

BOOK REVIEW

Robert Meakin*

The Church of England - Charity Law and Human Rights

by Kerry O'Halloran

Published by Springer International Publishing, Switzerland, 2014

ISBN: 9783319043180 (Hardback) 241 pages. Price: €103,99

And

Religion, Charity and Human Rights

by Kerry O'Halloran

Published by Cambridge University Press, Cambridge, 2014

ISBN: 9781107020481 (Hardback) 548 pages. Price: £75

Both *Church of England - Charity Law and Human Rights* and *Religion, Charity and Human Rights* by Kerry O'Halloran are welcome plugs to a gap in charity law literature. The second book provides wider coverage than the first and there is some overlap, but not so much that I would not recommend buying both.

The first book obviously focuses on the Church of England and there is an interesting historical introduction and international coverage towards the end about the Anglican Church. This is really a book about how the conflict of laws affects the Church of England rather than a book about the interplay between ecclesiastical law and charity law and human rights. The second book is much more broadly based on the role of religion in society and how it inter-relates with secular law. There is extensive coverage of international developments.

A fundamental point made in both books is that Human Rights legislation has opened a Pandora's box of idiosyncratic beliefs into a world of settled religion. As a result, subjective religious beliefs are protected. This might lead to challenges

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against established religions by disaffected members and will influence the development of the plurality of religious charities.

It is sometimes remarked that Christianity, in particular, has been relatively unfragmented, but after reading these books I wondered whether we are on the brink of a new precipice. In the light of this, the author could have gone on to look at how property rights could arise and be exercised in the event of such fragmentation. This issue is becoming more important as religious members seek to assert their rights as donors and is a natural corollary to the proposition being put forward by the author. Following *Varsani v Jesani*¹ the court and the Charity Commission are more likely to intervene in such disputes and to make orders for the division of charitable property by applying *cy-près* principles.

The author is not just making a theoretical point about the devolution of power into the hands of people from institutions. A key factor in the Roman Catholic Church failing to succeed in the Catholic Adoption Agency case² was that the evidence showed that most Catholics did not support the Roman Catholic's theological position on the family. That is a worrying development for the hierarchy in religions generally.

The author makes an interesting and worrying (for some) point that if the Charity Commission looks at the actual religious beliefs then this could affect both charitable registration and equality exemptions. The scrutiny of religious charities caused by the removal of the public benefit presumption (leaving aside whether it ever existed or was ever removed) and the focus on substance rather than form supports the author's proposition. Further, a proliferation of individualistic religious and belief charities raises the prospect of the established religions having their support diverted.

I would have liked to have seen a discussion of the trend in organisations deciding against having charitable status or structures separating out non-charitable from charitable elements. The case of Victory Christian Centre³ being investigated by the Charity Commission, closed down and then set up as a non-charitable not-for-profit organisation not subject to the regulation by the Charity Commission, springs to mind. Arguments against having charitable status and the implications of not having charitable status would have been interesting and provided a counterweight in the book.

1 [1999] Ch 219.

2 *Catholic Care (Diocese of Leeds) v The Charity Commission* [2012] UKUT 395 (TCC).

3 See further Richard Edwards, 'Wife of Sex Case Pastor Is Still Living the High Life; Woman Starts New Church As Inquiry Finds Debts Of £200,000' *Evening Standard* (7 September 2004).

Both books suggest that charity will reflect a pluralistic multicultural society and, with legal rights protecting subjective beliefs, this will lead to a breakdown of what religious charities as a sector will look like and threaten the established religions.

Both books provide good coverage of the subjects and provide domestic and international coverage. They are well written and accessible and I would recommend both. The only small niggle was the lack of a list of cases with references to the text.