RELIGION AND NON-RELIGIOUS BELIEFS IN CHARITY LAW

(Memorandum by the British Humanist Association)

The Definition of Religion

The legal definition of "religion" for charitable purposes is in difficulty. Adequate while the only religions of any significance in the country were Christianity and Judaism, it is put under severe strain by the arrival of many other religions and cults of entirely different natures, some of them inventions (discoveries?) by single individuals in comparatively recent times. Attempts to adapt the old definition are unlikely to succeed for much longer: its three key elements - a supreme being, worship and some form of evangelism - are all lacking in one or more acknowledged religions.

Thus, Buddhism[1] in its classic forms has no gods or supreme beings. Attempts to stretch the meaning of "supreme being" so as to make out that it and other non-theistic religions do have one soon lose credibility. For example, despite the Commission's 1999 ruling in the case of the Church of Scientology, it is scarcely credible that "the urge to exist as infinity" (whatever that means[2]) can be identified as a "supreme being" - the *urge*, after all, exists within a human being.

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[1] "There is no place for God in the Mahayana traditions of Buddhism as well, and indeed some of the early Indian Mahayana philosophers have denounced god-worship in terms which are even stronger than those expressed in the Theravada literature. . . Buddhism is unique amongst the religions of the world because it does not have any place for God in its soteriology." - Dr V. A. Gunasekara: The Buddhist Attitude to God, at http://www.buddhistinformation.com/buddhist_attitude_to_god.htm, accessed August 5, 2007. Consider also: "The [Charity Commission's] Church of Scientology decision has expanded the English definition, but it has not resolved all of its inconsistencies. One anomaly which remains is the status of Buddhism, which is recognized as a religion even though its adherents may choose whether or not to believe in God. Rather than expand the meaning of religion to include non-theist beliefs, English law has treated Buddhism as an "exceptional case" [*R v. Registrar General, Ex parte Segerdal and another* (1970) 2 QB 697 (C.A.).at 707]. The courts have never satisfactorily answered the logical argument that if Buddhism is a religion, religion cannot be necessarily theist or dependent on a God. Dillon J.'s dismissal of the issue in South Place is particularly telling: "I do not think it is necessary to explore this further because I do not know enough about Buddhism"." - Kathryn Bromley: "The Definition of Religion In Charity Law in the Age of Fundamental Human Rights" in International Journal of Not-For-Profit Law, vol. 3 issue 1, September 2000, consulted 4 August 2007 at http://www.icnl.org/journal/vol3iss1/ar_KBromley.pdf.
Jainism also is non-theistic: "Jainism does not fall under the broad umbrella of the Vedic (Hindu) traditions. It is a non-theistic religion with its own sacred texts and Jinas, or "Spiritual Victors". Mahavira, the most recent Jina, lived in the sixth century BCE in northern India during a period in which the non-Vedic sramana religions proliferated. The sramana religions rejected the authority of the Hindu scriptures (Vedas) and deities . . ." - Institute of Jainology website http://www.jainology.org/viewindex.asp?article_id=jainsutrasAboutJains, accessed August 8, 2007.

[2] "The *eighth dynamic* is the urge toward existence as INFINITY. The eighth dynamic is commonly supposed to be a Supreme Being or Creator. It is correctly defined as infinity. It actually embraces the allness of all." - http://www.scientology.org/wis/wiseng/wis4-6/wis4_12.htm, copied on August 4, 2007

Lacking a supreme being, such religions do not and cannot exhibit the worship ("conduct indicative of reverence or veneration for that supreme being"[3]) that is another required characteristic of a religion.

And the third limb of the definition, which the Commission has acknowledged has been definitively established[4], is the promotion of the religion "by spreading its message ever wider by pastoral and missionary means" - which Judaism, for one, does not exhibit in most of its forms.

Compounding the difficulties, the Charities Act has laid down (sn.2(3)) that

> "religion" includes . . . a religion which does not involve belief in a god.

It is not at all clear how a religion lacking a god can be said to acknowledge and worship a supreme being. The statement previously on the Commission's website[5] that

> A Supreme Being does not necessarily have to be in the form of a personal creator god; it may be in the form of one god or many gods or no god at all in the accepted understanding of the term

passes all comprehension. And if, enlarging on their unprecedentedly wide interpretation in the Scientology decision, the Commissioners decided that the meaning of "supreme being" should be stretched - as the definition of religion has been in a significant Australian case:

> . . . for the purposes of 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[6]

- then the requirement for something supernatural would offend simultaneously many religious people who see their beliefs as fitting within some version of "natural law" and many with non-religious beliefs who would see their principled unwillingness to designate their own over-arching beliefs as supernatural as being used as an excuse to exclude them.

The Charities Act, of course, also provides that a religion may involve "belief in more than one god"; but even this does not fully embrace the variety of religious belief, since some religions may have no god(s) in the sense of supreme being(s) but may (as with some forms of animism) see the world as inhabited by spirits that perhaps require local propitiation or else may (as in pantheism) see the world in itself as in some sense divine.

The Human Rights Act: Religion or Belief

Further difficulties arise from another source: the Human Rights Act. The Government, and Parliament on its advice, rejected for unclear reasons persistent proposals from this Association

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3 Charity Commission decision on Church of Scientology, 1999.

4 By Donovan J in United Grand Lodge of Ancient Free and Accepted Masons of England v Holborn Borough Council [1957] 1 WLR 1080

5 Quoted by Martin Horwood MP as "recently . . .changed" - House of Commons debates, 25 October 2006, col 1564

6 *Church of the New Faith v. Commissioner for Pay-roll Tax* (1982) 49 ALR 65 (H. C. Aust.). at 74.

and several members of both Houses of Parliament to extend the charitable head of "advancement of religion" in the Charities Act by adding "or belief", and so charity law continues to separate the advancement of religion from the advancement of non-religious beliefs and lifestances. Moreover, it does not appear to allow the mere advancement of the latter to be charitable, requiring instead that relevant organisations profess some other charitable object such as the moral and mental improvement of mankind, albeit according to the principles of the lifestance.

Nevertheless, as the Charity Commission recognises (and as was stated in their Scientology decision), the Human Rights Act (sn 6) requires that religious and non-religious lifestances must be treated equally and without discrimination by public authorities. This suggests that in practice little weight can be put on the requirement for some other charitable object towards which the non-religious lifestance is instrumental: it would constitute an illegitimate discrimination as between religious and non-religious beliefs.

Moreover, it is of limited utility to maintain religious charities as a distinct category, since (as was acknowledged in the Scientology decision) it is open to a body disallowed as religious to present itself instead under the 13th (previously 4th) head as one based on the moral or spiritual improvement of mankind, or some such purpose.

Further, the distinction, referred to in the Scientology decision (p.24), that religions had different criteria for acceptance as charities from causes falling under the then fourth head in that religion enjoyed the presumption of public benefit is not longer valid under the new Act. The view taken then by the Commissioners that it was "proper that the distinction . . . between religious and non-religious belief systems be maintained" is thus brought into question.

An Opportunity

So despite the lack of a formal acknowledgement in the Charities Act, simultaneously the common law definition of a religion is breaking down and the human rights principle of equal treatment of religions and non-religious beliefs is making inevitable incursions into previously discriminatory practice.[7]

This should not be regarded as a problem but as an opportunity - and one unlikely to occur again for decades. The radical changes made by the new Act offer an opening for fresh thought and a new, more logical approach that will be proof against the likely future decline in the importance of religion[8] and the regard in which it is held and the likely growth in importance of minority religions[9] and non-religious beliefs. A defensive stance on the part of the Commission, clinging

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[7] Even outside a legal context, it is difficult at the margin to distinguish a religion from a non-religious belief. Is it that religions start as cults? that religions acknowledge something ultimately transcendental rather than the naturalistic view taken by non-religious beliefs? Neither suggestion is obviously correct, and neither is useful for a legal distinction.

[8] See Voas, D. and Crockett, A.: *Religion in Britain: Neither Believing nor Belonging,* Sociology **39**.1 (February 2005), in which the authors demonstrate that the "half-life" of religious belief is one generation: "only about half of parental religiosity is successfully transmitted, while absence of religion is almost always passed on. Transmission is just as weak for believing as for belonging."

[9] The 2001 census showed about 6% of the population adhered to non-Christian religions, for whose followers Home Office research (Home Office Research Study 274: Religion in England and Wales: findings from the 2001 Home Office Citizenship Survey (March 2004)) has shown religion

to such wreckage from the old definition of religion as can be salvaged, would surely come to be seen as weak and conservative in a way that tomorrow's courts, let alone public opinion, would deplore. If Parliament decides that religions include polytheistic and atheistic religions, then attempts to rescue and force into unnatural meanings the terms of a definition based so squarely on the Judaeo-Christian tradition have to be called in question.

A straightforward acceptance of the implications of these changes in the Act is important for another reason: no longer will conformity to the definition of a religion offer any bulwark against accepting onto the register bodies of dubious public benefit - or be needed for that purpose. This role may not have had any basis in law but it certainly seems to have been the informal motivation behind, for example, straining so hard to prove that Scientology was not a religion according to the English legal definition. This is now, with the Human Rights Act, irrelevant. Instead, such bodies can now be challenged from the start to demonstrate the public benefit they bring, whether they be new age religions, South Sea cargo cults, or the inventions of a science fiction novelist.

The Human Rights Act together with the removal of the presumption of public benefit from religious charities facilitates a new start: one to which the courts, were any challenge to be brought, would surely be sympathetic. New statute law must surely prevail over interpretations based on the meagre accumulation over centuries of sometimes dubious judgements in often atypical cases.

A new approach

Any new approach should of course build on past practice where it is relevant and helpful but it should discard it where it is not compatible with the Human Rights Act[10] or with modern thinking - the "common consensus of opinion amongst people who are fairminded and free from prejudice or bias" (to quote again the Commission's judgement on Scientology) or the "general consensus of objective and reasoned opinion" (to quote the Commission's draft guidance on public benefit).

The most obvious fresh approach is to abandon any separate definition of "religion" and instead find a definition of "religion or belief" as a single concept. Insofar as the Human Rights Act forbids discrimination on the basis of religion or belief, it is no longer necessary to distinguish religions from non-religious beliefs nor does such a distinction serve any purpose. Indeed, in a post-Human Rights Act judgement in the House of Lords, Lord Nicholls of Birkenhead made it plain that the law seldom has any need to make any such distinction:

> the difficult question of the criteria to be applied in deciding whether a belief is to be characterised as religious . . .will seldom, if ever, arise under the European Convention.[11]

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matters far more than to the Christian population: they placed it first, second or third in a list of 15 factors important to their identity, Christians 7th, and the population as a whole 9th.

[10] Section 3 of the Human Rights Act requires that "primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights" - a requirement given a wide interpretation by the House of Lords in Ghaidan (Appellant) v. Godin-Mendoza (FC) (Respondent) [2004] UKHL 30.

[11] R v Secretary of State for Education ex parte Williamson [2005] UKHL 15, per Lord Walker at paragraph 24. Extensive extracts from his and other law lords' judgements in this case are relevant - see Annex.

Similarly, in same case Lord Walker of Gestingthorpe said that it was

> unnecessary for the House to grapple with the definition of religion [because] article 9 protects, not just the *forum internum* of religious belief, but 'freedom of thought, conscience and religion'. . .[12]

A potential difficulty comes from the breadth of meaning of the word 'belief' in 'religion or belief'. The word in ordinary English usage has as its most common meaning what the Oxford English Dictionary defines as "Mental acceptance of a proposition, statement, or fact, as true, on the ground of authority or evidence" - as in (for example) "It's my belief that reading books is the best way to extend one's vocabulary" or "I've got no belief in homeopathy".

The European Convention's protection of freedom of belief extends to all manner of beliefs. One judgement[13] of the European Court of Human Rights called Article 9 "a precious asset for atheists, sceptics and the unconcerned". And in a commentary on Article 18 of the International Covenant on Civil and Political Rights (which is essentially similar to Article 9 of the ECHR) the United Nations Human Rights Committee said:

> Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.[14]

Moreover, "belief" also includes specific religious beliefs - particular creeds or elements of a religion, such as each of the Thirty-Nine Articles, including, for example:

> XXII: The Romish doctrine concerning Purgatory, Pardons, worshipping and adoration as well of Images as of Relics, and also Invocation of Saint, is a fond thing vainly invented, and grounded upon no warranty of Scripture; but rather repugnant to the word of God.

Even wider, in the passage just quoted, Lord Walker went on to say:

> Plainly these expressions cover a wider field than even the most expansive notion of religion. Pacifism, vegetarianism and total abstinence from alcohol are uncontroversial examples of beliefs which would fall within article 9.

Such a wide application of the word "belief" is obviously welcome where it is a matter of defending someone against discrimination - but it is not suitable for application in decisions about the conferring of legal privilege such as charity status.

However, there is no need to accord that legal privilege to everything recognised as a belief.[15]

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12 *ibid*, paragraph 55.

13 Kokkinakis v Greece: (1994) 17 EHRR 397, para 31

14 Human Rights Committee, 1993 (General Comment no 22(48) (Art. 18) adopted on July 20th 1993, CCPR/C/21/Rev.1/Add.4, September 27th 1993, p1.)

15 There is of course an initial requirement in any case that the profession of beliefs - whether religious or not - is "neither fictitious, nor capricious, and that it is not an artifice" - Supreme Court of Canada in *Syndicat Northcrest v Amselem* (2004) 241 DLR

The privilege can be limited to types of belief that offer an analogy with religion in charity law. Other beliefs may qualify under some other head of charity (as perhaps might pacifism or vegetarianism); others again may not qualify for charity status at all.[16]

First, it should be observed - and this casts some doubt on Lord Walker's breadth of interpretation and similar *obiter dicta* - that the wide meaning of the word "belief" in English contrasts with the much narrower meaning of the words used in the French and German versions of the Universal Declaration and the European Convention on Human Rights. The French term is *conviction* and the German (in the 'manifest' clause) is *Weltanschauung* or "world-view". The use of the English word "conviction" is problematic because it has penological associations, which the French word lacks, but without this unfortunate association it expresses a significant aspect of what is required. Both "conviction" and *Weltanschauung* suggest deep or ultimate beliefs which are parallel to those of a religion. It is proper, therefore, that "belief" in the phrase "religion or belief" should be so interpreted.

Moreover, case law on the interpretation of 'religion or belief' also helps. There are European Court of Human Rights cases that deal with circumstances in which a narrower definition is needed. Baroness Hale of Richmond, in a House of Lords judgement[17], said

> Convention jurisprudence suggests that beliefs must have certain qualities before they qualify for protection. I suspect that this only arises when the belief begins to have an impact upon other people, in article 9 terms, when it is manifested or put into practice. Otherwise people are free to believe what they like.

Such a narrower definition is plainly needed to delimit beliefs that are worthy of public privilege - such as recognition as charities. Thus,

> [Belief means] more than just 'mere opinions or deeply held feelings'; there must be a holding of spiritual or philosophical convictions which have an identifiable formal content.[18]
>
> The term 'beliefs' . . . denotes a certain level of cogency seriousness cohesion and importance.[19]

(4th) 1, 27, per Iacobucci J at para 52. This may have provided a better answer to the question about registering Pastafarianism as a charity for the Commission witness at the Public Administration Select Committee on 12 July 2007 (question 51) rather than trying to find a way this ersatz religion did not fit the present definition.

[16] There is little risk of the European Court of Human Rights (should a case even reach it) endorsing any challenge to this differential treatment of beliefs, given (a) that several of the cases quoted here - and on which our proposals (below) rely - specifically draw such a distinction; (b) the Court is reluctant to breach the national 'margin of appreciation' in matters of religion - as was shown, for example, in the *Visions of Ecstasy* case (Wingrove v the United Kingdom (1997) 24 EHRR 1) - or probably in matters of tax exemption on merit, as with charity law.

[17] In Regina *v.* Secretary of State for Education and Employment and others (Respondents) *ex parte* Williamson (Appellant) and others [2005] UKHL 15 - on which see further at the Annex.

[18] McFeeley v UK: (1981), 3 EHRR 161

[19] Campbell and Cosans v. UK: (1982), 4 EHRR 293 para 36 – this case related to Article 2 to the first protocol ("the State shall respect the right of parents to ensure such education and teaching in

In post-Human Rights Act legislation, the Government has used several formulations or definitions for 'belief' or 'religion or belief'. That in the Employment Equality (Religion or Belief) Regulations (2003 No. 1660), whose concern is to outlaw discrimination, was relatively wide:

> In these Regulations, "religion or belief" means any religion, religious belief, or similar philosophical belief.

Similarly with the Equality Act, where section 44 reads:

> In this Part—
> (a) "religion" means any religion,
> (b) "belief" means any religious or philosophical belief,
> (c) a reference to religion includes a reference to lack of religion, and
> (d) a reference to belief includes a reference to lack of belief.

Moreover, the Act substituted these definitions for that just quoted from the Employment Equality regulations, significantly removing the word 'similar'.

However, in a context not of discrimination but of granting recognition and privilege, the Communications Act 2003 (sn.264) requires public service broadcasters to provide programmes dealing with "religion and other beliefs", and states that

> "belief" means a collective belief in, or other adherence to, a systemised set of ethical or philosophical principles or of mystical or transcendental doctrines.

There is therefore a variety of definitions and descriptions, even in a context of narrowly defining beliefs that merit some privilege. They - in particular the Communications Act and the descriptions in McFeeley v UK and in Campbell and Cosans v. UK - provide the groundwork for a new definition of "religion or belief".

Such a definition can also, as suggested above, build on the common law definition of religion. Evangelism may not be a universal characteristic, but it suggests that a religion or belief must be important and potentially of widespread application. A supreme being may be eschewed by many, but it again suggests importance together with a relationship of the individual to the universe. Worship may be too narrow a requirement, but it suggests worth or value[20]. The impression is of something supervening, valuable, powerful, capable of giving direction to one's life. The suggestion by two of the judges in the Australian case[21] which found Scientology to be a religion is on the same lines: that (to quote the Commission in their Scientology decision) the ideas in question reflect the ultimate concerns of human existence; an element of

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conformity with their own religious and philosophical convictions"). As Baroness Hale said, "The European Court in *Campbell and Cosans v United Kingdom* (1982) 4 EHRR 293, 303, para 36, equated the parental convictions which were worthy of respect under the first Protocol with the beliefs protected under Article 9: they must attain a certain level of cogency, seriousness, cohesion and importance; be worthy of respect in a democratic society; and not incompatible with human dignity. No distinction was drawn between religious and other beliefs."

[20] When many schools were embarrassed by the reassertion of the need for daily worship in the Education Reform Act 1988 there was much consideration of the word's etymology: worth-ship, being or considering something of great value or worth.

[21] *Church of the New Faith v. Commissioner for Pay-roll Tax* (1982) 49 ALR 65 (H. C. Aust.).

comprehensiveness; forms and ceremonies.

A definition, however, to be useful must be reasonably short and simple. It needs to reach the essentials and omit the rest. Given that the courts are obviously unable to pass judgement on the validity of a religion or belief, the definition will naturally refer to function and form rather than to content[22]. (It is the content of the common law definition in the shape of *worship* of a *supreme being* that has created significant difficulty.)

What then are the common characteristics of religions and those non-religious beliefs within the relevant range indicated by the judgements and descriptions quoted above? We suggest:

> 1 - They makes claims about the nature of the world we live in and of human life.
>
> 2 - They draw implications for the way one lives - typically establishing a basis of morality and values.

Both elements are important. A free-floating ethical code without claims about the nature of the world would fall short of what is required (though it may qualify for charitable status by some other route). Equally, claims about the nature of the world are what scientists advance all the time. It is the relatedness of one to the other that is distinctive.

Thus, the Christian and other creation myths posit a father-child relation between the creator god and mankind, with a duty of obedience to his commands and the moral code he endorses. In Buddhism and other eastern religions, a factual claim about a cyclical life of reincarnations is linked to a code of behaviour conducive to progression up the chain of life towards the desired Nirvana. In Humanism a naturalistic interpretation of life leads to a moral code based on the need for people to live together in concord for the benefit of all.

But that is not all. From the Communications Act one can take the need for *collective* belief: a solipsistic belief shared with no-one is unconvincing as an object of official favour. From *Campbell and Cosans v. UK* we can take the threshold of "a certain level of cogency, seriousness, cohesion and importance".

Thus one can venture a minimum working definition for a "religion or belief" on the lines of:

> **A collective belief that attains a sufficient level of cogency, seriousness, cohesion and importance and that relates the nature of life and the world to morality, values and/or the way its believers should live.**

This categorises religions as beliefs, which is valid whereas the reverse is not. The "and/or" formulation is needed because some beliefs put a predominant emphasis on orthopraxy rather than orthodoxy or moral behaviour[23]. The limitation to believers of the teachings about how to live is needed because some beliefs confine their rules in that way - e.g., Judaism.

Other elements in the sources are unnecessary or inappropriate. For example, it is unnecessary to specify that the belief may be religious (whatever that means) or not. Words on the lines of

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[22] "In principle, the right to freedom of religion as understood in the Convention rules out any appreciation by the state of the legitimacy of religious beliefs or of the manner in which these are expressed" - *Metropolitan Church of Bessarabia v Moldova* (2002) 35 EHRR 306, 335, para 117.

[23] The words 'morality' and 'values' could theoretically be omitted from the definition but are needed to give the right colour to "the way believers should live".

"philosophical principles or mystical or transcendental doctrines" or "spiritual[24] or philosophical convictions" offer examples of the nature of the belief rather than defining it: as examples they may be useful references when interpreting the definition but they do not need to form part of it. The idea of "ethical" is already contained in the proposed definition. Similarly, the idea of "identifiable formal content" is present in the words "cogency" and "cohesion". The notion that "the ideas in question reflect the ultimate concerns of human existence" is suggestive but more poetic than useful. Comprehensiveness; forms and ceremonies are common but not necessary features of a religion or belief.

The Second Test: Public Benefit

It must, of course, be recognised that even if this definition of a "religion or belief" for the purpose of head (c) (advancement of religion) and part of head (m) (relevant non-religious beliefs) is accepted, it will embrace non-religious beliefs that are dubious candidates for public support. But so will it embrace religions of a very dubious nature: the Raelians with their suicide leaps to flying saucers have a religion; the Jonestown cult was religious.

Charity law has claimed in the past to stand neutral as between religions:

> Before the Reformation only one religion was recognized by the law and in fact the overwhelming majority of the people accepted it…But since diversity of religious beliefs arose and became lawful the law has shown no preference in this matter to any church and other religious body. Where a belief is accepted by some and rejected by others the law can neither accept nor reject, it must remain neutral…[25]

But, as Kathryn Bromley has observed in her paper "The Definition of Religion In Charity Law in the Age of Fundamental Human Rights":

> The law's claim of neutrality is sustainable only because it is meaningless. It is meaningless because it is entirely self-referential, depending on charity law's own definition of religion to set the parameters of equal treatment. All religions may be equal in the eyes of the law, but only because not every religion comes within

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[24] The word "spiritual", although normally associated with religion, does not have any necessary connection with it and, especially insofar as it relates to "the human spirit", is used by (for example) some humanists. Ofsted, in guidance issued on the nature of "spiritual education" (one of the functions of schools since at least the 1944 Education Act) stated: "Spiritual development relates to that aspect of inner life through which pupils acquire insights into their personal existence which are of enduring worth. It is characterised by reflection, the attribution of meaning to experience, valuing a non-material dimension to life and intimations of an enduring reality. 'Spiritual' is not synonymous with 'religious'; all areas of the curriculum may contribute to pupils' spiritual development." - Ofsted *Handbook for the Inspection of Schools* (1994). More recently they have stated: "Spiritual development is the development of the non-material element of a human being which animates and sustains us and, depending on our point of view, either ends or continues in some form when we die. It is about the development of a sense of identity, self-worth, personal insight, meaning and purpose. It is about the development of a pupil's 'spirit'. Some people may call it the development of a pupil's 'soul'; others as the development of 'personality' or 'character'." - Ofsted, *Promoting and evaluating pupils' spiritual, moral, social and cultural development* (March 2004)

[25] Gilmour v. Coats [1949] 1 All ER 848 (H.L.), at 457

the law's scope of vision.[26]

With the Human Rights Act, that Nelson touch[27] is no longer acceptable.

Further, the claim that

> "As between different religions, the law stands neutral, but it assumes that any religion is at least likely to be better than none"[28]

was always dubious: now it is grotesque. Quite apart from its incompatibility with the Human Rights Act, no serious attempt could be made today to maintain that to be a humanist is inferior to being a member of no matter what stray religious cult. Whatever neutrality the law can maintain will now have to extend to non-religious beliefs.

Thus, when it comes to decisions about granting charity status, reliance, as Parliament has accepted, will have to be placed squarely on the requirement for public benefit. We have already submitted to the Commission our preliminary thoughts on the application of the rules on public benefit to religious charities[29]: here we make a few additional points.

(a) We have noted the Government's assurances given in Parliament by Ed Miliband that

> the Government, the courts and the Charity Commission have recognised that religious activities bring benefits not only to those who take part in them, but to the whole of society. Religion has an important role to play in society through faith and worship, motivating charitable giving and contributing in other ways to stronger communities. Both those dimensions will thus usually be apparent from the doctrines, beliefs and practices of a religion. The Charity Commission is clear that most established religions should not have any difficulty in demonstrating their value to society from their beliefs.[30]

We would observe that this and other assurances do not mean that no religious charities will have difficulty in establishing the public benefit they provide: "usually", "most" and so on leave the door open, in particular to the need for the Commission to reflect emerging public opinion so as to keep the law, if not up-to-date with modern thinking, then at least not too far out-of-date.

We would also observe that Parliamentary assurances have no legal force. For example, statements by the Government in the plainest terms about the meaning of the term "public authorities" during the passage of the Human Rights Act have been overturned by the courts right

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[26] International Journal of Not-For-Profit Law, vol. 3 issue 1, September 2000, consulted 4 August 2007 at http://www.icnl.org/journal/vol3iss1/ar_KBromley.pdf

[27] Consider also: "Neither does this Court, in this respect, make any distinction between one sect and another … If the tenets of a particular sect inculcate doctrines adverse to the very foundation of all religion, and are "subversive of all morality" they will be void, but a charitable bequest will not be void just because the Court might consider the opinions foolish or devoid of foundation…"- *Thornton v. Howe* (1862) 31 Beav. 14.

[28] *Neville Estates v. Madden* [1962] Ch. 832 at 853)

[29] BHA Response to Charity Commission Consultation on Draft Public Benefit Guidance, May 2007.

[30] Ed Miliband as Minister of State for the Cabinet Office (Commons Hansard, 25 October 2006, col. 1609)

up to the House of Lords.[31]

(b) The test of public benefit must be applied even-handedly, in particular as between religions and non-religious beliefs. It may be possible for a Minister in Parliament to suggest otherwise:

> it is right that public benefit must be shown, but . . . , at least for religion, the obligation will not be onerous . . . Religions have nothing to fear.[32]

but the Commission are bound by law to be even-handed. If the public benefit of a putative non-religious belief that promotes practices disliked by the tabloids is to be called in question, then so must aggressive proselytising unaccompanied by good works and holy begging in the fashion of some Indian mystics.

(c) Next, concerning public worship, we note that Ed Miliband, in the passage just quoted, also stated:

> We have accepted, and I think others have, too, that making provision for people to attend acts of worship is clearly a public benefit. It is clear in case law, and it will remain part of the charity law of this country.

In the absence of any proof of objective benefits from prayer, this suggests that the public benefit lies in meeting the private felt needs of members of the congregation. If this is accepted, two observations follow:

> (i) it opens to question whether there is not public benefit from removing the felt need, e.g., by proselytising in favour of mere atheism; and
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> (ii) insofar as demand for such facilities for worship may decline, the public benefit from excess provision of facilities must be called in question.

(d) We reiterate our view that evidence is vital. The Commission's summary of the law on public benefit repeats this point time and again. Given its reliance on the accumulation of case law on the matter and its disavowal of any creative role in revising the law[33], the Commission has no basis for ignoring this requirement, however embarrassing to certain religious charities. The notion of "intangible benefits" as an escape hatch from the difficulty cannot serve unless judiciable evidence of those benefits can be produced. We do not see this as likely to lead to charities being removed from the register but to the objects of some being amended so as to limit themselves to those benefits that can be demonstrated by evidence.[34]

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[31] YL v Birmingham City Council [2007] UKHL 27 - see http://www.publications.parliament.uk/pa/ld200607/ldjudgmt/jd070620/birm-1.htm

[32] Ed Miliband as Minister of State for the Cabinet Office (Commons Hansard, 26 June 2006, col. 96)

[33] Public Administration Committee, uncorrected minutes, 12 July 2007, at QQ36, 37 - see http://www.publications.parliament.uk/pa/cm200607/cmselect/cmpubadm/uc904-i/uc90402.htm

[34] We listed in our comments on the consultation on public benefit a series of types of benefit that religious charities might claim to provide. We were interested to see that the Canadian Roman Catholic archbishop Thomas Collins recently listed the contributions he saw religion making to society: "Religion enhances local communities in which human relationships can flourish. Religious communities make massive contributions to the common good of all society through deeds of charity and social action.

(e) We were glad to see that the Commission volunteered in evidence to the Public Administration Select Committee that "Of course, in assessing public benefit in religion, there is the issue about the extent to which religion may be harmful to society."[35] Objections from religious charities to the notion of disbenefit are unsurprising ("they would say that, wouldn't they?") but can carry no weight.

(f) As quoted in the Commission's decision on Scientology, "the contrary of beneficial to the public" is not "detrimental to the public" but "non-beneficial to the public"[36]. Neutrality as to the public interest is not enough. For this reason we question that the mere conduct or performance of worship - as, for example, in a modern-day chantry or even religious services that are minimally attended - can in itself be seen as charitable.

(g) The question of public benefit must be contestable, as in any process where a decision is based on evidence. There can be no place for private nods by the Commission to charities backed by a file note that it has demonstrated its public benefit. But evidence of harm done will not be forthcoming from the charity itself, and the Commission cannot be expected to go digging for it. This must mean that the Commission will need to invite the public to submit evidence on the question of benefit. This is a requirement that will be particularly important in the early months and years after the removal of the presumption of public benefit, diminishing as a firm foundation of decisions builds up.

(h) Disbenefits will have to be plain, material and substantial and cannot be mere matters of disagreement. For example, ultra-Protestant objections to the intrinsic damage to society and souls proceeding from Roman Catholicism do not qualify; but a record of causing psychological harm, breaking up families, covering up child abuse, encouraging suicide, or (as was acknowledged by the Commission to the Public Administration Select Committee[37]) limiting the freedom of adherents to leave the religion would all be relevant.

For this reason we were dismayed at the Commission's response to the Committee's questions about fostering intolerance.

> Q48 Chairman: ... if a religion, or a religious organisation, was in the business of preaching intolerance of other groups, would that mean it would fall foul of charitable status?
>
> Dame Suzi Leather: Religious organisations are not free to break the law, so a church which was promoting religious hatred, criminal acts, is not acceptable, but that is a matter for the criminal law; but it is perfectly within charity law for religious organisations to have tenets of faith with which not everybody in society agrees.
>
> Q49 Chairman: So it can propagate intolerance?
>
> Dame Suzi Leather: I think there is a certain tolerance of intolerance, but it is not

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Religious communities bring to bear on current issues the wisdom of their heritage. Religious communities endow society with beauty." - a detailed report is to be found at http://www.zenit.org/article-20187?l=english (accessed August 5, 2007).

35 *ibid*, Q46, correcting 'accessing' to 'assessing'.

36 In Re Coats' Trust v Gilmour 1948] Ch. 340, 347 per Lord Greene MR

37 *loc. cit.* Q50

acceptable to break the law.

The suggestion here, which we hope was the result of unpreparedness for the question, is that no matter what the harm done by a religion by way of fostering divisions and intolerance in society, it is only when it steps over the mark and breaks the law that it becomes liable to any sanction, and then not from the Commission. We do not think such a position would be sustainable in the face of what would undoubtedly be outraged public opinion. It should form no part of the Commission's thinking as they decide how to apply the rule on public benefit to religious charities.

16 August 2007

ANNEX

HOUSE OF LORDS

EXTRACTS FROM OPINIONS OF THE LORDS OF APPEAL FOR JUDGMENT

IN THE CAUSE

Regina v. Secretary of State for Education and Employment and others (Respondents) ex parte Williamson (Appellant) and others

[2005] UKHL 15

Lord Nicholls of Birkenhead

22. It is necessary first to clarify the court's role in identifying a religious belief calling for protection under article 9. When the genuineness of a claimant's professed belief is an issue in the proceedings the court will inquire into and decide this issue as a question of fact. This is a limited inquiry. The court is concerned to ensure an assertion of religious belief is made in good faith: 'neither fictitious, nor capricious, and that it is not an artifice', to adopt the felicitous phrase of Iacobucci J in the decision of the Supreme Court of Canada in *Syndicat Northcrest v Amselem* (2004) 241 DLR (4th) 1, 27, para 52. But, emphatically, it is not for the court to embark on an inquiry into the asserted belief and judge its 'validity' by some objective standard such as the source material upon which the claimant founds his belief or the orthodox teaching of the religion in question or the extent to which the claimant's belief conforms to or differs from the views of others professing the same religion. Freedom of religion protects the subjective belief of an individual. As Iaccobucci J also noted, at page 28, para 54, religious belief is intensely personal and can easily vary from one individual to another. Each individual is at liberty to hold his own religious beliefs, however irrational or inconsistent they may seem to some, however surprising. The European Court of Human Rights has rightly noted that 'in principle, the right to freedom of religion as understood in the Convention rules out any appreciation by the state of the legitimacy of religious beliefs or of the manner in which these are expressed': *Metropolitan Church of Bessarabia v Moldova* (2002) 35 EHRR 306, 335, para 117. The relevance of objective factors such as source material is, at most, that they may throw light on whether the professed belief is genuinely held.

23. Everyone, therefore, is entitled to hold whatever beliefs he wishes. But when questions of 'manifestation' arise, as they usually do in this type of case, a belief must satisfy some modest, objective minimum requirements. These threshold requirements are implicit in article 9 of the European Convention and comparable guarantees in other human rights instruments. The belief must be consistent with basic standards of human dignity or integrity. Manifestation of a religious belief, for instance, which involved subjecting others to torture or inhuman punishment would not qualify for protection. The belief must relate to matters more than merely trivial. It must possess an adequate degree of seriousness and importance. As has been said, it must be a belief on a fundamental problem. With religious belief this requisite is readily satisfied. The belief must also be coherent in the sense of being intelligible and capable of being understood. But, again, too much should not be demanded in this regard. Typically, religion involves belief in the supernatural. It is not always susceptible to lucid exposition or, still less, rational justification. The language used is often the language of allegory, symbol and metaphor. Depending on the subject matter, individuals cannot always

be expected to express themselves with cogency or precision. Nor are an individual's beliefs fixed and static. The beliefs of every individual are prone to change over his lifetime. Overall, these threshold requirements should not be set at a level which would deprive minority beliefs of the protection they are intended to have under the Convention: see Arden LJ [2003] QB 1300, 1371, para 258.

24. This leaves on one side the difficult question of the criteria to be applied in deciding whether a belief is to be characterised as religious. This question will seldom, if ever, arise under the European Convention. It does not arise in the present case. In the present case it does not matter whether the claimants' beliefs regarding the corporal punishment of children are categorised as religious. Article 9 embraces freedom of thought, conscience and religion. The atheist, the agnostic, and the sceptic are as much entitled to freedom to hold and manifest their beliefs as the theist. These beliefs are placed on an equal footing for the purpose of this guaranteed freedom. Thus, if its manifestation is to attract protection under article 9 a non-religious belief, as much as a religious belief, must satisfy the modest threshold requirements implicit in this article. In particular, for its manifestation to be protected by article 9 a non-religious belief must relate to an aspect of human life or behaviour of comparable importance to that normally found with religious beliefs. Article 9 is apt, therefore, to include a belief such as pacifism: *Arrowsmith v United Kingdom* (1978) 3 EHRR 218. The position is much the same with regard to the respect guaranteed to a parent's 'religious and philosophical convictions' under article 2 of the First Protocol: see *Campbell and Cosans v United Kingdom* 4 EHRR 293. . .

32. Thus, in deciding whether the claimants' conduct constitutes manifesting a belief in practice for the purposes of article 9 one must first identify the nature and scope of the belief. If, as here, the belief takes the form of a perceived obligation to act in a specific way, then, in principle, doing that act pursuant to that belief is itself a manifestation of that belief in practice. In such cases the act is 'intimately linked' to the belief, in the Strasbourg phraseology: see *Application 10295/82 v United Kingdom* (1983) 6 EHRR 558. This is so whether the perceived obligation is of a religious, ethical or social character. If this were not so, and if acting pursuant to such a perceived obligation did not suffice to constitute manifestation of that belief in practice, it would be difficult to see what in principle suffices to constitute manifestation of such a belief in practice. I do not read the examples of acts of worship and devotion given by the European Commission in *Application 10295/82 v United Kingdom* as exhaustive of the scope of manifestation of a belief in practice.

33. This is not to say that a perceived obligation is a prerequisite to manifestation of a belief in practice. It is not: see, for instance, *Syndicat Northcrest v Amselem* 241 DLR (4th) 1, esp at 25-26, paras 46-50. I am concerned only to identify what, in principle, is sufficient to constitute manifestation in a case where the belief is one of perceived obligation.

Lord Walker of Gestingthorpe

54. In his written and oral submissions Mr Dingemans QC (for the appellants) devoted quite a lot of time to the meaning of "religion" in article 9. In my opinion it is certainly not necessary, and is probably not useful, for your Lordships to try to reach a precise definition. Courts in different jurisdictions have on several occasions had to attempt the task, often in the context of exemptions or reliefs from rates and taxes, and have almost always remarked on its difficulty. Two illuminating cases are the decisions of Dillon J in *In re South Place Ethical*

Society [1980] 1 WLR 1565 and that of the High Court of Australia in *Church of the New Faith v Commissioner of Pay-Roll Tax (Victoria)* (1983) 154 CLR 120, both of which contain valuable reviews of earlier authority. The trend of authority (unsurprisingly in an age of increasingly multi-cultural societies and increasing respect for human rights) is towards a "newer, more expansive, reading" of religion (Wilson and Deane JJ in the *Church of the New Faith* case at p174, commenting on a similar trend in United States jurisprudence).

55. There are two reasons why it is unnecessary for the House to grapple with the definition of religion. One is that article 9 protects, not just the *forum internum* of religious belief, but "freedom of thought, conscience and religion." This is coupled with the individual's (qualified) freedom "to manifest his religion or belief, in worship, teaching, practice and observance." Similarly article 2 of the First Protocol refers not just to religious beliefs but to "religious and philosophical convictions." Plainly these expressions cover a wider field than even the most expansive notion of religion. Pacifism, vegetarianism and total abstinence from alcohol are uncontroversial examples of beliefs which would fall within article 9 (of course pacifism or any comparable belief may be based on religious convictions, but equally it may be based on ethical convictions which are not religious but humanist: this was the sort of problem which confronted the United States Supreme Court in *United States v Seeger* 380 US 163 (1965), where the relevant statute recognised conscientious objection to military service only if it arose from "religious training and belief", which was elaborately defined as requiring belief in a Supreme Being and not including "essentially political, sociological, or philosophical views or a merely personal moral code.") It is to be noted that section 13 of the Human Rights Act 1998 is more restricted, referring to the exercise of article 9 rights "by a religious organisation (itself or its members collectively)." But little reliance was placed, in argument, on section 13.

56. The other reason why the House need not grapple with the problem of definition is that it is not in dispute that Christianity is a religion, and that the appellants are sincere, practising Christians. Those who profess the Christian religion are divided among many different churches and sects, sometimes hostile to each other, which is a cause of both sadness and scandal. That some Christians should believe that the Bible not merely permits but enjoins them to have corporal punishment administered to their children may be surprising to many, but it is by no means an extreme instance. Some sects claiming to be Christian believed that polygamy was not merely permitted but actually enjoined by the Bible: see *Reynolds v United States* 98 US 145 (1879); *Mormon Church v United States* 136 US 1 (1890). Others believe that medical treatment by blood transfusion is forbidden by the Bible and is sinful, even if it is the only means of saving life: see *Re O (A minor) (Medical Treatment)* [1993] 2 FLR 149; *Re R (A minor) (Blood Transfusion)* [1993] 2 FLR 757. Countless thousands have suffered cruel deaths because at different periods during the last two thousand years parts of the Christian Church thought that the Bible not merely permitted but enjoined them to torture and kill apostates, heretics and witches. In *Bowman v Secular Society* [1917] AC 406, 456 Lord Sumner referred to "the last persons to go to the stake in this country *pro salute animae*" (that was in 1612 or thereabouts). By comparison with these horrors a belief in a scriptural basis for smacking children is fairly small beer.

57. In the Court of Appeal Arden LJ said [2003] QB 1300, 1371, para 258,

> ". . . to be protected by article 9, a religious belief, like a philosophical belief, must be consistent with the ideals of a democratic society, and that it must be compatible with human dignity, serious, important, and (to the extent that a religious belief can reasonably be required so to be) cogent and coherent."

Later in this opinion I shall suggest that it may be unwise to take a rigidly analytical approach to the application of article 9. But assuming for the moment that the issue is to be analysed in terms of (i) the existence of a belief, (ii) its manifestation, (iii) interference with the manifested belief and (iv) justification of the interference, I doubt whether it is right for the court (except in extreme cases such as the "Wicca" case mentioned below) to impose an evaluative filter at the first stage, especially when religious beliefs are involved. For the Court to adjudicate on the seriousness, cogency and coherence of theological beliefs is (as Richards J put it in *R (Amicus) v Secretary of State for Trade & Industry* [2004] IRLR 430, 436-7, para 36) to take the Court beyond its legitimate role. The High Court of Australia expressed similar views in the *Church of the New Faith* case, especially at pp129-30 (Mason ACJ and Brennan J) and at p174 (Wilson and Deane JJ). So did the Supreme Court of Canada in *Syndicat Northcrest v Amselem* [2004] 241 DLR 4th 1, especially at p24, para 43 (Iacobucci J giving the judgment in which the majority concurred). So did the United States Supreme Court in *Employment Division, Department of Human Resources of Oregon v Smith* 494 US 872 (1990), especially at pp. 886-7 (Scalia J giving the majority opinion); the case contains a full discussion of the Free Exercise Clause of the First Amendment. Only in clear and extreme cases can a claim to religious belief be disregarded entirely, as in *X v United Kingdom*, Application No. 7291/75, admissibility decision of 4 October 1977 (no evidence of the existence of the "Wicca" religion).

58. A filter is certainly needed, because it is quite clear (as Mason ACJ and Brennan J put it crisply in the *Church of the New Faith* case at p136) that "Religious conviction is not a solvent of legal obligation." In my opinion the filters are to be found (first) in the concept of *manifestation* of religion or belief and (second) in Article 9 (2), which qualifies an individual's freedom to manifest his religion or beliefs (in the four ways mentioned in article 9 (1): worship, teaching, practice and observance) by:

> ". . . such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

59. I must recognise that the views of Arden LJ quoted above are not without some support in the jurisprudence of the Strasbourg Court. In *Campbell and Cosans v United Kingdom* (1982) 4 EHRR 293 (in which parents objected, but not on religious grounds, to their children receiving corporal punishment) the European Court of Human Rights stated (p304, para 36) that 'convictions',

> "denotes views that attain a certain level of cogency, seriousness, cohesion and importance."

It added (p305, para 36) that 'philosophical convictions',

> "denotes, in the Court's opinion, such convictions as are worthy of respect in a 'democratic society' and are not incompatible with human dignity."

The latter passage refers back to the Court's decision in *Young, James & Webster v United Kingdom* (1981) 4 EHRR 38 (para 63), a case on an employee who had conscientious objections to a "closed shop" policy.

60. I have to say that I find these qualifications rather alarming, especially if they are to be

applied to religious beliefs. For the reasons already noted, the court is not equipped to weigh the cogency, seriousness and coherence of theological doctrines. Anyone who feels in any doubt about that might refer to the hundreds of pages of the law reports devoted to 16 years of litigation, in mid-Victorian times, as to the allegedly "Romish" beliefs and devotions of the incumbent of St Alban's, Holborn (the litigation, entitled *Martin v Mackonochie*, starts with (1866) LR2 A & E 116 (Court of Arches) and terminates at (1882) 7 PD 94 (Privy Council sitting with Ecclesiastical Assessors)). Moreover, the requirement that an opinion should be "worthy of respect in a 'democratic society'" begs too many questions. As Mr Diamond (following Mr Dingemans) pointed out, in matters of human rights the court should not show liberal tolerance only to tolerant liberals.

61. *Campbell and Cosans* was concerned with the meaning of "philosophical convictions" in article 2 of the First Protocol, not with the meaning of 'religion' or 'belief'. The reference to a 'democratic society' in the passage quoted from para 36 of the judgment suggests that so far as it may be relevant to article 9 also, it must be looking at the article as a whole, including article 9 (2). Much of the Strasbourg jurisprudence takes a flexible approach, summarised by *Clayton and Tomlinson*, *The Law of Human Rights* (2000) para 14.40:

> "In the majority of cases, the Court has avoided making any express determination as to whether the subject matter comes within the scope of Article 9. In other cases, the Court has either assumed the existence of a religious belief without question, or has found against the existence of a manifestation of religious belief without determining whether there was a religion in issue."

The footnotes to this passage refer to *X v Italy* (1976) 5 DR 83 (complaints under articles 9, 10 and 11 by persons convicted of reorganising the Fascist Party in Italy); *Hoffman v Austria* (1993) 17 EHRR 293 (refusal of blood transfusions by a Jehovah's Witness); and *X and Church of Scientology v Sweden* (1979) 16 DR 68 (Scientology advertisement which was in any event commercial in nature).

62. The first necessary filter, I suggest, in order to prevent article 9 becoming unmanageably diffuse and unpredictable in its operation, is the notion of manifestation of a belief. Although freedom of thought and conscience is "also a precious asset for atheists, agnostics, sceptics and the unconcerned" (*Kokkinakis v Greece* (1993) 17 EHRR 397,418, para 31), the notion of manifesting a belief is particularly appropriate to the area of religious belief. Most religions require or encourage communal acts of worship of various sorts, preaching, public professions of faith and practices and observances of various sorts (including habits of dress and diet). There will usually be a central core of required belief and observance and relatively peripheral matters observed by only the most devout. These can all be called manifestations of a religious belief. By contrast the manifestation or promotion of secular beliefs (or "causes") tends to be focused on articles 10 and 11, although reliance may be placed on article 9 also.

63. It is clear that not every act which is in some way motivated or inspired by religious belief is to be regarded as the manifestation of religious belief: see *Hasan and Chaush v Bulgaria* (2002) 34 EHRR 1339, 1358, para 60. Article 9 protects (as well as the *forum internum)*

> ". . .acts which are intimately linked to [personal convictions and religious beliefs], such as acts of worship or devotion which are aspects of the practice of a religion or belief in a generally recognised form."

See *Kalac v Turkey* (1997) 27 EHRR 552, 558 (para 34 of the Commission's opinion) and 564 (para 27 of the judgment of the Court); the admissibility proceedings in *Konttinen v Finland* Application No. 24949/94; and *Sahin v Turkey* Application No. 44774/98, judgment

given 29 June 2004, para 66. Richards J made a similar point, in the *Amicus* case, [2004] IRLR 430, 438, para 44, when he observed that:

> "the weight to be given to religious rights may depend upon how close the subject-matter is to the core of the religion's values or organisation."

In the *Oregon* case 494 US 872, 888, footnote 4, Scalia J gave a particularly vivid example:

> ". . . dispensing with a 'centrality' inquiry is utterly unworkable. It would require, for example, the same degree of 'compelling state interest' to impede the practice of throwing rice at church weddings as to impede the practice of getting married in church."

64. I am therefore in respectful agreement with Lord Nicholls that, at any rate by the time that the court has reached the stage of considering the *manifestation* of a belief, it must have regard to the implicit (and not over-demanding) threshold requirements of seriousness, coherence and consistency with human dignity which Lord Nicholls mentions.

65. The second filter is article 9 (2), on which (as on the issue of interference) I have very little to add to what has been said by Lord Nicholls and Baroness Hale.

Baroness Hale of Richmond

75. ...Article 9 protects "freedom of thought, conscience and religion". This includes the freedom to manifest one's "religion or belief". Those of us who hold religious beliefs may feel that they are in some way different not only in kind but also in importance from other beliefs. But those who do not hold religious beliefs may profoundly disagree. Both article 9 and the first Protocol are careful not to distinguish between religious and other beliefs or philosophical convictions, nor do they elevate religious beliefs above others. The court is not required to consider the nature of religion, still less is it required to consider whether a particular belief is soundly based in religious texts. The court's concern is with what the belief is, whether it is sincerely held, and whether it qualifies for protection under the Convention.

76. Convention jurisprudence suggests that beliefs must have certain qualities before they qualify for protection. I suspect that this only arises when the belief begins to have an impact upon other people, in article 9 terms, when it is manifested or put into practice. Otherwise people are free to believe what they like. The European Court in *Campbell v Cosans v United Kingdom* (1982) 4 EHRR 293, 303, para 36, equated the parental convictions which were worthy of respect under the first Protocol with the beliefs protected under Article 9: they must attain a certain level of cogency, seriousness, cohesion and importance; be worthy of respect in a democratic society; and not incompatible with human dignity. No distinction was drawn between religious and other beliefs. In practice, of course, it may be easier to show that some religious beliefs have the required level of cogency, seriousness, cohesion and importance.

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http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050224/will-1.htm