
Book Review: The Status of Religion and the Public Benefit in Charity Law

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The Status of Religion and the Public Benefit in Charity Law, ed. Barry W. Bussey. Anthem Press, London, 2020; 240 pp: ISBN 978-1-78527-266-0

In the preface to this book, the editor, Barry Bussey, describes it as “an apologetic for maintaining the presumption of public benefit for the charitable category of the advancement of religion.” Bussey, who is director of legal affairs at the Canadian Council of Christian Charities (CCCC), states the book’s rationale as “an extended rebuttal to recurring calls in Canada to remove charitable status from religious charities.” The book makes a passionate argument for the place and public benefit of religion in contemporary society in the context of current debate.

The contributors, all well versed in the subject, bring together a wealth of evidence to support their case of the public benefit of religion, from different disciplines and perspectives. They analyse the impact of recent decisions on the charitable status of religious charities from different common law jurisdictions and set out concerns about freedom of religion and the place of religion in the public sphere in Canada, in the context of a new approach to the Canadian Charter of Rights and Freedoms (the Charter) values.

The opening chapter by Juliet Chevalier-Watts, an academic in New Zealand, provides an overview of the development of charity law and then looks at some recent cases from Australia and New Zealand. She argues that the doctrine and presumption of public benefit is an effective way of ensuring that religious bodies function legally and benefit their communities. This also enables a flexible response to changes in the way society operates. Three cases she reviews illustrate this – all new expressions of the advancement of religion. They are variously concerned with the provision of a mortgage-free lending scheme demonstrating the Bible’s

financial principles, a new religion, and a commercial entity established to generate funds for religious purposes.

Chevalier-Watts concludes that, under the doctrine of public benefit, the public may be reassured that whilst religious charities have the privileges of charity registration, these do not outweigh the benefit they confer on communities.

Raymond Chiu, an academic at Brock University, addresses the issue of public benefit from the social science perspective. His thesis is that the lack of consensus on the question of public benefit stems from an insufficient understanding of what the question actually means, and the application of the wrong tests by lawmakers. He argues that lawmakers have a narrow understanding of religion and oversimplify the issue, demanding obvious benefits whereas religion “centres on the deepest human need for meaning, significance and connectedness.” He stresses that both religion and benefit operate at societal, organizational, and personal levels and the current legal treatment fails to recognize the distinct contributions and integration between these different levels.

John Pellowe’s chapter provides a comprehensive overview of a very large number of studies of the public benefit of religion, mainly from the US and Canada. Pellowe, CCCC’s CEO, considers the benefits under four categories: better personal outcomes; development of pro social attitudes and behaviours; tangible community benefits; and tangible and intangible benefits for the community at large. He describes benefits encompassing all of life and ranging from better mental and physical health to higher levels of volunteering and the empowerment of women. He also cites evidence which shows that, balancing the cost of tax concessions against the benefits provided to society, religious organizations provide an outstanding tangible return on investment.

Two chapters look at the United Kingdom and the impact of the 2006 Charities Act in England and Wales. This removed the presumption of public benefit for all charities, including those for the advancement of religion. Frank Cranmer, a UK scholar and consultant, looks at the Charity Commission’s guidance on the advancement of religion and public benefit made under the Act and then considers the application of this in light of subsequent charity registration decisions.

The registration cases illustrate the difficulty that charity regulators face in determining the charity status of new religions. Thus, although the Charity Commission registered the Druid Network, it rejected the Gnostic Centre, Pagan Fellowship, Way of the Livingness, and, most recently, the Temple of the Jedi Order. Cranmer also discusses the 2013 Supreme Court case of *Hodkin*, which concerned the registration of the Church of Scientology under the Places of Worship Act and, whilst not addressing public benefit, gave a new, very wide definition of religion.

Bernard Doherty, who has academic positions in Australia and the UK, considers the Charity Commission’s decisions on the registration of the Preston Down Trust, part of the Exclusive Brethren. The Commission originally refused registration on the grounds that the doctrines and practices did not meet the new public benefit test, but following confidential negotiation and changes to the governing document, the Trust was later registered. Doherty describes the importance of the case as providing a framework for the analysis of future cases involving religious minorities. He ends by noting that the question of undesirable state interference needs to be considered. Both authors are critical of the charity law reforms in England and Wales,

particularly regarding the removal of the presumption of public benefit from charities for the advancement of religion, and urge that other jurisdictions considering reforms pay attention.

The final chapters turn to the debates in Canada around Charter values and the position of religion in the public space, and here the tone becomes more adversarial. The chapter by Canadian legal practitioners Derek Ross and Ian Sinke sets the scene from a constitutional perspective and considers whether the advancement of religion is consistent with the rights and freedoms guaranteed by the Constitution. Their starting point is the reference to the supremacy of god in the preamble to the Charter. They then consider Charter language and jurisprudence dealing with the protection of religious freedom, association and expression, and pursuit of a multicultural society and conclude that the Constitution and Charter “evince a strong preference for religious positive pluralism.”

The next two chapters delve into questions about the tension that can arise between tenets of faith and secular social norms. In particular, they raise concerns that, following the case of Trinity Western University and a controversy over criteria in 2018 for the Canada Summer Jobs program, the future charitable status of religious organizations may well insist on compliance with “Charter values,” such as equality. “Charter values” are an innovative element of the Supreme Court of Canada’s Trinity Western University decision that has been widely critiqued. The case dealt with accreditation of a law school at a private university and its beliefs and practices around marriage. Bussey, who contributes the first of these chapters, suggests that the “Charter values” concept – as opposed to more traditional judicial language framed around “rights” – is open-ended and has broad and troublesome implications for future jurisprudence. Bussey takes on what he describes as “the societal and legal elite” and their insistence on “certain ideological positions on human nature.” He states that if we respect diversity then “we must accept a wide and sometimes conflicting spectrum of views and practices.”

Canadian academic Janet Epp Buckingham also provides a chapter on the interaction between faith and secular social norms and places the “Charter values” issue in a broader context. She argues that, if religious freedom does not apply when religious organizations engage in public activities, then this restricts their positive societal impact, which in turn calls their charitable status into question. Buckingham is not persuaded by assertions that socially-beneficial activity undertaken outside the “four walls of a church,” for example education, ought to be subject to secular norms. She states that this would undermine the ability of religious institutions to provide public benefit. She argues that restricting religious organizations to church-focused functions violates Charter protection for religious freedoms and international human right norms.

In the concluding chapter, Iain Benson – an academic affiliated with universities in both Australia and South Africa – sums up the concerns underpinning much of the book: that Western culture no longer respects religion or understands why it should have a place in the public sphere. He argues that religious freedom rights are not solely private but communal and freedom of religion is itself an equality right rather than being at odds with equality rights. He stresses the importance of language in this area and argues that all have a faith, whether religious or non-religious. He argues the term secular should not be equated with non-religious, but rather that the secular should be inclusive of religious believers. He ends with describing the irony that “the only relationship that will last is if one is first charitable to religion in order to benefit from the charitable dimensions of religion.”