yale LJ* 917.
- Kenny, C 1922. "The Evolution of the Law of Blasphemy" *Cam LJ* 127.
- Kent, S A 1999. "The Globalization Of Scientology: Influence, Control and Opposition in Transnational Markets" *29 Religion* 147-169.
- King, R 2005. "Don't All Religions Basically Teach the Same Thing?" ("Can't We All Just Get Along?"), viewed May 11 2005, <http://temaa1p315.homestead.com/one_way_2_God.html>.
- Kirkland, R 1976. "Defining 'Religion'", viewed January 18 2005, <<http://www.arches.uga.edu/~kirkland/rk/pdf/guides/RELDEFINE.pdf>>.
- Kishimoto, H 1961. "An Operational Definition of Religion" *8 Numen* 236.

- Konvitz, M R 1963. "The Meaning of 'Religion' in the First Amendment: The Torcaso Case" 197 *Cath World* 288.
- Korzec, R 1991. "A Tale of Two Religions: A Contractual Approach to Religion As a Factor in Child Custody and Visitation Disputes" 25 *New Eng L Rev* 1121.
- Klundt, S 1988. "Permitting Religious Employers to Discriminate on the Basis of Religion: Application to For-profit Activities" *BYU L Rev* 221.
- Kowalski, G 2003. "The Ultimate Canvas", *UU World*, July/August 2003, viewed April 26 2005, <<http://www.uuworld.org/2003/04/feature3.html>>.
- Kurland, P B 1978. "The Irrelevance of the Constitution: The Religion Clauses of the First Amendment and the Supreme Court" 24 *Vill L Rev* 3.
- Kurtz, J 1978. "Difficult Definitional Problems in Tax Administration: Religion and Race" 23 *Cath Law* 301.
- Lansberry, J C 2003. "De Religione Romana", viewed December 21 2004, <<http://www.aztriad.com/religio1.html>>.
- Larue, G A 2003. "What is 'Religion'? - Well, It's Hard to 'Say Exactly'" , viewed June 14 2005, <http://www.teachingaboutreligion.org/WhitePapers/Larue_whatisreligion.htm>.
- Lash, K T 1998. "The Status of Constitutional Religious Liberty at the End of the Rtitacts" 32 *Loy LAL Rev* 1.
- Laska, L L 1996. "Landmarks Of Tennessee Law: 1796-1996" 32 *Tenn Bar J* 12.
- Laughlin, P A 1998. "Hindu Philosophy and the Future of New Thought Revisited" *The Journal of the Society for the Study of Metaphysical Religion* 4(1), Spring 1998:75-112, [Online] viewed January 23 2006, [Part 1] <<http://websyte.com/unity/westerville/wuf/food/pl-hindunt.htm>>, [Part 2] <<http://websyte.com/unity/westerville/wuf/food/pl-hindunt.htm>>, [endnotes] <<http://websyte.com/unity/westerville/wuf/food/pl-hinduntnotes.htm>>.
- "Law and the Definition of Religion, The" (1984) 58 *Aust L J* 366.

- Laws, J 1998. "The Limitations of Human Rights" *Public L* 254.
- Lawson, G 1992. "Legal Theory: Proving the Law" 86 *Nw U L Rev* 859.
- Laycock, D 1986. "Equal Access and Moments of Silence: The Equal Status of Religious Speech by Private Speakers" 81 *Nw U L Rev* 1.
- Laycock, D 1990. "Formal, Substantive, and Disaggregated Neutrality Toward Religion" 39 *De Paul L Rev* 993.
- Leahy, M & Laura, R S 1997. "Religious 'Doctrines' and the Closure of Minds" *Journal of Philosophy of Education*, 31, 329.
- Leuba, J H 1901. "Introduction to a Psychological Study of Religion" 9 *Monist* 201.
- Levine, J M 1994. "Comment: 'Join the Sierra Club!': Imposition of Ideology as a Condition of Probation" 142 *U Pa L Rev* 1841.
- Lewin, R 1987. "Creationism Case Argued Before Supreme Court" 235 *Science* 22.
- Lindbeck, G A 1962. "Natural Law in the Thought of Paul Tillich" 7 *Natural Law Forum* 84.
- Lindgren, J 1993. "Defining Pornography" 141 *U Pa L Rev* 1153.
- Linder, D O & Quinn, M S 1981. "One Dialogue on Constitutional Religion" 14 *Creighton L Rev* 1249.
- Littell, F H 1964. "Basis of Religious Liberty" *Journal of Church and State*, 6, pp 132, 145.
- Little, D 1976. "Thomas Jefferson's Religious Views and Their Influence on The Supreme Court's Interpretation of the First Amendment" 26 *Cath UL Rev* 57.
- Loftin, J D 1994. "Constitutional Law and American Indian Religious Freedom: A Tale of Two Worlds" 1 *American Indian Religions: An Interdisciplinary Journal* 37.
- Longley, A 1993. "Religion as Charity: Some Reflections" 1 *CL & PR* 87.

- Louisell, D W 1976. "Does the Constitution Require A Purely Secular Society?" 26 *Cath UL Rev* 20.
- Lupton, D 1939. "Mr X and Alcoholics Anonymous" [sermon: First Unitarian Church (Universalist-Unitarian), Cleveland OH, November 26 1939], viewed April 29 2005, <http://www.a-1associates.com/AA/mr_x_aa.htm>.
- Lyall, F 1976. "Religion and Law" 21 *Judicial Rev (NS)* 58.
- Lysy, T 2000. "William James, Theosophist", *Quest*, November-December 2000 [Online] viewed March 15 2006, <<http://www.theosophical.org/theosophy/questmagazine/novdec2000/lysy/index.html>>.
- Mackie, J L 1962. "John Anderson" 40 *AJP* 124.
- McBride, J 1988a. "Paul Tillich and the Supreme Court: Tillich's 'Ultimate Concern' as a Standard in Judicial Interpretation" 30 *J Church & St* 244.
- McBride, J 1988b. "Religion and the First Amendment: An Inquiry Into the Presuppositions of the Jurisprudence of Original Intention" 6 *JL & Relig* 1.
- McCalla, A M 1998. "Evolutionism and Early Nineteenth Century Histories of Religions" *Religion* 28.
- McCarson, B 2002. "What is Religion?", viewed October 16 2004, <http://www.metareligion.com/Psychiatry/Analytical_psychology/what_is_religion.htm>.
- McCarty, D 2006. "Living in Mystery, Walking in Wonder", *Quest* LX:7, Je 2006, 4.
- McClellan, Van F 1988. "Edwards v Aguillard: The Creationist - Evolutionist Battle Continues" 13 *Okla City UL Rev* 631.
- McConnell, M W 1985. "Accommodation of Religion" *Sup Ct Rev* 1.
- McConnell, M W 1986. "Coercion: The Lost Element of Establishment" 27 *Wm & Mary L Rev* 933.

- McConnell, M W 1990. "The Origins and Historical Understanding of Free Exercise of Religion" 103 *Harv L Rev* 1410.
- McConnell, M W 1991. "A Response to Professor Marshall" 58 *U Chi L Rev* 329.
- McDermott, B L 1988. "Fundamentalists' Efforts To Intervene In Curricular Decisions" 39 *Case W Res L Rev* 911.
- McNatt, J M 1969. "Religion and Law" 42 *Fla B J* 1214.
- McDougal, M S et al 1976. "The Right to Religious Freedom and World Public Order: The Emerging Norm of Nondiscrimination" 74 *Mich L Rev* 865.
- McNarie, A D 2005. "No Place of Refuge", *Hawai'i Island Journal*, viewed April 29 2005, <<http://www.hawaiiislandjournal.com/2005/01a05.html>>.
- Mahoney, A & Pargament, K I 2004. "Sacred Changes: Spiritual Conversion and Transformation" 60 *Journal of Clinical Psychology* 481.
- "Major Religions of the World Ranked by Number of Adherents", viewed June 6 2005, <http://www.adherents.com/Religions_By_Adherents.html>.
- Malcolm, D 1996. "Religion, Tolerance and the Law" 70 *Aust L J* 976.
- Manners, B 2002. "'On the Seventh Day ...': A Jewish View of the Sabbath" *Signs of the Times* 117:7.
- Mansfield, B 1989. "Thinking about Australian Religious History" 15(3) *Journal of Religious History* 330.
- Mansfield, J H 1984. "The Religion Clauses of the First Amendment and the Philosophy of the Constitution" 72 *Cal L Rev* 847.
- Marshall, W P 1994. "Truth and the Religion Clauses" 43 *De Paul L Rev* 243 .
- Marshall, W P 1986. "We Know It When We See It": The Supreme Court and Establishment" 59 *S Cal L Rev* 495.

- Marty, M 1979. "This We Can Believe: A Pluralistic Vision" 75 *Religious Education* 37.
- "Mary Baker Eddy (1821-1910) *Founder of Christian Science*", viewed January 23 2006, <<http://marybakereddy.wwwhubs.com/>>.
- Mason, C A 1988. "Note, 'Secular Humanism' and the Definition of Religion: Extending a Modified 'Ultimate Concern' Test to *Mozert v Hawkins County Public Schools* and *Smith v Board of School Commissioners*" 63 *Wash L Rev* 445.
- Mead, S E 1978. "Religious Pluralism and the Character of the Republic" 61 *Soundings* 306.
- Meditation & Buddhism* 2002. Elizabeth Bay NSW: Mahasiddha Buddhist Centre.
- Melnick, R R 1981. "Secularism in the Law: The Religion of Secular Humanism" 8 *Ohio North U L* 329.
- Merel, G 1978. "The Protection of Individual Choice: A Consistent Understanding of Religion Under the First Amendment" 45 *U Chi L Rev* 805.
- Meyer, J E 2002. "A Religion of Peace" [sermon: Unitarian Universalist Community Church of Santa Monica, Santa Monica CA, October 20 2002], viewed November 26 2004, <<http://www.uusm.org/services/102002.php>>.
- Michaelsen, R 1983. "'We Also Have a Religion': The Free Exercise of Religion Among Native Americans" 7 *American Indian Quarterly*.
- Michaelsen, R 1986. "Sacred Land in America: What is It? How Can it be Protected?" 16 *Religion* 249.
- Michaelsen, R 1998. "Is the Miner's Canary Silent? Implications of the Supreme Court's Denial of American Indian Free Exercise of Religion Claims" 697 *JL & Relig* 97.
- Moens, G A 2004. "The Menace of Neutrality in Religion" *BYU L Rev* 535.
- Montgomery, J W 1998. "When is Evangelism Illegal?" *New LJ* 524.

- Moore, J S 1987. "The Edwards' Decision: The End of Creationism in our Public Schools?" 21 *Akron L Rev* 255.
- Morden, J W 1983. "Law and Religion" 17 *Law Society of Upper Canada Gazette* 249.
- Morden, J W 1984. "An Essay on the Connections Between Law and Religion" 2 *JL & Relig* 7.
- Morgan, J 2000. "Small Group Ministry: Rooted in Early Universalism" 2 *Covenant Group News* (February 29 2000), [Online] viewed April 6 2005, <<http://www.swuuc.org/Bob%20Hill/vol2no1.htm>>.
- Morrison, K 1992. "Beyond the Supernatural: Language and Religious Action" *Religion* 22, 201-5.
- Morris, A A 1988. "Fundamentalism, Creationism and the First Amendment" 41 *Ed Law Rep* 1.
- Mortensen, R 1995. "Rendering to God and Caesar: Religion in Australian Discrimination Law" 18 *U Queens LJ* 208.
- Mullins, L B 1986. "Note, Education for Economic Security Act: The Secular Humanism Ban and Equal Access Act" 43 *Wash & Lee L Rev* 265.
- Murdoch, J L 1989. "Religion, Education and the Law" *Journal of the Law Society of Scotland* 258.
- Murray, W R 2000. "Religious Humanism: An Address Delivered at the Unitarian Universalist Association General Assembly 2000" 1:2 *Journal of Liberal Religion* Spring 2000, [Online] viewed October 5 2004, <http://www.meadvill.edu/murry_1_2.html>.
- Muthuraj, J G 2001. "The Significance of Mircea Eliade for Christian Theology" 33 *Bangalore Theological Forum* 38, [Online] viewed November 18 2004, <<http://religion-Online.org/showarticle.asp?title+1901>>.

- Nall, J. "Turning to Friends in Faithful Places: Why Non-Theists Must Befriend Likeminded, Minority Religious Groups", viewed November 15 2004, <<http://www.impactpress.com/articles/octnov04/nall101104.html>>.
- Newman, L L 2004. "Faith, Spirituality, and Religion: A Model for Understanding the Differences" 23:2 *College Student Affairs Journal* 102.
- Nichols, A C 2004. "The Constitutionality of the Religious Land Use and Institutionalized Persons Under the Establishment Clause" 46 *Journal of Church and State* 281.
- "No Protection for Religious Group" (1999) *Education Law Monitor* April 1999, 9.
- Noonan, J T 1985. "Review: Religion and the Law" (1985) 33 *Am J Comp L* 765.
- "Note, 'Constitutional Religion': A Survey of First Amendment Definitions of Religion" (2001) *Tex F on CL & CR* (Summer 2001) 117, 139-144.
- "Note, 'I Know It When I See It': Mail-Order Ministry Tax Fraud and the Problem of a Constitutionally Acceptable Definition of Religion" (1987) 25 *Am Crim L Rev* 113.
- "Note, Mind Control' or Intensity of Faith: The Constitutional Protection of Religious Beliefs" (1978) 13 *Harv Civ Rights-Civ Lib L Rev* 751.
- Nuger, K P 1988. "The US Supreme Court Applies the Lemon Test to Louisiana's Balanced Treatment Act" 46 *Education Law Rep* 1.
- O'Brien, C C 1998. "A Founding Father's Feet of Clay: An Interview" *Free Inquiry*, 18:2 Spring 1998.
- O'Callaghan, J 1990. "Alcohol, Driving and Public Policy: The Effectiveness of Mandated AA Attendance for DWI Offenders" 7(4) *Alcoholism Treatment Q* 87.
- O'Connor, S D 1997. "Religious Freedom: America's Quest for Principles" 48 *N Ir L Q* 1.
- Oh, K 2005. "Buddhism, Taoism and Christianity." Address delivered at the Sydney Unitarian Church, Sydney NSW, 5 June 2005.

- Olds, M [1995] 1996. "Religious Humanism" *Religious Humanism*, Autumn 1995 (April 1996), [Online] viewed October 5 2004, <<http://www.humanistsofutah.org/1996/artapril96.htm>>.
- O'Neill, M R 1994. "Government's Denigration of Religion: Is God the Victim in our Public Schools" 21 *Pepperdine L Rev* 477.
- Orlin, T S 1997. "Religious Pluralism and Freedom of Religion: Its Protection in the Light of Church/State Relationships" 5(2) *OSCE Bulletin* 22.
- Overton, W R 1982. "Creationism in the Schools; the Decision in McLean versus the Arkansas Board of Education" 215 *Science* 934.
- Ownby, D 2005. "Unofficial Religions in China: Beyond the Party's Rules" [Statement of Professor David Ownby to the Congressional-Executive Commission on China, May 23 (2005)], viewed October 18 2005, <<http://www.cecc.gov/pages/roundtables/052305/Ownby.php>>.
- Paine, T 2004. "Of the Word 'Religion,' and Other Words of Uncertain Signification" *Tom Paine on the Word "Religion"*, viewed December 15 2004, <http://www.deism.com/paine_essay11.htm>.
- Palmer, P J. "The Heart of a Teacher: Identity and Integrity in Teaching" , viewed May 10 2005, <http://64.233.179.104/search?q=cache:v0XS8tGGF7UJ:www.colorado.edu/ftcp/memos/protected_memos/59.pdf+%22Palmer+Parker%22%22longing+to+be+connected%22&hl=en>.
- Palmer, W D 1993. "Time to Exorcise Another Ghost from the Vietnam War: Restructuring the In-Service Conscientious Objector Program" 140 *Mil L Rev* 179 [Online] viewed July 21 2006, <http://www.loc.gov/rr/frd/Military_Law/Military_Law_Review/pdf-files/275871~1.pdf>.
- Paris, J J 1973. "Toward an Understanding of the Supreme Court's Approach to Religion in Conscientious Objector Cases" 7 *Suffolk U L Rev* 449.

- Passmore, J 1951. "The Dreariness of Aesthetics" 60 *Mind* 318.
- Paulsen, M S 1993. "Lemon is Dead" 43 *Case W Res L Rev* 795.
- Peale, N V nd. "What Freemasonry Means to Me", viewed July 29 2006, <<http://www.masonicinfo.com/quotes.htm>>.
- Penalver, E 1997. "Note, The Concept of Religion" 107 *Yale LJ* 791, [Online] viewed October 12 2004, <http://gateway.proquest.com/openurl?url_ver=Z39.88-2004&res_dat=xri:pqd&rft_val_fmt+info:ofi/fmt:kev:mtx:journal&genre=article&rft_dat=xri:pqd:did=000000025169161&svc_dat=xri:pqil:fmt=text&req_dat=xri:pqil:pq_clntid=68426>.
- Pepper, S 1981. "Reynolds, Yoder, and Beyond: Alternatives for the Free Exercise Clause" *Utah L Rev* 309.
- "Permitting Religious Employers to Discriminate on the Basis of Religion: Application to Non-profit Activities" (1988) *BYU L Rev* 221.
- Pfeffer, L 1987. "The 'Religion' of Secular Humanism" 29 *J Church & St* 495.
- Phang, A 1999. "The Natural Law Foundations of Lord Denning's Thought and Work" *DLJ* 159.
- Phifer, K W 2004. "Our Heritage of Humanism" [sermon: First Unitarian Universalist Church, Ann Arbor MI, June 6 2004], viewed October 5 2004, <http://www.uuaa.org/sermons/our_heritage_of_humanism.txt>.
- Picarda, H 1993. "Religious Observances and the Element of Public Benefit" 2 *Charity Law and Practice Review* 155.
- Poppinga, J B 1980. "Religion and the First Amendment: Choosing Sword or Shield" *Theology, News and Notes*, December 1980, 3-5.
- "Preamble to the Constitution of The International Council of Unitarians and Universalists", viewed January 12 2005, <<http://www.icuu.net/aboutus/index.html>>.

- Presser, S B 1997. "Some Realism About Atheism: Responses to The Godless Constitution" 1 *Tex Rev L & Pol* 87.
- Presser, S B 2004. "Outsiders, Swing Justices, and Original Understanding: Can the Religion Clauses Be Saved? A Comment on Greenawalt" 99 *Nw UL Rev* 177.
- Prevos, P 2001. "Myth, Ritual & the Sacred: Phenomenology of Religion", viewed February 28 2005, <<http://www.prevos.net/ola/phenomenology.pdf>>.
- Price, L 1998. "What is Religion?", viewed November 9 2004, <<http://wrinklybrain.com/WhatIsReligion.pdf>>.
- Prowse, M 2005. "The Essential Durkheim", *Australian Financial Review*, March 24 2005, [Online] viewed April 5 2005, <<http://afr.com/articles/2005/03/23/1111525215172.html>>.
- Pummer, R 1975. "Recent Publications on the Methodology of the Science of Religion" 22 *Numen* 161.
- "Purpose of Ritual in Freemasonry, The", viewed March 29 2005, <<http://sric-canada.org/Ritual.htm>>.
- Quinn, W 1988. "Rudolf Bultmann's Demythologization Hermeneutic as Applied to New Testament and Constitutional Exegesis" 6 *JL & Relig* 297.
- Quint, F & Spring, T 1999. "Religion, Charity Law and Human Rights" 5(3) *Charity Law and Practice Review* 153.
- Raloff, J 1987. "High Court Rejects Creationism Law" 131 *Science News* 404.
- Ravitch, F S 2004. "The Supreme Court's Rhetorical Hostility: What is 'Hostile' to Religion under the Establishment Clause?" *BYU L Rev* 1031.
- Reidinger, P 1986. "Creationism in the Classroom" 72 *ABA J* 66.
- "Religion and Employment Law" (1995) 538 *IDS Brief* 7.
- "Religion in Hawaii", viewed April 29 2005, <<http://www.lava.net/~hcsc/>>.

- "Religious Discrimination in US State Constitutions", viewed November 30 2004, <<http://www.religioustolerance.org/texas.htm>>.
- "Religious Freedom in the USA", viewed November 30 2004, <<http://www.bible-sabbath.com/reliiglib/Religious%20Freedom.htm>>.
- Rennie, B 2004. "REL 161 - Understanding Religious Experience and Expression", viewed January 18 2005, <<http://www.westminster.edu/staff/brennie/rel161in.htm>>.
- Rice, D 1983. "Felix Frankfurter and Reinhold Niebuhr: 1940-1964" 1 *JL & Relig* 325.
- Rice, D 1986. "The Spirit of the Law in the Thought of Reinhold Niebuhr" 4 *Journal of Law and Religion* 253.
- Richard, R 1978. "Le concept de religion" 2 *Cahiers de centre des recherches en sociologie religieuse* 3.
- Ricks, V D 1993. "To God God's, to Caesar Caesar's, and to Both the Defining of Religion" 26 *Creighton L Rev* 1053.
- Riga, P J 1977. "Yoder and the Free Exercise of Religion" 6 *JL & Educ* 419.
- Rimington, H 1998. "No Right of Withdrawal from Religious Education" 146 *Childright* 13.
- "Ritual", viewed March 29 2005, <<http://www.spiritmoving.com/quotes.html>>.
- Robbins, J W 1992. "When Christians Become Naturalists" 28 *Religious Studies* 195.
- Robertson, M G "Pat" 1995. "Squeezing Religion Out of the Public Square - The Supreme Court" 4 *Wm & Mary L Bill Rts J* 223.
- Robillard, A St J N 1981. "Religion, Conscience and Law" 32 *N Ir L Q* 358.
- Robinson, B A 2005. "Confucianism: Founded by K'ung Fu Tzu", viewed May 16 2005, <<http://www.religioustolerance.org/confuciu.htm>>.
- Rosenbaum, D E 1985. "Of 'Secular Humanism' and its Slide into Law" *New York Times* Feb 22, A16.

- Ross, D S 1975. "The 'Civil Religion' in America" 44 *Religion in Life* 29.
- Routledge, G 1989. "Blasphemy: The Report of the Archbishop of Canterbury's Working Group on Offences against Religion and Public Worship" *Ecclesiastical Law Journal* 27.
- Rzepka J 2005. "From Your Minister", *Quest* LXI:6, Je 2005, 6.
- Sadurski, W 1989. "On Legal Definitions of 'Religion'" 63 *Aust L J* 834.
- Salmons, D B 1965. "Toward a Fuller Understanding of Religious Exercise: Recognising the Identity-Generative and Expressive Nature of Religious Devotion" 62 *U Chi L Rev* 1243.
- Samson, S A 2004. "Charles Hodge on Law and Religion" American Reformation Project, viewed November 30 2004, <<http://www.americanreformation.org/Philosophy/Polity/CharlesHodge.htm>>.
- Santangelo, F X 1996. "A Proposal for the Equal Protection of Non-Indians rtifacts Native American Religions: Can the Religious Freedom Restoration Act Finally Remove the Existing Deference Without a Difference?" 69 *St John's L Rev* 255.
- Santucci, J 1997. "Krishnamurti and the World Teacher Project: Some Theosophical Perceptions", viewed March 13 2006, <http://www.alpheus.org/html/articles/thopv/kandwt_print.html>.
- Sarno, G G & Stephens, A 1991. "Constitutionality of Teaching or Suppressing Teaching of Biblical Creationism or Darwinian Evolution Theory in Public Schools" 102 *ALR Fed* 537.
- Sautter, C 2002. "*Chochmat*: Rhymes with Spirit Rock" 1 *Journal of Religion and Popular Culture*, [Online] viewed June 15 2005, <<http://www.usask.ca/relst/jrpc/chochmatprint.html>>.
- Saxer, S R 1996. "When Religion Becomes A Nuisance: Balancing Land Use and Religious Freedom When Activities of Religious Institutions Bring Outsiders Into the Neighborhood" 84 *Ky LJ* 507-22.

- Saxer, S R 1998. "Zoning Away First Amendment Rights" 53 *Journal of Urban and Contemporary Law* 1.
- Schaeffer, S 1988. "Edwards v Aguillard: Creation Science and Evolution - The Fall of Balanced Treatment Acts in the Public Schools" 25 *San Diego L Rev* 829.
- Scharlemann, R P 1971. "Christian Theology and Law" 23 *Lutheran Quarterly* 210.
- Schmid, P D 1989. "Note, Religion, Secular Humanism and the First Amendment" 13 *S Ill U LJ* 357.
- Schulweis, H 1975. "From God to Godliness: Proposal for a Predicate Theology" 40:1 *Reconstructionist*.
- Schulz, W F 1990. "Unitarian Universalism affirms ..." *UU World*, January/February 1990, [Online] viewed December 13 2004, <<http://www.wisdomquotes.com/001232.html>>.
- Schulz, W F 2003. "Our Humanist Legacy: Seventy Years of Religious Humanism" *UU World*, November/December 2003, [Online] viewed December 13 2004, <<http://www.uuworld.org/2003/06/feature3.html>>.
- Schweitzer, A 1936. "The Ethics of Reverence for Life" (1936) 1 *Christendom* 225, [Online] viewed April 19 2005, <<http://www1.chapman.edu/schweitzer/sch.reading4.html>>.
- Sewell, R 2002. "What is Dialectical Materialism?", viewed March 29 2006, <http://www.marxist.com/Theory/study_guide1.html>.
- Sexton, J 1978. "Note, Toward a Constitutional Definition of Religion" 91 *Harv L Rev* 1056.
- Shaffer, T L 1981. "The Moral Theology of Atticus Finch" 42 *U Pitt L Rev* 181.
- Sharpe, E 1975. "The Phenomenology of Religion" 15 *Learning for Living* 4.
- Sheffer, M S 1979. "The Free Exercise of Religion and Selective Conscientious Objection: A Judicial Response to a Moral Problem" 9 *Capital U L Rev* 9:8.

- Sheffer, M S 1998. "God versus Caesar: Free Exercise, the Religious Freedom Restoration Act, and Conscience" 23 *Okla City UL Rev* 929.
- Sherrin, C H 1990. "Public Benefit in Trusts for the Advancement of Religion" 32 *Malaysian Law Review* 114.
- Shureen, D D 2004. "What is 'Religion' for Purposes of Employment Discrimination Cases?" 29:4 *Employee Relations Law Journal* 35.
- Sibley, M Q 1984. "Religion and Law: Some Thoughts on their Intersections" 2 *JL & Relig* 41.
- Sieghart, P 1989. "Christianity and Human Rights" 100 *Law & Just* 5.
- Simpson, M D 2003. "Thou Shalt Not..." 21:6 *NEA Today* March 2003, 17.
- Sinkford, W G 2004. "Sinkford Issues Statement on Unitarian Universalist Moral Values" (UUA presidential statement: Boston MA, November 9 2004), viewed April 26 2005, <<http://www.uua.org/president/041109.html>>.
- Sinkford, W G 2005. "Real Moral Values", *UU World*, March/April 2005, [Online] viewed April 26 2005, <<http://www.uuworld.org/2005/02/calling.html>>.
- Sisk, G C 1998. "Stating the Obvious: Protecting Religion for Religion's Sake" 47 *Drake L Rev* 45.
- Slye, T L 1983. "Rendering Unto Caesar: Defining 'Religion' for Purposes of Administering Religion-Based Tax Exemptions" 6 *Harv JL & Pub Pol'y* 219.
- Small, F 2003. "Intimacy and Ultimacy" [sermon: First Church Unitarian, Littleton, September 28 2003], viewed April 6 2005, <http://www.fculittle.org/sermons/Intimacy_and_Ultimacy_FS.htm>.
- Smith, C K 1992. "Note, State Compelled Spiritual Revelation: The First Amendment and Alcoholics Anonymous as a Condition of Drunk Driving Probation" (1992) 1 *Wm & Mary Bill Rts J* 299.

- Smith, E E 1991. "The Criminalization of Belief: When Free Exercise Isn't" *42 Hastings LJ* 1491.
- Smith, J C 1979. "Case Note: R v Lemon" *Crim LR* 311.
- Smith, S D 1994. "Free Exercise Doctrine and the Discourse of Disrespect" *65 U Colo L Rev* 519.
- Smith, S D 1987. "Symbols, Perceptions, and Doctrinal Illusions: Establishment Neutrality and the 'No Endorsement' Test" *86 Mich L Rev* 266.
- Smith, S D 1991. "The Rise and Fall of Religious Freedom in Constitutional Discourse" *140 U Pa L Rev* 149.
- Smoley, R 1999. "The Purpose of Ritual", viewed March 29 2005, <http://www.modernpaths.com/library/articlesfaith/articles/f_lib_rituals_rs_mpaths.html>
- Smolla, R A 1982. "The Re-emergence of the Right - Privilege Distinction in Constitutional Law: The Price of Protesting Too Much" *35 Stan L Rev* 69.
- "Sociology of Religion, The", viewed November 2 2004, <<http://www2.pfeiffer.edu/~Iridener/DSS/Durkheim/DURKW3.HTML>>.
- Solove, D J 1996. "Faith Profaned: The Religious Freedom Restoration Act and Religion in the Prisons" *106 Yale LJ* 459, [Online] viewed November 19 2004, <http://law.shu.edu/faculty/fulltime_faculty/soloveda/rfra_prisons.htm>.
- Spearritt, G 2004. "Religion: It's Natural", viewed October 5 2004, <<http://www.sof-in-australia.org/religion.htm>>.
- Spiegel, S J 1983. "United States V Lemon: Judicial Consideration of Religious Association as an Aggravating Factor at Criminal Sentencing" *33 Cath UL Rev* 187
- "Spirituality (for Skeptics)", viewed November 23 2004, <<http://treesong.org/spirituality/skeptics/>>.

- Spiro, D A 1987. "The Creation of a Free Marketplace of Religious Ideas: Revisiting the Establishment Clause after the Alabama Secular Humanism Decision" 39 *Ala L Rev* 1.
- Spong, J S. "The Bishop's Voice: 'Can One Be a Christian without Being a Theist?'," viewed November 10 2004, <<http://www.dioceseofnewark.org/vox21096.html>>.
- Stark, R 1999a. "Atheism, Faith and the Social Scientific Study of Religion" 14 *Journal of Contemporary Religion* 41.
- Stark, R 1999b. "A Theory of Revelations" 38 *Journal for the Scientific Study of Religion* 289.
- Stark, R & Bainbridge, W S 1979. "Of Churches, Sects, and Cults" 18 *Journal for the Scientific Study of Religion* 117.
- Stavros, S 1997. "Freedom of Religion and Claims for Exemption From Generally Applicable, Neutral Laws: Lessons From Across The Pond?" 6 *European Human Rights Law Review* 607.
- Stawski, C 2003. "Definitions and Hypotheses: William James, religion, and Spiritual Transformation" 53 *Cross Currents* 424.
- Stenshoel, M C 1985. "The Supreme Court, Supreme Law, and Supreme Being: A Current Constitutional Perspective" 24 *Dialog* 252.
- Stone, J A 1993. "Broadening Care, Discerning Worth: The Environmental Contributions of Minimalist Religious Naturalism" 22 *Process Studies* 194, [Online] viewed February 15 2005, <<http://www.religion-Online.org/showarticle.asp?title+2846>>.
- Stone, J A 2000. "What is Religious Naturalism?" 2:1 *Journal of Liberal Religion* Fall 2000, [Online] viewed October 5 2004, <http://www.meadville.edu/stone_2_1.html>.
- Stone, J A 2003. "Is Nature Enough? Yes" 38 *Zygon* 783, [Online] viewed April 11 2004, <<http://www.ingentaconnect.com/content/bpl/zygo/2003/00000038/00000004/art00005>>.

- Strauss, L T 2003. "Process Theology: God and Humanity – Partners in Creation" [sermon: River Road Unitarian Church, Bethesda MD, September 21 2003], viewed April 26 2005, <<http://www.rruc.org/sermons/sermon030921.htm>>.
- Strossen, N 1986. "'Secular Humanism' and 'Scientific Creationism': Proposed Standards for Reviewing Curricular Decisions Affecting Students' Religious Freedom" 47 *Ohio St LJ* 333.
- Stumpf, S E 1950. "Christian Theology and Juristic Thought" (1950) 30 *Journal of Religion* 44.
- Sturm, D 1983. "Constitutionalism and Conscientiousness: The Dignity of Objection to Military Service" 1 *JL & Relig* 265.
- Sullivan, D J 1988. "Advancing the Freedom of Religion or Belief Through the UN Declaration on the Elimination of Religious Intolerance and Discrimination" 82 *Am J Int L* 487.
- Sullivan, K M 1989. "Unconstitutional Conditions" 102 *Harv L Rev* 1413.
- Sutherland, S R 1987. "Religious Tolerance and Charitable Status" 36 *K C* 23.
- Swatos, Jr, W H 1990. "Renewing 'Religion' for Sociology" 23 *Sociological Focus* 141.
- Swick III, J S 1996. "Veiled in Allegory and Illustrated by Symbols: An Invitation to a Deeper Appreciation of Masonic Teaching", *The Philalethes Magazine*, Vol XLIX No 3, June 1996, 74-5.
- Symposium 1991. "Whether Tax Exemption for Religious Organizations Violate the First Amendment" 22 *Cum L Rev* 471 .
- Tarran, M 1999. "Does Religion Allow Discrimination?" *Private Client Briefing* 49.
- Taylor, B C 1998. "Kansas Denies Religion-based Defense to Rastafarians on Marijuana Charges" 38 *Washburn LJ* 307.

- Teshima, J Y 1995. "The Concept of Man in Hasidism" [extract from *Zen Buddhism and Hasidism: A Comparative Study* (University Press of America, 1995), [Online] viewed June 6 2005, <<http://www16.0038.net/~gilboa/conceptofman.html>>.
- Thomas, G 2004. "Jesus Cursed the Fig-tree" [sermon: Alfred Place Baptist Church, Aberystwyth, Wales, August 29 2004], viewed June 2 2005, <<http://users.aber.ac.uk/emk/ap/sermons/mark61.htm>>.
- Thomas, O S 1991. "The Power to Destroy: The Eroding Constitutional Arguments for Church Tax Exemptions and the Practical Effect on Churches" 22 *Cum L Rev* 604.
- Titshaw, S 1989. "Note, Sharpening the Prongs of the Establishment Clause: Applying Stricter Scrutiny to Majority Religions" 23 *Ga L Rev* 1085.
- Tobin, G 1990. "Day Care and the Establishment Clause: The Constitutionality of the Certificate Program in S 5, The 'ABC' Bill" 12 *Geo Mason U L Rev* 317.
- Toscano, P J 1979. "A Dubious Neutrality: The Establishment of Secularism in the Public Schools" *BYU L Rev* 177.
- Trahan, J 1990. "Constitutional Law: Parental Denial of a Child's Medical Treatment for Religious Reasons" 1989 *Ann Surv Am L* 307.
- Tsang, L 1999. "Faith and Law" 96 *LSG* 25.
- Tushnet, M 1986. "The Constitution of Religion" 18 *Conn L Rev* 701.
- Tweed, T A 2005. "Marking Religion's Boundaries: Constitutive Terms, Orienting Tropes, and Exegetical Fussiness" 44 *History of Religions* 252.
- Underkuffler, L S 1989. "'Discrimination' on the Basis of Religion: An Examination of Attempted Value Neutrality in Employment" 30 *Wm & Mary L Rev* 581.
- Underkuffler-Freund, L 1995. "The Separation of the Religious and the Secular: A Foundational Challenge to First Amendment Theory" 36 *Wm & Mary L Rev* 837.

- Unitarian Universalist Association 1995. "About Unitarian Universalism" (excerpts from "We Are Unitarian Universalists", pamphlet #3047, Unitarian Universalist Association), viewed April 8 2005, <<http://www.uua.org/aboutuu/>>.
- Unitarian Universalist Association 2005. "Unitarian Universalist Association Principles and Purposes", viewed April 26 2005, <<http://www.uua.org/aboutuua/principles.html>>.
- "Unitarianism in America - Thomas Starr King 1824-1864", viewed November 11 2004, <<http://www.harvardsquarelibrary.org/UIA%20Online/44starring.html>>.
- Unity's Statement of Faith* [nd/(1977)]. Unity School of Christianity, Unity Village MO.
- "Universal Life Church", viewed May 5 2005, <<http://religiousmovements.lib.virginia.edu/nrms/UnivLife.html>>.
- Unsworth, C 1995. "Blasphemy, Cultural Divergence and Legal Relativism" 58 *Mod L Rev* 658.
- Van Alstyne, W W 1990. "Academic Freedom and the First Amendment in the Supreme Court of the United States: An Unhurried Historical Review" 53 *Law & Contemp Prob* 79.
- Volokh, E 1999. "A Common-law Model for Religious Exemptions" 46 *UCLA L Rev* 1465.
- Walker, J 1997. "Little-Known US Document Signed by President Adams Proclaims America's Government is Secular", *The Early America Review*, Summer 1997, [Online] viewed April 14 2005, <<http://earlyamerica.com/review/summer97/secular.html>>.
- Walsh, J 1995. "Tax Treatment of the Church of Scientology in the United States and the United Kingdom" 19 *Suffolk Transnational Law Review* 331.
- Ward, K 1990. "Truth and the Diversity of Religions" *Religious Studies* XXVI, 10.
- Ward, L F 1898. "The Essential Nature of Religion" 8 *International Journal of Ethics* 169.
- Weigert, A J 1974. "Functional, Substantive, or Political?" 13 *Journal for the Scientific Study of Religion* 483.

- Weiss, J 1964. "Privilege, Posture and Protection: 'Religion' In the Law" 73 *Yale LJ* 593.
- West, Jr, J G 1991. "The Changing Battle Over Religion in the Public Schools" 26 *Wake Forest L Rev* 361.
- "What is Reconstructionism?", Jewish Reconstructionist Congregation, Evanston IL, viewed May 31 2005, <<http://www.jrc-ewanston.org/about/reconstructionism.html>>.
- "What is Religion? Functional Definitions of Religion: Examples of How Religion Operates and What Religion Does", viewed November 2 2004, <http://atheism.about.com/library/FAQs/religion.blrel_def_functionales.htm>.
- Whitehead, J W 1979. "Commentary 'Secular Humanism' as an 'Established Religion': A Response to Whitehead and Conlan" by Robert P Davidow 11 *Tex Tech L Rev* 5l.
- Whitehead, J W 1982. "The Second American Revolution" *Moody Monthly*, JI/Ag 1982.
- Whitehead, J W & Conlan, J 1978. "The Establishment of the Religion of Secular Humanism and Its First Amendment Implications" 10 *Tex Tech L Rev* l.
- "Why Religious Faith is Rational After All", viewed October 21 2004, <<http://www.writewords.org.uk/archive/4323.asp>>.
- Williams, J P 1962. "The Nature of Religion" 2 *Journal for the Scientific Study of Religion* 3.
- Williams, S 1988. "Establishment Clause: Edwards v Aguillard: The United States Supreme Court Denies Equal Time for Scientific Creationism in the Public Schools - 'Scopes-in-Reverse'?" 56 *Univ Mo Kansas City L Rev* 603.
- Wilson, E H 1995. "The Genesis of a Humanist Manifesto" , viewed October 7 2004, <http://www.infidels.org/library/modern/edwin_wilson/manifesto/index.shtml>.
- W[ilson], W [Bill] 1949. "The Society of Alcoholics Anonymous" 106 *Amer J Psych* 370, [Online] viewed November 22 2004, <<http://silkworth.net/aahistory/billw2/societyofaa.html>>.

- W[ilson], W [Bill] 1960. "Alcoholics Anonymous", in The Proceedings of the Twelfth National Clergy Conference on Alcoholism (*The "Blue Book"*), vol 12, April 19-21 1960.
- Winslow, A 1996. "Sacred Standards: Honoring the Establishment Clause in Protecting Native American Sacred Sites" 38 *Arizona Law Review* 1291.
- Witte, Jr, J 1992. "The Integration of Religious Liberty" 90 *Mich L Rev* 1363.
- Witte, Jr, J 1996a. "Law, Religion and Human Rights" 28 *Colum Human Rights L Rev* 1.
- Witte, Jr, J 1996b. "The Essential Rights and Liberties of Religion in the American Constitutional Experiment" 71 *Notre Dame L Rev* 371.
- Wood, J E 1998. "The Relationship of Religious Liberty to Civil Liberty and a Democratic State" *BYU L Rev* 479.
- Woodfield, S T 1996. "Doing God's Work: Is Religion Always Charitable?" *Auckland U L Rev* 25.
- Wooten, D G 1925. "The Scopes Case" 1 *Notre Dame Law* 11.
- Worth, M 1997. "The Godless Constitution" [sermon: Unitarian Universalist Church of Ellsworth ME, July 6 1997], viewed April 19 2005, <<http://ellsworthme.org/uuce/Sermons/gdlescon.html>>.
- Worthing, S L 1980. "'Religion' and 'Religious Institutions' Under the First Amendment" 7 *Pepperdine L Rev* 313.
- Yates, M A 2000. "Plenary [Session] 2: Criminal Justice without a Bill of Rights Australia 2001" *Human Rights and the Administration of Criminal Justice*, The International Society for the Reform of Criminal Law, December 3-7 2000, Sandtown, South Africa, [Online] viewed November 30 2004, <<http://www.isrcl.org/Papers/Yeats.pdf>>.
- Yinger, J M 1969. "A Structural Examination of Religion" 8 *Journal for the Scientific Study of Religion* 88.

Young, M 1998. "The Buddha Who is to Come" [sermon: First Unitarian Church of Honolulu HI, April 5 1998], viewed May 27 2005, <<http://home.hawaii.rr.com/uuchurch/sermons/buddha.htm>>.

Young, M 1999. "Myth and Modernity" [sermon: First Unitarian Church of Honolulu HI, December 12 1999], viewed April 5 2005, <<http://home.hawaii.rr.com/uuchurch/sermons/myth.htm>>.

IV. MULTIMEDIA

Liberal Catholic Church in Australia nd. *The Larger View: The History and Ideals of the Liberal Catholic Church*, narrated by L Furze-Morrish. Gardner VIC: The Australian Liberal Catholic Tape Library. Audio cassette/Program GP 26.

Martin, J C (Joe) 1979. *Spirituality & Religion*. Beresfield NSW: Caring & Sharing Tape Library Inc. Audio cassette/Tape No 00285.

Peale, N V 1992. *The Power of Positive Thinking*. New York: Simon & Schuster Audio. Compact disc/0-671-58186-4.

