Stato, Chiese
e pluralismo confessionale

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The Meaning of 'Religion' in English Case Law

SUMMARY: 1. Introduction - 2. The English religious landscape and its connected system of legal protection - 3. The meaning of religion under Charity Law: the process of evolution from the Segerdal to the Hodkin case - 4. The meaning of "belief" under Equality and Human Rights Law - 5. The recent case of the Temple of the Jedi Order - 6. Conclusions.

1 - Introduction

The present paper analyzes the problem of the definition of religion in English case law. Giving a legal definition of religion and identifying its parameters is challenging. It can therefore be considered an "undertaking bound for failure"[516]: such a topic is more widely developed in other fields of study[517], but the sociological notion does not exactly lend itself to defining "what courts ought to protect"[518].

At the same time such a legal definition of religion, as clear as possible, plays a key role. This is due to the increasing weight recognized in modern legal systems to the collective dimension of religious freedom. Such a notion (and the related "binomial confessions-sects")[519] is not a mere academic question. It has a substantial impact on the state recognition of a "religious" status to groups and allows them to enjoy a specific juridical regime[520]. For this reason States, if they wish to maintain a strict attitude of deferential abstention ("hands-off" approach), are obliged to provide a definition of religion. However, there is a high risk of offering over- or under-inclusive solutions[521]. Moreover, even though the possibility of a self-

[516] See **C. MILLER**, *"Spiritual but not Religious": Rethinking the Legal Definition of Religion*, in *Virginia Law Review*, vol. 102, 2016, p. 841.

[517] See **R. N. BELLAH**, *Religious Evolution,* in *American Sociological Review*, vol. 29, 1964, pp. 358-374.

[518] See **N. TEBBE**, *Nonbelievers*, in *Va. L. Rev.*, vol. 97, 2011, p. 1135.

[519] See **G. CAROBENE**, *Problems on the legal status of the Church of Scientology*, in *Stato, Chiese e pluralismo confessionale*, Rivista telematica (*www.statoechiese.it*), 21/2014, p. 1.

[520] See **A. LICASTRO**, *Il diritto statale delle religioni nei paesi dell'Unione Europea*, Milano, Giuffrè, Second Edition, 2017, p. 64 ff.

[521] See **S. FERRARI**, **I.C. IBAN**, *Diritto e religione in Europa occidentale*, Bologna, il

qualification seems to be the best option, it is not exempt from the risk of encouraging frauds. This is because "sham religions" might exploit this opportunity to enjoy the benefits recognized to religious groups.

For all these reasons, State approach should be founded as far as possible on neutral standards in order not to intrude into ambits that should be strictly regulated by religious groups.

2 - The English religious landscape and its connected system of legal protection

Evolution in the religious landscape in England is in progress; the last one has been described by some Authors as "three-dimensional" (Christian, secular and religiously plural)"[522]. In any case, some trends are palpable: a gradual and continuous decrease in affiliation to traditional churches; an increase of atheism; a rise of faiths connected with immigration (Islam). A high number of minority religious groups also belong to minority ethnic communities, giving rise to intricate connections between race, religion and culture. Minorities show a greater loyalty to their culture and their religion, while majority churches experience the attitude of "believing without belonging" in the faithful[523].

In the search for a balance between the interest of minority groups to safeguard some key aspects of their culture and their religion and state concern for social cohesion, the English approach is very distant from the policies of assimilation (such as the French one) and it has traditionally opted for a more pluralistic and permissive model. However, such a policy raises concerns in those who are worried about the risks of religious fundamentalism, community segregation, and the vulnerability and powerlessness of "minorities within minorities"[524].

The present day legal framework mirrors these basic changes: even though the Church of England is still the established state religion and as such enjoys a more favourable status than other denominations and maintains its entanglement with the public sphere, there has been, from the 18th century onwards, a gradual process of improvement of the legal

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Mulino, 1997, p. 68.

[522] See **M. NYE**, **P. WELLER**, *Controversies as a Lens on Change*, in *Religion and Change in Modern Britain,* L. Woodhead, R. Catto (eds.), Abingdon, Routledge, 2012, pp. 34-54.

[523] See **G. DAVIE**, *Believing without Belonging*, Oxford-Cambridge (Mass.), Blackwell, 1994.

[524] See **M. MALIK**, *Minorities Legal Orders in the UK. Minorities, Pluralism and the Law*, London, The British Academy, 2012.

treatment of other religious groups "from persecution to tolerance and latterly to accommodation"[525]. The recent legal acts encourage the recognition of an appropriate *quantum* of religious liberty to all religious groups (even though minority groups still complain they do not play on a level field of complete equality). Nowadays the protection of religious freedom seems increasingly intertwined with the safeguarding of equality and human rights[526]: minority religions view recent legal statutes as an opportunity of further amelioration of their legal treatment; on the contrary, some voices of Christian opinion feels "marginalised" and "penalized" by such new legal narrative implementing "equality and diversity"[527].

Finally, the peculiarity of a commom law system, where case law has a predominant role, as it goes to integrate and change the rules introduced by the legislator, should not be overlooked.

3 - The meaning of religion under Charity Law: the process of evolution from the Segerdal to the Hodkin case

There has never been a common legal definition of religion in English law, because of the number of world religions, social changes, and the various legal contexts. In England, there is no formal system of recognition or registration of groups as "religion". However, religious groups can obtain certain advantages, such as tax benefits, registering as religious charities. The Charity Commission recognizes the "advancement of religion" as a charitable purpose. However, in order to obtain such a status, religious charities are required to demonstrate that they carry out their activities for the public benefit. Approved forms of religion traditionally enjoyed the support offered by charity law, but from the nineteenth century onwards English courts have had to cope with religious pluralism and they have recognized that the idea of "religion" can incorporate non-Anglican forms

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[525] See **M. HILL**, *Reasonable Accommodation: Faith and Judgement*, EUI Working Papers, 2016, p. 1; M Hill, R. Sandberg, N. Doe (eds) *Religion and Law in the United Kingdom*, Netherlands, Wolters Kluwer, Second edition, 2014, pp. 26-27.

[526] The 1998 Human Rights Act seems to incorporate the guarantees offered by the ECHR into English law. The Equality Act 2010 prohibits unlawful harassment, victimization and direct and indirect discrimination at work founded on religion or belief; it is the legal tool by which Great Britain fulfills its obligations under EU Directive 2000/78. See **P. EDGE**, **L. VICKERS**, *Review of Equality and Human Rights Law Relating to Religion and Belief*, Equality and Human Rights Commission, 2015, p. 28.

[527] See **A. DONALD**, **K. BENNETT**, **P. LEACH**, *Religion or Belief, Equality and Human Rights in England and Wales*, Manchester, Equality an Human Rights Commission, 2012, p. 112 ff.

of Christianity[528], non-Christian religions such as Judaism[529], less widespread religious groups (Hindu, Sikh, Bahai, Zoroastrian and Jain groups)[530], and also some Buddhist groups (notwithstanding the traditional Judeo-Christian centric concept of deity adopted by the English judiciary), rejecting atheism from the ambit of the accepted religious realities[531].

Most recent case law concerns new religious groups, such as the Church of Scientology, and their attempts to have their buildings registered as places of worship under the Places of Worship Registration Act 1855, just to enjoy the more favourable conditions offered by the State to religious premises[532].

According to the Segerdal case (which arose from an attempt by the Church of Scientology to have a chapel registered as a place of worship under the Places of Worship Registration Act 1855), Scientology is more a philosophy of the existence of man and of the concept of life, rather than a religion; it does not involve "religious worship" as such, since it is not connected with "reverence or veneration of God or of a Supreme Being"[533].

Such a theistic definition of religion has been repeatedly underlined in subsequent cases[534] and also when the Charity Commission decided to reject the application of Scientology to obtain the status of a charity[535].

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[528] See *Thornton v Howe* (1862) 21 Beav 14 (UK).

[529] See *Re Michel's Trust* (1860) 28 Beav 39 (UK).

[530] See **P.W. EDGE**, *Religion and Law: An Introduction*, London, Ashgate, 2006, p. 107.

[531] See *Re South Place Ethical Society* ([1980] All ER 918 (UK). According to Judge Dillon, in the decision *Re South Place Ethical Society*, religion "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?; besides, religion is about faith in a god and worship of that god".

[532] Worship meetings of over 20 people are allowed only in buildings (other than private residences) registered as places of worship (Places of Religious Worship 1812s.2 (UK)); registration is required to hold religious marriage ceremonies; buildings registered as places of worship are exempt from the planning controls concerning buildings of special value for conservation purposes (Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994 art. 4).

[533] See *R v Registrar General, Segerdal and another*, in *All England Law Reports*, [1970] 3 All ER.

[534] In 1974 the Immigration Appeal Tribunal stated that Scientology cannot enjoy the privileges accorded in the immigration law to the ministers of religion.

[535] In 1999 it stated that "it is accepted that Scientology believes in a supreme being", but "the core practices of Scientology, being auditing and training, do not constitute worship as they do not display the essential characteristic of reverence or veneration for a supreme being". Scientology's application was also rejected because the Commission underlined that its benefit would have been enjoyed only by elected members and not by the public as a whole. According to previous case law, in fact, "[...] a benefit will not be recognised for the public as a whole if it relies upon metaphysical causation, for instance

A recent ruling, nevertheless, addresses the question whether a building of the Church of Scientology can be registered as a "place of meeting for religious worship", so that a civilly valid marriage ceremony can be solemnized there[536].

Such a decision reverses the traditional British approach to the concept of religion. Lord Toulson, who wrote the leading judgement, provided a detailed description of the idea of religion[537]: from this definition, religion might be described as a system of beliefs transcending sensory perception or scientific data, that is respected by a group of believers (so the associational nature of religion is emphasized), which aims at explaining mankind's position in the universe and its relationship to the infinite, and to teach its followers how they should live their lives in accordance with the spiritual principles linked to the belief system. Within this concept of religion, which develops the functional role of the belief system in the adherent's life and his "ultimate concern"[538], Scientology can clearly be considered a religion, its spiritual leaders can hold religious services and its premises can be registered as places of worship.

Following this ruling, religion cannot be limited to faiths worshipping a supreme God because doing so would also mean excluding Buddhism, Jainism, Taoism, Theosophy and part of Hinduism from the religious sphere; this assumption would even cause an undue interference with intricate theological issues.

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prayers by cloistered nuns to benefit the world as a whole" (*Gilmour v Coates* [1949] AC 426 (UK). However, a public advantage can be recognised also to a small religious group, as the Commission traditionally starts from the assumption that advancing any religion is advantageous, and then assesses the public importance of such a benefit. See **A. VAN ECK DUYMAER VAN TWIST**, *Religion in England*, in *Mit welchem Recht? Europäisches Religionsrecht im Umgang mit neuen religiösen Bewegungen*, a cura di K. Funkschmidt., Berlin, Evangelische Zentralstelle für Weltanschauungsfragen, 2014, pp. 74-90.

[536] *See R (on the application of Hodkin and another) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77, 11 December 2013.

[537] "I would describe religion in summary as a spiritual or non-secular belief system, held by a group of adherents, which claims to explain mankind's place in the universe and relationship with the infinite, and to teach its adherents how they are to live their lives in conformity with the spiritual understanding associated with the belief system. By spiritual or non-secular I mean a belief system which goes beyond that which can be perceived by the senses or ascertained by the application of science. I prefer not to use the word "supernatural" to express this element, because it is a loaded word which can carry a variety of connotations. Such a belief system may or may not involve belief in a supreme being, but it does involve a belief that there is more to be understood about mankind's nature and relationship to the universe than can be gained from the senses or from science. I emphasise that this is intended to be a description and not a definitive formula".

[538] See *Note, Toward a Constitutional Definition of Religion*, in *Harv. L. Rev.*, vol. 91, 1978, pp. 1066-67.

Such a decision offers therefore a solution for the particular case of those religions (such as Buddhism), which previous case law preferred to qualify as "exceptional cases" rather than expanding the meaning of religion to include non-theist beliefs[539].

By its very words, it seems that the English court has been deeply influenced by an examination of some foreign Court decisions in order to face the problem posed by the Church of Scientology: such decisions develop an "analogic" approach, whereby the belief system in question is compared to other belief systems already accepted as "religions". Some of the standards adopted in such rulings, in order to identify a "religion", as the involvement of the transcendent factor of belief systems and the observance of particular standards or codes of conduct by adherents, have been applied to this English ruling[540].

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[539] In fact, Lord Toulson added that "The evidence in the present case shows that, among others, Jains, Theosophists and Buddhists have registered places of worship in England. Lord Denning in Segerdal [1970] 2 QB 697, 707, acknowledged that Buddhist temples were "properly described as places of meeting for religious worship" but he referred to them as "exceptional cases" without offering any further explanation. The need to make an exception for Buddhism (which has also been applied to Jainism and Theosophy), and the absence of a satisfactory explanation for it, are powerful indications that there is something unsound in the supposed general rule". See **K. BROMLEY**, *The Definition of Religion in Charity Law in the Age of Human Rights*, in *The International Journal of Not-For-Profit Law*, vol. 3.1, 2000, p. 41.

[540] See Court of Appeals of the United States, 3rd Circuit, Malnak v. Yogi, 592 F.2d 197 (1979); High Court of Australia, in the Church of the New Faith v. Comm'r of Pay-Roll tax (Victoria) (1983) 154 CLR. In the first decision, Judge Adams of the Third Circuit has suggested a test for religion consisting of three parameters. He has identified the task of religion as providing a comprehensive belief system: as opposed to an isolated teaching, it supplies an all-embracing set of beliefs that "addresses fundamental and ultimate questions having to do with deep and imponderable matters". Such basic questions include: "the meaning of life and death, man's role in the Universe, [and] the proper moral code of right and wrong ". Uniting these two ideas, religion can be defined as a comprehensive belief system that focuses on the fundamental questions of human existence, such as the meaning of life and death, man's role in the universe, and the nature of good and evil; the requirement of a comprehensive belief system addressing fundamental questions is stressed, as it provides an acceptable starting point to define the concept of religion.

Finally, a religion can often be recognized by the presence of "any formal, external, or surface signs that may be analogized to accepted religions" (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). Cfr. **B. CLEMENTS**, *Defining Religion in the First Amendment: A Functional Approach*, in *Cornell Law Review*, vol. 74, 1989, pp. 532-558.

In the second decision, the Court had to decide "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". It stated that: "We would therefore hold that, for the purposes of the law, the

There is a further significant point. Once Scientology had been included within the meaning of a religion, if its chapel could not have been registered under the Places of Worship Registration Act because its services do not involve the kind of veneration which the Court of Appeal in *Segerdal* considered essential, the result would have been to prevent Scientologists from being married anywhere in a form which involved use of their own marriage service.

They could have held a service in their chapel, but it would not have been a legal marriage, and they could have had a civilly valid marriage on other "approved premises" under section 26(1)(bb) of the Marriage Act, but not in the form of a religious service, because of the prohibition in section 46B(4) of the Marriage Act 1994[541]. They would therefore have been under a double exclusion and discrimination, not only compared to atheists and agnostics, but also to most religious groups. The result would have been illogical, discriminatory and unjust. When Parliament prohibited the use of any "religious service" on approved premises in section 46B(4), it did so on the assumption that any religious service of marriage could lawfully be held at a meeting place for religious services by registration under Places of Worship Registration Act.

4 - The meaning of "belief" under Equality and Human Rights Law

Under Charity Law, on the basis of which the recognition of the status of religion involves the enjoyment of some financial benefits, a more reluctant approach has been adopted towards nontraditional belief systems by the judiciary; however, under Equality and Human Rights Law, UK courts have found that most beliefs deserve protection and are not prone to questioning the legitimacy or worth of a person's most authentic beliefs unless they conflict with human dignity.

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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". So, the Court held that Scientology can be granted the status of religion.

[541] Section 26(1)(bb), as inserted by section 1(1) of the Marriage Act 1994, permits marriages to be solemnized on the authority of a superintendent registrar on "approved premises". Under that provision, marriages can now take place in hotels or elsewhere.

The form of marriage on approved premises is governed by section 46B, as inserted by section 1(2) of the 1994 Act, and sub-section (4) provides: "No religious services shall be used at a marriage on approved premises in pursuance of section 26(1)(bb) of this Act".

Such an approach is broader and more coherent with the most recent legislative trends (aimed at managing a multicultural social context), on the grounds of which the definition of religion was re-assessed in the light of the *European Convention on Human Rights*, the Strasbourg jurisprudence[542] and the EU Directives[543]. According to this trend, both "philosophical" and "religious" beliefs deserve a wider protection, which cannot be limited to established religions[544]: so the category of belief includes all claims of conscience, even the deeply held secular ones.

Under Human Rights and Equality Law, The UK courts tend to implement the principles derived from the Strasbourg Court cases to determine whether a religious or a philosophical belief merits protection under equality legislation or Article 9 ECHR, thus weakening the boundary between religion and conscience.

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[542] See *Arrowsmith v United Kingdom* (1978) 3 EHRR 218; *H v UK* (1992) 16 EHRR CD 44; *Campbell and Cosans v United Kingdom* (1982) 4 EHRR 293; *Chappell v United Kingdom* (1987) 53 DR 241. In the last case the ECtHR recognised Druidism as a religion under Article 9. The Charity Commission has also identified Druidism as a religion (*Application forRegistration of the Druid Network*, 21 September 2010). Otherwise, the Commissioners did not recognise the Pagan Federation (*Application for the Registration of the Pagan Federation*, 2012) or the Gnostic Centre as charities for the promotion of religion (*Application for the Registration of the Gnostic Centre*, 16 December 2009).

[543] Section 3 (2) (a) of the Charities Act 2011 states that "Religion" includes a religion which involves belief in more than one god and a religion that does not involve belief in a God. Under the Equality Act 2010, religion means "any religion" and belief means "any religious or philosophical belief"; atheism is also included. The Explanatory Notes (para. 52) accompanying the Equality Act 2010 follow Strasbourg jurisprudence in explaining that a "philosophical belief" must "be genuinely held; be a belief and not an opinion or viewpoint based on the present state of information available; be a belief as to a weighty and substantial aspect of human life and behaviour; attain a certain level of cogency, seriousness, cohesion and importance; and be worthy of respect in a democratic society, compatible with human dignity and not conflict with the fundamental rights of others".

[544] See *Farrell v South Yorkshire Police Authority* [2011] EqLR 934 (ET), where the Employment Tribunal held that the claimant's belief in a New World Order - "a secret satanic ideology to enslave the masses and claim control of the world's resources" - was not a belief deserving protection. It was "wildly improbable" and did not reach the required standards of cogency or coherence. See *Hashman v Milton Park Dorset Limited* [2011] EqLR 426 (ET), where the Employment Tribunal held that belief in the sanctity of life and anti-fox-hunting are qualified for protection. On the contrary, the House of Lords has held that pro-hunting views are not under the protection offered by Article 9 ECHR (*R (Countryside Alliance) v Attorney General* [2008] 1 AC 719). See also *Alexander v Farmtastic Valley Ltd and Others* [2012] EOR 222, in which case the Employment Tribunal held that beliefs about the treatment of animals that embodied vegetarianism and aspects of Buddhism were protected beliefs; *Streatfield v London Philarmonic Orchestra Limited* [2012] EqLR 901, where the Employment Tribunal granted humanist beliefs protection under the Equality Act 2010.

According to these decisions, a belief must be genuinely held; it must be a belief and not an opinion or viewpoint based on other information[545]; it must reach a certain level of cogency, seriousness, cohesion and importance[546]; it must be considered worthy of respect in a democratic society; it has to be coherent with human dignity and it must not be incompatible with the fundamental human rights[547]. A philosophical belief should have a similar position or cogency as a religious belief is equipped with, but it does not need to be shared by others[548] A "one-off belief", that is to say, a belief that does not fully rule a person's existence, may nevertheless admitted to the protection reserved to religious beliefs[549].

5 - The recent case of the Temple of the Jedi Order

Following its traditional strict approach, in 2016 the Charity Commission rejected an application to be granted the status of religion from a group self-qualified as the Temple of the Jedi Order (TOTJO). TOTJO is an entirely web-based organization and the Jedi are almost exclusively an online community. The information provided on the TOTJO's website and produced in support of the application, which includes the content of the sermons and transcripts of the Live Services which are founded upon the Jedi Doctrine and recite the Creed (adopted from the Prayer of St. Francis of Assisi) were taken into consideration.

In its ruling, the Commission stated that although the group makes "sermons", transcripts of "live services" and a "creed" available on its website, and has its own calendar of special days and other forms of

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[545] For example, the thesis, founded on current research concerning the effects on children, that single-sex couples should not be allowed to adopt, was considered as an opinion rather than a belief in *McClintock v Department of Constitutional Affairs* [2008] IRLR 29.

[546] In some cases a belief was dismissed on these grounds and the House of Lords has questioned the appropriateness of this enquiry by courts (*R (Williamson) v Secretary of State for Education and Employment* [2005] 2 AC 246). According to the *Arrowsmith* case, the House of Lords accepted that pacifism was a protected belief in this case.

[547] Thus, a religious belief, which involves exposing others to torture or inhuman punishment, would not obtain protection (*R (Williamson)*.

[548] See *Grainger Plc v Nicholson* [2010] ICR 360: in this case, the Employment Appeal Tribunal held that a belief in man-made climate change, and the connected moral imperatives, could be considered, if genuinely held, as a philosophical belief for the purposes of the Employment Equality (Religion or Belief) Regulations (SI/2003/1660).

[549] See *Grainger*, where pacificism and vegetarianism are one-off beliefs in this sense, but both have been qualified as protected beliefs.

"religious" practice, its activities did not have the required elements of "worship" to be considered as religious[550].

Besides, the Charity Commission held that Jediism "lacked the necessary spiritual or non-secular element" to be qualified as a religion.

The absence of a belief system was emphasized: the Commission stated there was not sufficient evidence that "moral improvement" was central to the beliefs and practices of Jediism and it did not have the "cogency, cohesion, or seriousness" to be classified as a belief system.

Finally, the Commission held that a religion must also have a positive beneficial effect on society in general and feared that, otherwise, Jediism might, in part, have an "inward focus" on its members.

6 - Conclusions

The lack of a clear definition of religion leaves a lot of discretionary power in the hands of judges. The government trend is aimed at allowing the courts and tribunals the task of facing the definitional issues as they turn up. In fact, "given the wide variety of different faiths and beliefs in this country", it was not considered appropriate for the government to assess the legitimacy of particular religions or beliefs [551].

Courts feel uncomfortable about giving a legal definition of religion. Even so, the judiciary is encharged to determine the range of the concept on a case-by-case basis, according to the context in which the question arises.

Case law witnesses the long process of evolution concerning the meaning of religion in the English legal system. In the past, it was connected to a set of shared values and to its national Christian identity. Multiculturalism, globalization and secularism have led to a weakening of such a traditional approach, in view of the new needs of coping with religious diversity and plurality. Such needs are the tip of the "iceberg" of the difficult balance between state secularism and the social demands of religious accommodation. At the same time, the English legal system has accepted the idea that religions are not static and cristalyzed sets of value.

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[550] "Although these publications borrow from the prayers and texts of world religions, in the context of TOTJO the Commission is not satisfied that the 'Live Services' on the website, the published sermons and the promotion of meditation evidence a relationship between the adherents of the religion and the gods, principles or things which is expressed by worship, reverence and adoration, veneration intercession or by some other religious rite or service […]. In particular, it is significant that Jediism may be adopted as a lifestyle choice as opposed to a religion".

[551] See Government consultation on implementing EU Directive 2000/78 (para 13.5).

Moreover, it recognizes their more flexible and dynamic dimension, which is the effect of the social and cultural context they interact with.

The primary advantage of the most recent "functional" and, at the same time, "analogic" approach is that it offers more objective and tangible elements for courts to focus on while assessing whether a belief or practice is religious. This approach attempts to articulate more open definitional guidelines and to provide a concrete methodological structure to judicial analysis, in order to determine which belief systems can be qualified as religions. In this way, it tries to minimize penalization of non-traditional religions and to resolve the contradictions of the previous definition. Some borderline cases concerning newer forms of "faiths", on the other hand, are qualified as undeserving of legal protection.

A broad perspective notwithstanding emerges, aimed at including, rather than excluding, belief systems, in order to provide protection to a wide array of belief systems. This approach seems to leave a margin of flexibility[552], giving the courts the possibility of distinguishing sham claims. It should mitigate future excessive judicial fluctuations, depending on the predilections of single courts[553]. In any case, such a qualification is not sufficient to admit that a "religious" behaviour deserves an accommodation if there is a violation of criminal law[554].

Under Charity Law, specifically, the legal notion of religion is prone to favor organized religion over individualized personal approaches. Even so, religion might occur also outside an institutional framework. Thus, it risks excluding religious beliefs that are not held by a group. The Courts have now overturned theism as a defining feature of religion and today incorporate even nontheistic belief systems. The judiciary should take a step further, to recognize that the presence of an organized group is not a prerequisite for legal protection. At the same time, the emphasis given to the metaphysical dimension of religion seems to reject belief systems grounded in the physical world (e.g. secular humanism, atheism), which do

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[552] It also takes into consideration, even though with some caution, the self-perspective of the same groups: "A fifth and perhaps more controversial, indicium (see Malnak v Yogi) is that the adherents themselves see the collection of ideas and/or practices as constituting a religion" (p. 174).

[553] It is in fact similar to the one developed by Judge Adams in *Malnak v. Yogi*, which is strictly constructed by comparing religious and nonreligious belief systems.

[554] See *R v Taylor* [2001] EWCA Crim 2263 (23 October 2001) (UK), and *R v Andrews* [2004] EWCA Crim 947 (5 March 2004) (UK), cases concerning the religious use of drugs by Rastafarians. The courts stated that, even though Rastafarianism is a religion, and that the drugs were aimed at religious purposes, the legal prohibition is consistent with Article 9(2) ECHR. Cfr. R. Sandberg (ed.), *Religion and Legal Pluralism*, Burlington (VT), Ashgate, 2015.

not include any transcendent factor, as religions. However, in this regard, a deeper analysis of new forms of spirituality and the option to offer them legal protection seems to impose itself as a future task for the judiciary.

Moreover, such a trend would be in harmony with the new social need to satisfy the expectations of religious pluralism in a religiously neutral framework. It would avoid the risk, on one hand, of creating an excessively open system, which would make religious beliefs and ways of life or even "sham religions"all equal. On the other hand, it would prevent using anachronistic parameters. It also might try to minimize the risk of a pervasive judicial interference into theological matters which courts are not equipped to weigh up[555].

Such an overcoming of the "obsolete patterns of inclusion/exclusion"[556], drawing "lines between religious and nonreligious belief systems"[557], will surely have a positive impact on the recognition of other groups as religions. It would, in fact, not only cover the claims of those who complain of discrimination under the Equality Act 2010, but also include the purposes of Charity Law.

ABSTRACT: The present paper analyzes the problem of the definition of religion in English case law. Case law witnesses the long process of evolution concerning the meaning of religion in the English legal system. In the past it was connected to a set of shared values and to its national Christian identity. Multiculturalism, globalization and secularism has led to a weakening of such a traditional approach, in view of the new needs of coping with religious diversity.

[555] See *MBA v. London Borough of Merton*, [2013] EWCA Civ 1562.

[556] See **G. CAROBENE**, *Problems on the Legal Status of the Church of Scientology*, cit., p. 15.

[557] See **C. MILLER**, *"Spiritual but not Religious": Rethinking the Legal Definition of Religion*, cit., p. 853.