

CHARITABLE STATUS FOR THE ADVANCEMENT OF RELIGION - THE PROPONENT'S VIEW

Michael King¹

Introduction

This article is prompted by the erudite and provocative arguments of Peter Edge in *The Charity Law and Practice Review* (Volume 3, 1995/6, Issue 1) suggesting that the third head of charity, advancement of religion, be abolished. Erudite they may be, but his premise reminds me somewhat of Lewis Carroll's Queen of Hearts who yells for decapitation when she meets a contrary view.

Declaring an Interest

Let me declare an interest or two. I am a committed Christian (in the Catholic tradition) and a solicitor who advises a quantity of religious orders and dioceses and many schools funded by various religious denominations, so I am partial; abolition of the third head would produce some lucrative work!

A Step Towards the Abolition of Religion?

Mr Edge does not overtly admit to arguing for abolition of charitable status because he wishes to abolish religion in what he calls the United Kingdom's "religiously heterogeneous society" but, if he were seeking to abolish religion, he might care to look at the history of attempts by monarchs and governments of our country and others to stamp out Jews, Catholics, Protestants, Non-Conformists and even Moslems in far off countries. Indeed, the paradox is that religion tends to flourish in times and places of persecution and I cannot think that committed members of religions would stop subscribing to their churches, synagogues, mosques and temples if they could no longer do so by Deed of Covenant.

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Finances might be marginally easier for Greenpeace or Amnesty International if they could recover tax, but they are hardly unsuccessful organisations.

Need for Religion

Supporters of the retention of religion as a head of charity might, Mr Edge suggests, argue that religious organisations in the United Kingdom perform a number of beneficial, philanthropic functions. So they do in my experience — indeed some do things that the State could not reasonably pay people to do — but if such charities lost religious charitable status, all they would need to do would be to re-register their beneficial and philanthropic functions under other heads of charity.

My argument for retention of the third head of charity is that the promotion and sustenance of religion and the spreading of its message throughout the world is of itself beneficial to humanity just as is the relief of poverty and sickness or the advancement of education. Why? Because unlike other animals in this world, we are cerebral beings, capable of mental and moral improvement and capable of assimilating values which have the very effect of underpinning those first and second heads of charity. Of course, I do not accept the tenets of all religions, but then why should I necessarily agree with the policy of every service provider towards the third world or the statement of every academic institution? I do, however, defend the charitable status of such organisations, thus enhancing their right to exist and to work, by their own lights, for the benefit of mankind.

Setting Standards

Like it or not, religion permeates society in setting standards for the way in which people should relate to one another. St Paul conceived charity as an expression of love for fellow man, "I may give away all that I have to feed the poor and give myself up to be burnt at the stake; if I lack charity it goes for nothing".² Christianity offers us ideals by which we can measure our charitable actions. Judaism, moreover, looks to its members to exercise charity as a moral and social obligation; "the poor, it taught, were the special wards of God; wealth came from and belonged to God; charity therefore was no favour but the absolute duty of the custodian".³

I do not for one moment suggest that charitable giving is confined to those who follow a religion but I do suggest that religions offer values and have the duty of

² 1 Corinthians c 13 v 3.

³ *Charities* by Benedict Nightingale, Allen Lane, 1973.

reminding us all of values higher than our own selfish self-interest. If religions did not exist, it would doubtless be for politicians to lay down all our value judgments; morality governed by expediency is surely politics, not morality.

Public Benefit

Mr Edge suggests that the current law discriminates against some "fundamental belief systems". He fails to say what those systems are but my assumption is that he means freedom of thought or the discussion of ethics, neither of which is a belief system. He then suggests that all religious trusts should show public benefit, which is precisely what charity law requires; the presumption that a trust for religious purposes is charitable is capable of rebuttal if there is no evidence of public benefit (*Re Watson*⁴).

Interestingly enough, this *Reviews* learned Editor⁵ finds it difficult to reconcile the decision in *Re Watson* with that seminal case on religion and public benefit, *Gilmour v Coates*.⁶ In *Re Watson* the learned judge ventured to suggest that the only way of disproving public benefit was to show that the doctrines inculcated were "adverse to the very foundations of all religion and that they are subversive of all morality", a term which could hardly be applied with any justice to the activities of the group of Carmelite Nuns in *Gilmour v Coates* who were refused charitable status on the grounds that their example of piety and prayer was insufficient to show public benefit.

Half a century on and in the light of the Charity Commissioners' decision to register an enclosed community of Anglican Nuns, the Society of the Precious Blood,⁷ I happen to think it likely that, if *Gilmour v Coates* were re-run, the Court would lean in favour of charitable status, but the point is that the public benefit is most certainly essential in relation to charities for the advancement of religion.

Mr Edge refers to "secular public benefit" which is not a concept known to English law but which I take to mean "non-religious public benefit". There seems to be an element here of special pleading. If advancement of religion is a head of charity in its own right and if public benefit must be present, why should it be necessary to show some special non-religious benefit to the public? He might just as well argue that any charity that is providing relief to the poor must also prove some element of education towards better health education and self-sufficiency.

⁴ *Re Watson, Hobbs v Smith* [1973] 1 WLR 1472.

⁵ Hubert Picarda QC in *The Law and Practice Relating to Charities*, Butterworths 1995.

⁶ *Gilmour v Coates* [1974] AC 426.

⁷ *Decisions of the Charity Commissioners*, Vol 3, January 1995.

No Case For Abolition

Mr Edge has failed to give any good reason for abolition of the third head of charity beyond the claim that extension of that head is necessary under Article 9 of the European Convention on Human Rights but is nevertheless impossible to achieve on the grounds that the State would thus have to support undesirable charitable activities. He presumes that charities are supported by the State, in other words that tax exemption is the privilege, not the right of charities.

According to Hubert Picarda,⁸ the exemption of charities from income tax last came under serious attack in 1863 but the view of Benjamin Disraeli prevailed, that the exemption was a right not a privilege. Even if the ever-fickle "Public Opinion" were to consider the exemption a privilege, why should Mr Edge single out religious charities as having State support, as distinct from animal rescue charities, arts charities or independent schools?

Pleased though I am that Mr Edge's provocative article has allowed me to put my own thoughts in focus, I submit that he has made no case for abolition and that the idea of legislative time being given to such a reform is, in his own words, "improbable".

⁸ *The Law and Practice Relating to Charities* by Hubert Picarda QC, Butterworths 1995.